

SESSION LAWS
OF
HAWAII
PASSED BY THE
SIXTEENTH STATE LEGISLATURE

REGULAR SESSION
1991

Convened on Wednesday, January 16, 1991
and
Adjourned sine die on Monday, May 6, 1991

SPECIAL SESSION
1991

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and
Adjourned sine die on Friday, June 28, 1991

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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 and Special Sessions of 1991. The text of the laws as enacted is followed except for obvious typographical 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 However, the text is edited to omit the bracketed matter for HRS sections repealed in their entirety and to delete the underscoring from new HRS sections.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 20, 1991

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**Session Laws Of Hawaii
Passed By The
Sixteenth State Legislature
Regular Session
1991**

ACT 1

H.B. NO. 1

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 \$4,488,279, or so much thereof as may be necessary, for defraying any and all session and nonsession expenses of the Senate up to and including June 30, 1992, including but not limited to the 1991 regular session, Sixteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1991 and 1992 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,854,919, or so much thereof as may be necessary, for defraying any and all session and nonsession expenses of the House of Representatives up to and including June 30, 1992, including but not limited to the 1991 regular session, Sixteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1991 and 1992 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 1991 and 1992 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 1991 and 1992 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 15, 1992, the Senate and 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, 1992.

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 pro-

ACT 1

visions of section 78-15, Hawaii Revised Statutes, or by any other general statute. Until otherwise prescribed by law, the expenses of such member shall be \$125 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 \$2,417,190, to the office of the legislative auditor for the following expenses: (a) the sum of \$1,816,000, or so much thereof as may be necessary, for defraying the expenses of the office of the legislative auditor during the fiscal year 1991-1992; (b) the sum of \$451,190, or so much thereof as may be necessary for defraying the expenses of the office of the state ethics commission during the fiscal year 1991-1992; (c) the sum of \$150,000, or so much thereof as may be necessary during the fiscal year 1991-1992, 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 those 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 \$1,953,325, or so much thereof as may be necessary, to the legislative reference bureau for defraying the expenses of the bureau during the fiscal year 1991-1992 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 \$673,226, 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 1991-1992.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary, for defraying the expenses of the legislative information system (known as "SHADO"): (a) \$500,000 to the Senate; and (b) \$500,000 to the House of Representatives. This appropriation shall be utilized to pay for hardware, software, consultant, installation, materials, supplies and other related costs associated with the legislative information system which have been or will be incurred. This appropriation shall take effect upon its approval and shall not lapse until June 30, 1992.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$650,000, or so much thereof as may be necessary, to defray any unanticipated costs by the Senate associated with the relocation of the legislature to its new facilities. Such costs may include the redeployment of staff, the moving, installation, and remodeling of equipment and office facilities to adapt to the new building, and any other costs deemed necessary by the President of the Senate. This appropriation shall take effect upon its approval and shall not lapse until June 30, 1992.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$650,000, or so much thereof as may be necessary, to defray any unanticipated costs by the House of Representatives associated with the relocation of the legislature to its new facilities. Such costs may include the

redeployment of staff, the moving, installation, and remodeling of equipment and office facilities to adapt to the new building, and any other costs deemed necessary by the Speaker of the House. This appropriation shall take effect upon its approval and shall not lapse until June 30, 1992.

SECTION 12. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$12,643,198 or 0.49 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 13. As of the close of business on June 30, 1992, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 14. Each section of this Act is declared to be severable from the remainder of this Act.

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

(Approved February 5, 1991.)

ACT 2

S.B. NO. 1811

A Bill for an Act Relating to Employment.

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

SECTION 1. Section 368-1, Hawaii Revised Statutes, is amended to read as follows:

“§368-1 Purpose and intent. The legislature finds and declares that the practice of discrimination because of race, color, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or handicapped status in employment, housing, public accommodations, or access to services receiving state financial assistance is against public policy. It is the purpose of this chapter to provide a mechanism which provides for a uniform procedure for the enforcement of the State’s discrimination laws. It is the legislature’s intent to preserve all existing rights and remedies under such laws.”

SECTION 2. Section 378-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Sexual orientation” means having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified with any one or more of these preferences. “Sexual orientation” shall not be construed to protect conduct otherwise proscribed by law.”

ACT 2

SECTION 3. 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) Because of race, sex, sexual orientation, age, religion, color, ancestry, handicapped status, marital status, or arrest and court record:
 - [(1)] (A) For 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, handicapped status, marital status, or arrest and court record];
 - [(2)] (B) For 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, handicapped status, marital status, or arrest and court record];
 - [(3)] (C) 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, handicapped status, marital status, or arrest and court record];
 - [(4)] (D) 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, handicapped status, marital status, or arrest and court record]; or
 - (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be less than sixteen years of age;
- [(5)] (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
- [(6)] (3) 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, handicapped status, marital status, or arrest and court record of an apprentice; provided that no apprentice shall be less than sixteen years of age;
- [(8)] (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard; or
- [(9)] (5) 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 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. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved March 21, 1991.)

ACT 3

S.B. NO. 713

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing 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 26-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following are placed in the department of business, economic development, and tourism for administrative purposes as defined by section 26-35: Aloha Tower development corporation, Hawaii community development authority, high technology development corporation, land use commission, natural energy laboratory of Hawaii[,] authority, and any other boards and commissions as shall be provided by law.

The department of business, economic development, and tourism shall be empowered to establish, modify, or abolish statistical boundaries for cities, towns, or villages in the State and shall publish, as expeditiously as possible, an up-to-date list of cities, towns, and villages after changes to statistical boundaries have been made.”

SECTION 2. Section 103-3, Hawaii Revised Statutes, is amended to read as follows:

“**§103-3 Employment of attorneys.** No department of the State, other than the attorney general, shall make any expenditure of public funds for the employment or retention by contract or otherwise of any attorney for the purpose of representing the State or such department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply:

- (1) To the housing finance and development corporation or the public utilities commission;
- (2) To any court or judicial or legislative officer of the State;
- (3) To the legislative reference bureau;
- (4) To such compilation commission as may be constituted from time to time;

ACT 3

- (5) To the real estate commission in any action involving the real estate recovery fund, the contractors license board in any action involving the contractors recovery fund, and the trustees in any action involving the travel agency recovery fund;
- [(6)] To the Hawaii criminal justice commission;
- (7) (6) To grand jury counsel;
- [(8)] (7) To the office of Hawaiian affairs;
- [(9)] (8) To the department of commerce and consumer affairs; provided that its attorney shall be responsible for the prosecution of consumer complaints;
- [(10)] (9) To the employees' retirement system; or
- [(11)] (10) In the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines representation or counsel, or approves a department's expenditures; provided that the governor thereupon waives the provision of this section.

For the purpose of this section the term "department of the State" means any department, board, commission, agency, bureau, or officer of the State.

Every attorney employed by any department on a full-time basis, except an attorney employed [by the Hawaii criminal justice commission or] as a grand jury counsel, or the department of commerce and consumer affairs in prosecution of consumer complaints, shall become a deputy attorney general."

SECTION 3. Section 353D-4, Hawaii Revised Statutes, is amended to read as follows:

"§353D-4 Advisory council. There is established within the department for administrative purposes an offender family service center program advisory council. The council shall consist of seven members, of whom two shall be offender family members. The members of the council shall be appointed by the director of [corrections] public safety in consultation with private secular and religious organizations. The council may review and make recommendations to the director to improve the services rendered by the center."

SECTION 4. Section 487-5, Hawaii Revised Statutes, is amended to read as follows:

"§487-5 General functions, powers, and duties. 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 director of 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; pro-

vided 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 adopted for the purpose of consumer protection and shall enforce such laws and rules 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 clearinghouse 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) Appear before governmental commissions, departments, and agencies to represent and be heard on behalf of consumers' interest;
- (10) 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 for the purpose of consumer protection under this section, 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; and
- [(11) Adopt rules pursuant to chapter 91 necessary to implement the provisions of chapter ; and
- (12)] (11) 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 5. Act 40, Session Laws of Hawaii 1990, is amended by amending the prefatory language in section 1 to read as follows:

“SECTION 1. Section 454-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:”

SECTION 6. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1991, whether enacted before or after the effective date of this Act, unless the other acts specifically provided otherwise.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

ACT 4

SECTION 8. This Act shall take effect on July 1, 1991; provided section 5 shall take effect retroactive to April 23, 1990.

(Approved March 28, 1991.)

ACT 4

S.B. NO. 124

A Bill for an Act Relating to Public Defenders.

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

SECTION 1. The legislature finds that section 46-3, Hawaii Revised Statutes, authorizing counties to create offices of public defender, has become obsolete due to the enactment of chapter 802, which creates and provides for an office of the state public defender.

SECTION 2. Section 46-3, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed.¹

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

(Approved March 28, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 5

S.B. NO. 135

A Bill for an Act Relating to Writs of Ne Exeat.

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

SECTION 1. Section 601-14, 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 March 28, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 6

S.B. NO. 83

A Bill for an Act Relating to Small Claims.

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

SECTION 1. Section 633-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All district courts, except as otherwise provided, shall exercise jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction, shall be known and referred to as the small claims division of the district court; provided that the jurisdiction of the court when sitting as a small claims division of the district court shall be confined to:

- (1) Cases for the recovery of money only where the amount claimed does not exceed \$2,500 exclusive of interest and costs, except as provided by section 633-30;
- (2) Cases involving disagreement between landlord and tenant about the security deposit in a residential landlord-tenant relationship; and
- (3) Cases for the return of leased or rented personal property worth \$1,500 or less where the amount claimed owed for [such] that lease or rental does not exceed \$2,500 exclusive of interest and costs.

This chapter shall not abridge or affect the jurisdiction of the district courts under paragraphs (1) and (3) to determine cases under the ordinary procedures of the court, it being optional with the [parties to such] plaintiff in the cases to elect the procedure of the small claims division of the district court or the ordinary procedures, as provided by rule of court. No case filed in the small claims division after December 31, 1991, shall be removed from the small claims division to be heard under the ordinary procedures of the district court unless the removal is agreed to by the plaintiff. In cases arising under paragraph (2) the jurisdiction of the small claims division of the district court shall be exclusive. This subsection shall not abrogate nor supersede sections 604-5, 633-30, and 633-31.”

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 1, 1991.)

ACT 7

S.B. NO. 1373

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-61, Hawaii Revised Statutes, is amended to read as follows:

“**§383-61 Payment of contributions; wages not included.** (a) Contributions with respect to wages for employment shall accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter. The contributions shall become due and be paid by each employer to the director of labor and industrial relations for the fund in accordance with such [regulations] rules as the department of labor and industrial relations may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in [such] the employer’s employ.

(b) [For the purposes of this part,] Except as provided in subsections (c) and (d), the term “wages” does not include remuneration paid with respect to employment to an individual by an employer during any calendar year which exceeds the average annual wage, rounded to the nearest hundred dollars, for the

ACT 7

four calendar quarter period ending on June 30 of the preceding year.

The average annual wage shall be computed as follows: on or before November 30 of each year the total remuneration paid by employers, as reported on contribution reports on or before such date, with respect to all employment during the four consecutive calendar quarters ending on June 30 of such year shall be divided by the average monthly number of individuals performing services in such employment during the same four calendar quarters as reported on such contribution reports and rounded to the nearest hundred dollars.

(c) For the calendar year 1991 only, the term "wages" does not include remuneration in excess of \$7,000 paid with respect to employment to an individual by an employer.

[(c)] (d) For calendar year 1988 only, the term "wages" as used in this part does not include remuneration paid with respect to employment to an individual by an employer during the calendar year which exceeds:

- (1) One hundred per cent of the average annual wage if the most recently computed ratio of the current reserve fund to the adequate reserve fund prior to that calendar year is equal to or less than .80; or
- (2) Seventy-five per cent of the average annual wage if the most recently computed ratio of the current reserve fund to the adequate reserve fund prior to that calendar year is greater than .80 but less than 1.2; or
- (3) Fifty per cent of the average annual wage if the most recently computed ratio of the current reserve fund to the adequate reserve fund prior to that calendar year is equal to or more than 1.2;

provided that "wages" with respect to which contributions are paid are not less than that part of remuneration which is subject to tax in accordance with section 3306(b) of the Internal Revenue Code[,] of 1986, as amended.

[(d)] (e) If an employer during any calendar year acquires substantially all the property used in a trade or business, or in a separate unit of a trade or business, of another employer, and after the acquisition employs an individual who prior to the acquisition was employed by [such] the predecessor, then for the purpose of determining whether [such] remuneration in excess of the average annual wages has been paid [for such employment] to the individual[,] for employment, remuneration paid to the individual by [such] the predecessor during the calendar year shall be considered as having been paid by the successor employer. For the purposes of this subsection, the term "employment" includes services constituting employment under any employment security law of another state or of the federal government.

[(e)] (f) Subsections [(b), (c), and (d)] (b) through (e) [of this section] notwithstanding, for the purposes of this part[,] the term "wages" shall include at least that amount of remuneration paid in a calendar year to an individual by an employer or the employer's predecessor with respect to employment during any calendar year which is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

(g) In accordance with section 303(a)(5) of the Social Security Act, as amended, and section 3304(a)(4) of the Internal Revenue Code of 1986, as amended, any contributions overpaid due to a retroactive reduction in the taxable wage base may be credited against the employer's future contributions upon request by the employer; provided that no employer shall be given a cash refund."

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 5, 1991.)

ACT 8

H.B. NO. 1008

A Bill for an Act Relating to Limitations of Actions.

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

SECTION 1. Chapter 657, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§657- Limitation of actions not applicable to State. No limitation of actions provided for under this or any other chapter shall apply to bar the institution or maintenance of any action by or on behalf of the State and its agencies, unless the State is specifically designated in such a statute as subject to the limitation period contained therein. No defense to any action brought by the State or any of its agencies shall be predicated upon the lapse of time.”

SECTION 2. This Act shall not be deemed to deprive the State or its agencies of any common law right to maintain actions regardless of the existence of any limitation statute.

SECTION 3. New statutory material is underscored.¹

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

(Approved April 5, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 9

H.B. NO. 1166

A Bill for an Act Relating to Election Contests.

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

SECTION 1. The purpose of this Act is to provide for delivery of a copy of the complaint upon the chief election officer or county clerk in the case of county elections when an election contest is filed.

SECTION 2. Section 11-172, Hawaii Revised Statutes, is amended to read as follows:

“§11-172 Contests for cause; generally. With respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in the supreme court. The complaint

ACT 10

shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results. The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the precinct officials or the officials at a counting center in an election using the electronic voting system. A copy of the complaint shall be delivered to the chief election officer or the clerk in the case of county elections."

SECTION 3. New statutory material is underscored.

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

(Approved April 5, 1991.)

ACT 10

H.B. NO. 1168

A Bill for an Act Relating to Nomination Papers.

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

SECTION 1. The purpose of this Act is to amend the close of the filing deadline for special elections to provide for sixty, instead of fifty, days between the close of filing and the election. The amendment would assist candidates and the public by providing consistency among the close of filing deadlines for all elections while providing sufficient time for election officials to print the ballots and comply with federal recommendations for the mailing of absentee ballots.

SECTION 2. Section 12-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"§12-6 Nomination papers: time for filing; fees.¹ (a) Nomination papers shall be filed as follows: for members of Congress, state, and county offices, and the board of trustees of the office of Hawaiian affairs, with the chief election officer, or clerk in case of county offices, not later than 4:30 p.m. on the sixtieth calendar day prior to the primary, [or not later than 4:30 p.m. on the fiftieth day prior to the] special primary, or special election provided that if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding[; provided further that any]. A state candidate from the counties of Hawaii, Maui, and Kauai may file the declaration of candidacy with the respective clerk. The clerk shall transmit to the office of the chief election officer the state candidate's declaration of candidacy without delay. However, if a special primary or special election is to be held by a county and the county charter requires that the council shall issue a proclamation calling for the election to be held within a specified period of time, and if that requirement would not allow the filing of nomination papers with the appropriate office by the sixtieth calendar day prior to the day for holding the special primary or special election, the council shall establish the deadline for the filing of nomination papers in the proclamation calling for the election."

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 5, 1991.)

Note

1. So in original.

ACT 11

H.B. NO. 1571

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 712-1249.6, Hawaii Revised Statutes, is amended to read as follows:

“[[§712-1249.6]] Promoting a controlled substance in, on, or near schools.] or school vehicles. (1) A person commits the offense of promoting a controlled substance in, on, or near schools or school vehicles if [he] the person knowingly:

- (a) Distributes or possesses with intent to distribute a controlled substance in any amount in or on the real property comprising a public or private elementary or secondary school; [or]
- (b) Distributes or possesses with intent to distribute a controlled substance in any amount within seven hundred and fifty feet of the real property comprising a public or private elementary or secondary school[.]; or

- (c) Distributes or possesses with intent to distribute a controlled substance in any amount while on any school vehicle, or within ten feet of a parked school vehicle during the time that the vehicle is in service for or waiting to transport school children.

(2) Promoting a controlled substance in, on, or near schools or school vehicles is a class C felony.

(3) Any person with prior conviction or convictions under this section is punishable by a term of imprisonment of not less than two years and not more than ten years.

(4) Any individual convicted under subsection (3) of this section shall not be eligible for parole until the individual has served the minimum sentence required by such subsection.

(5) For the purposes of this section, “school vehicle” means every school vehicle as defined in section 286-181 and any regulations adopted pursuant to that section.”

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 April 5, 1991.)

A Bill for an Act Relating to the Grant of a Franchise for the Island of Maui to Maui Electric Company, Limited.

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

SECTION 1. A franchise for the island of Maui, State of Hawaii, is hereby granted to Maui Electric Company, Limited, to read in its entirety as follows:

“FRANCHISE

Section 1. **Definitions.** The following words, wherever they are used or appear in this franchise, shall be construed to mean and be held to have the force and effect as follows:

“Corporation” means Maui Electric Company, Limited, and its successors and assigns as a body corporate under that or any other name as the company and its successors and assigns may adopt hereafter.

“Public utilities commission” means any officer, board, or commission authorized or empowered to regulate public utilities under chapter 269, Hawaii Revised Statutes, or any amendments thereto.

Section 2. **Franchise.** The corporation is granted the right, authority, and privilege to manufacture, sell, furnish, and supply electric light, electric current, or electric power on the island of Maui, State of Hawaii, for lighting the streets, roads, public and private buildings and property, or for motive power, or for any other purpose that it considers advisable, and from time to time for the purposes stated in this section to construct, maintain, and operate suitable poles, lines, wires, cables, lamps, lamp posts, conductors, conduits, and any other appliances and appurtenances as from time to time may be necessary or convenient for the transmission, distribution, or supply of electricity to consumers thereof, under, along, upon, and over public rights-of-way, including but not limited to the streets, sidewalks, roads, squares, bridges, alleys, and lanes on that island, and to connect those wires, lines, and conductors with any manufactory, private or public buildings, lamps, lamp posts, or other structure or object and the place or source of supply; provided that the proposed installation meets standards prescribed by the public utilities commission governing installation.

Section 3. **Rules.** The council of the county of Maui is authorized to make and from time to time to change, amend, or add to reasonable rules regulating, within the island of Maui, the placing of poles and wires, the insulation of wires and apparatus carrying electric current, the excavation of conduits, and the maintenance in good repair of all poles, wires, and apparatus, and generally concerning the manufacture and supply of electricity that may be necessary or proper for the public safety and welfare. If at any time the corporation, after reasonable notice given to it in writing, fails to observe or execute the rules governing the placing of poles and wires, the insulation of wires and apparatus carrying electric current, and the repair of all poles and appliances, the council of the county of Maui, after giving the corporation reasonable notice thereof in writing of its intention so to do, may proceed to enforce rules regulating the placing of poles and wires, the insulation of wires and apparatus carrying electric current, the excavation of conduits, and the maintenance in good repair of all poles, wires, and apparatus and to make whatever repairs as may be necessary to enforce the

rules; and the actual cost thereof may be recovered from the corporation by the county of Maui.

Section 4. Poles not to interfere with streets. All poles, lines, wires, cables, lamps, lamp posts, conductors, conduits, and other apparatus constructed, maintained, or operated under, along, upon, or over the streets, sidewalks, roads, squares, bridges, alleys, and lanes on the island shall be so constructed, maintained, and operated by the corporation as not to interfere unnecessarily with the use of the streets, sidewalks, roads, squares, bridges, alleys, and lanes by the public.

Section 5. Plant subject to inspection. The entire plant, corporation, books, and accounts of the corporation shall be subject at all times to the inspection of the public utilities commission and the treasurer of the county of Maui.

Section 6. Meters and rates. The corporation shall have the right to maintain, operate, and use electric meters or other means of measuring electric light, power, or current supply from time to time and to locate them at whatever places may be necessary for determining the current supplied or to be supplied by the corporation. The corporation shall have the right to charge, receive, and collect from all consumers of electricity those reasonable rates as from time to time may be fixed and determined by the public utilities commission.

Section 7. Extensions of lines and charges for making connections. The public utilities commission may order the corporation to make extensions of its service lines whenever it appears that the extension is a public necessity and that the total plant of the corporation, including the extension or extensions, can earn a reasonable profit on the cost and maintenance of the extension or extensions.

Section 8. Charges for making connections. The corporation shall have the right, subject to the approval of the public utilities commission, to charge consumers or applicants for the use of electricity for the cost and expense of making connections between the nearest line of supply and the premises where the electricity is to be used. The cost and expense shall include the price of all wires, poles, insulators, and other materials and labor necessary to be used in making the connections, the reasonableness of the charges upon the application of any party in the interest to be subject to the approval of the public utilities commission.

Section 9. Rights to acquire property, limits to. The corporation shall have the right to acquire, hold, or take over, either by purchase or lease, property, both real or personal or mixed, as may be necessary or incidental to the proper conduct of its business; provided the corporation shall not have the power or right to acquire the franchise or property of any other public utility company, except with the approval of the public utilities commission.

Section 10. Power to borrow money and bonds. Whenever from time to time it is expedient in the furtherance of the objectives of the corporation, the corporation shall have the power to borrow money and secure the payment thereof, with interest agreed upon, by mortgage of all or any part of its property and this franchise; or if it is advisable, bonds may be issued, secured by deed of trust of property and this franchise together with all future acquired property and franchises, the income and receipts of the property and franchises, as well as the income and receipts of the property from whatever sources derived, in whatever form and under whatever terms as the corporation may consider advisable; pro-

ACT 12

vided that nothing contained in this section shall operate to prevent the corporation from obtaining the usual business credits or making promissory notes without security.

Section 11. **Franchise not exclusive.** Nothing contained in this franchise shall be construed to grant to the corporation an exclusive right to furnish, sell, or supply electric current for light and power.

Section 12. **Forfeiture of franchise.** If the corporation, its representatives, successors, and assigns fail or refuse to do, perform, or comply with this franchise or the laws of the State and continue to refuse, fail to perform, or comply therewith after reasonable notice given by the public utilities commission to comply therewith, the public utilities commission, with the consent of the governor and of the attorney general, may cause proceedings to be instituted before any appropriate tribunal to have the franchise forfeited and declared void.

Section 13. **Rules to enforce rates.** The corporation shall have the right to discontinue or cut off the supply of electricity to any consumer who refuses to pay the amount due for electricity supplied by the corporation within a reasonable time as the corporation may fix by general rules for the payment of amounts due, and the discontinuance of service or supply of electricity shall not be a bar to or prejudice the rights of the corporation in any remedy or remedies now or that may be authorized by law for the recovery and collection of the amount due.

Section 14. **Eminent domain.** The corporation shall continue to have the power of eminent domain pursuant to chapter 101, Hawaii Revised Statutes, or any amendments thereto and may continue to exercise the power; provided that prior to the exercise of the power:

- (1) The corporation submits to the public utilities commission its intention to exercise the power, with a description of the property to be condemned; and
- (2) The public utilities commission finds that the proposed condemnation is in the public interest, that the proposed condemnation is necessary, and that the corporation will use the property for its operations as a public utility.

Section 15. **Annual statement, payment to government.** Within one month after the expiration of each calendar year, the corporation shall file with the treasurer of the county of Maui a detailed statement, showing all of its receipts and expenditures during the preceding calendar year and, at that time, shall pay to the treasurer of the county of Maui, for and on behalf of the county, two and one-half per cent of the gross receipts of the corporation from all electric current or power furnished to consumers on the island of Maui during the preceding year; and all its books, papers, records, and accounts shall be open to inspection at all reasonable times by the treasurer of the county and the treasurer's respective agents appointed for that purpose. The payment by the corporation to the treasurer of the county of Maui under this section shall be in lieu of any other payment that the corporation may be required to pay to the treasurer of the county of Maui based on gross receipts of the corporation from electric current or power furnished to consumers on the island of Maui under any other franchise held by the corporation.

Section 16. **Regulation.** The corporation shall have all the powers and be

subject to all of the liabilities provided by law for corporations and shall be subject in all respects to all laws relating to public utilities and all laws as may be applicable from time to time to electric light and power companies or the persons or corporations operating them; provided that from every ruling, decision, and order, an appeal shall lie as provided by law.

Section 17. **Amendment and repeal of franchise.** This franchise may be amended or repealed at any time by the legislature of the State of Hawaii."

SECTION 2. The franchise previously granted to the corporation shall be superseded and replaced in its entirety by this Act, upon the effective date of this Act.

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

(Approved April 10, 1991.)

ACT 13

H.B. NO. 1453

A Bill for an Act Relating to Tourism.

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

SECTION 1. The purpose of this Act is to authorize and appropriate funds for a special marketing campaign to promote Hawaii's visitor industry during fiscal year 1990-91.

Hawaii's visitor industry, which is the economic mainstay of the State, is being impacted by a downturn in the national economy and uncertainty regarding world events. Marked declines in reservation booking activity are being experienced. Such declines are expected to continue through at least the first quarter of 1991. This uncertain situation could potentially affect state tax revenues.

This Act is recommended by the governor for immediate passage in accordance with Section 9 of Article VII of the Constitution of the State of Hawaii.

In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$6,000,000 or 0.234 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum \$6,000,000, or so much thereof as may be necessary for the fiscal year 1990-1991, for the purposes of this Act.

SECTION 3. The sum appropriated shall be expended by the department of business, economic development, and tourism.

SECTION 4. The department of business, economic development, and tourism shall submit a report to the legislature not less than twenty days prior to the convening of the 1992 regular session.

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

(Approved April 11, 1991.)

ACT 14

H.B. NO. 958

A Bill for an Act Relating to Attendance of Blind and Deaf Children.

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

SECTION 1. Section 298-10, 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 12, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 15

H.B. NO. 2014

A Bill for an Act Relating to Districts.

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

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

“§4-1 Districts, generally. For election, taxation, education, city, county, and all other purposes, the State shall be divided into the following districts:

- (1) The island and county of Hawaii shall be divided into nine districts as follows:
 - (A) Puna, to be styled the Puna district;
 - (B) From the Hakalau stream to the boundary of South Hilo and Puna, to be styled the South Hilo district;
 - (C) From the boundary of Hamakua and North Hilo to the Hakalau stream, to be styled the North Hilo district;
 - (D) Hamakua, to be styled the Hamakua district;
 - (E) North Kohala, to be styled the North Kohala district;
 - (F) South Kohala, to be styled the South Kohala district;
 - (G) North Kona, to be styled the North Kona district;
 - (H) South Kona, to be styled the South Kona district;
 - (I) Kau, to be styled the Kau district.
- (2) The islands of Maui, Molokai, Lanai, and Kahoolawe and counties of Maui and Kalawao shall be divided into seven districts as follows:
 - (A) Kahikinui, Kaupo, Kipahulu, Hana, and Koolau, to be styled the Hana district;
 - (B) Hamakualoa, Hamakuapoko, portion of Kula, and Honuaula, the western boundary being a line starting from the sea at

- Kapukaulua on the boundary between the ahupuaas of Hali-imaile and Wailuku, thence running inland following the boundary to the mauka side of the Lowrie ditch, thence following the mauka side of the ditch and its projected extension to the Waiakoa gulch which is the boundary between the ahupuaas of Pulehunui and Waiakoa, thence down along the boundary to the mauka boundary of the Waiakoa Homesteads (makai section), thence along the boundary to the ahupuaa of Kaonoulu, thence across the ahupuaa of Kaonoulu to the mauka boundary of the Waiohuli-Keokea Beach Homesteads, thence along the boundary to the mauka boundary of the Kamaole Homesteads, thence along the boundary and the extension thereof to the north boundary of the ahupuaa of Paeahu, thence along the boundary to the sea, and including the island of Kahoolawe, to be styled the Makawao district;
- (C) All that portion of central Maui lying east of a line along the boundary of the ahupuaas of Kahakuloa and Honokohau to the peak of Eke crater, thence along the ridge of mountains and down the bottom of Manawainui gulch to the sea, and west of the boundary of Makawao district, to be styled Wailuku district;
- (D) All that portion of Maui lying west of Wailuku district, to be styled the Lahaina district;
- (E) The island of Molokai, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known or designated as the Settlement for Hansen's disease sufferers, to be styled the Molokai district;
- (F) All that portion of the island of Molokai known as Kalaupapa, Kalawao, and Waikolu forming the county of Kalawao, to be styled the Kalawao district;
- (G) The island of Lanai, to be styled the Lanai district.
- (3) The island of Oahu shall be divided into seven districts as follows:
- (A) From Makapuu Head in Maunaloa to Moanalua inclusive, and the islands not included in any other district, to be styled the Honolulu district;
- (B) Ewa, excluding Waikakalaua, Waipio Acres, and Mililani Town, to be styled the Ewa district;
- (C) Waianae excluding Waianae Uka, to be styled the Waianae district;
- (D) From Kaena point to and including [the ahupuaa of Waimea] Waialeale Stream excluding Wahiawa, hereinafter described, to be styled the Waialua district;
- (E) From [Waimea] Waialeale Stream to Lae o ka Oio, to be styled the Koolauloa district;
- (F) From Lae o ka Oio to Makapuu Head in Waimanalo, to be styled the Koolaupoko district;
- (G) Wahiawa and Waianae Uka, including Waikakalaua, Waipio Acres, and Mililani Town, lying between Ewa and Waialua districts and more particularly described in the following manner: Beginning at Puu Kaaumakua in the Koolau range and running to and along the south boundary of Waianae Uka (which is also the south boundary of Schofield Barracks Military Reservation) to and including Waikakalaua, Waipio

Acres, and Mililani Town, thence to Puu Hapapa in the Waianae range; thence continuing along Schofield Barracks Military Reservation northerly along the Waianae range to Puu Kaala, easterly along Mokuleia down ridge to Puu Pane, continuing to Maili Trig. station, and down ridge to Haleauau stream and down Haleauau stream to Kaukonahua gulch, and easterly along the gulch to the west boundary of the ahupuaa of Wahiawa; thence leaving Schofield Barracks Military Reservation and following up and along the west and north boundaries of the ahupuaa of Wahiawa to the Koolau range; thence along the Koolau range to the beginning; to be styled the Wahiawa district.

- (4) The islands of Kauai, Niihau, Kaula, and county of Kauai, shall be divided into five districts as follows:
 - (A) From Puanaaiea Point to the ili of Eleele, including the islands of Niihau and Kaula, to be styled the Waimea district;
 - (B) From and including the ili of Eleele to and including Mahaulepu, to be styled the Koloa district;
 - (C) From and including Kipu to the northerly bank of the north fork and the main Wailua river, to be styled the Lihue district;
 - (D) From the northerly bank of the north fork and the main Wailua river to Kealaakaiole, to be styled the Kawaihau district;
 - (E) From and including Kealaakaiole to Puanaaiea Point, to be styled the Hanalei district."

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 12, 1991.)

ACT 16

S.B. NO. 1123

A Bill for an Act Relating to Pest Control.

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

SECTION 1. The purpose of this Act is to implement the recommendations of the legislative auditor's sunset evaluation report which reviewed state laws relating to pest control operators. The legislature agrees with the auditor's finding that the potential harm to the public health, safety, and welfare requires continued regulation of pest control operators.

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 458 (Board of Dispensing Opticians)
- [(2) Chapter 460J (Pest Control Board)]
- (3) [2] Chapter 462A (Pilotage)

[(4)] (3) Chapter 468K (Travel Agencies)”

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The following chapters are hereby repealed effective December 31, 1997:

- (1) Chapter 438 (Board of Barbers)
- (2) Chapter 448 (Board of Dental Examiners)
- (3) Chapter 455 (Board of Examiners in Naturopathy)
- (4) Chapter 459 (Board of Examiners in Optometry)
- (5) Chapter 471 (Board of Veterinary Examiners)
- (6) Chapter 460J (Pest Control Board)”

SECTION 4. Section 460J-1, Hawaii Revised Statutes, is amended by amending the definition of “household pests” to read as follows:

““Household pests” means those pests other than wood-destroying insects and microbes which invade households and other structures, including, but not limited to, rodents, vermin, [and] insects[.], and birds.”

SECTION 5. Section 460J-2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There shall be a pest control board of [seven] nine members. [Four] Six members of the board shall be appointed by the governor, pursuant to section 26-34[, and]; of which four shall have been for a period of not less than five years preceding the date of their appointment, licensed pest control operators actively engaged in the business of pest control [with a pest control contractors license.]; and two shall be public members. Three members of the board shall serve on an ex officio voting basis: the [director] chairperson of the [department] board of agriculture or the [director’s] chairperson’s representative, the director of [the department of] health or the director’s representative, and the [chairman] chairperson of the department of entomology of the college of tropical agriculture and human resources of the University of Hawaii or the [chairman’s] chairperson’s representative. No two members of the board shall be employed by or associated with the same business firm engaged in pest control.

(b) Except for members of the board first appointed, no one, except the ex officio and public members, shall be eligible for appointment who does not at the time of the member’s appointment hold a valid and unexpired license to operate as a pest control operator.”

SECTION 6. Section 460J-6, Hawaii Revised Statutes, is amended to read as follows:

“**[[]§460J-6[]] Licenses required.** No person within the purview of this chapter shall act or assume to act, or advertise, as a pest control operator or fumigator or be engaged in the business of pest control without a license previously obtained under and in compliance with this chapter and the rules [and regulations] of the board. No person required to be licensed under this chapter shall be subject to chapter 444.”

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SECTION 7. Section 460J-8, Hawaii Revised Statutes, is amended to read as follows:

“§460J-8 No license issued when. No license shall be issued to:

- (1) Any person unless the person has filed an application therefor;
- (2) Any person who does not possess a history of honesty, truthfulness, financial integrity, and fair dealing;
- [(3) Any partnership or joint venture unless one member of the partnership or joint venture who actively participates in the pest control business thereof holds an appropriate license;
- (4) Any corporation unless the pest control business thereof is under the direct management of an officer who holds an appropriate license;]
- (3) Any partnership, joint venture, corporation or sole proprietorship, unless it is under the direct management of an operator or responsible managing employee with an appropriate license;
- [(5)] (4) Any individual unless the individual is of the age of eighteen years or more;
- [(6)] (5) Any person unless the person submits satisfactory proof to the board that the person has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386.”

SECTION 8. Section 460J-25, Hawaii Revised Statutes, is amended to read as follows:

“§460J-25 Insurance. No person shall engage in the business of pest control unless the person has filed with the [director of finance,] director of commerce and consumer affairs a general liability insurance policy approved by the director in the minimum amount of \$20,000 for any one claim and a minimum aggregate of not less than \$50,000 for all claims, and for fumigation work, in the minimum amount of \$50,000, for all claims arising during a policy term of one year. If a policy cannot be obtained, the licensee may file with the director in lieu thereof a verified statement providing proof satisfactory to the director, of financial responsibility equivalent to that provided for by any such insurance policy; provided that no employee of any company need have such policy in effect with respect to work covered by a policy of the company by which the employee is employed. This section shall not apply to vault fumigation.”

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved April 12, 1991.)

ACT 17

S.B. NO. 1239

A Bill for an Act Relating to Investments of the Employees' Retirement System.

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

SECTION 1. Section 88-119, Hawaii Revised Statutes, is amended to read as follows:

“§88-119 Investments. Investments may be made in:

- (1) Real estate loans and mortgages. Obligations (as defined in section 431:6-101) of any of the following classes:
 - (A) Obligations secured by mortgages of nonprofit corporations desiring to build multirental units (ten units or more) subject to control of the government for occupancy by families displaced as a result of government action[.];
 - (B) Obligations secured by mortgages insured by the federal housing administration[.];
 - (C) Obligations for the repayment of home loans made under the Servicemen's Readjustment Act of 1944 or under Title II of the National Housing Act[.];
 - (D) Other obligations secured by first mortgages on unencumbered improved real estate owned in fee simple; provided that the amount of the obligation shall not at the time investment is made therein exceed eighty per cent of the value of the real estate and improvements mortgaged to secure it, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no more than ninety per cent of the value of the real estate and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer should be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the real estate and improvements mortgaged to secure it. Such insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the real estate and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees. Real estate shall not be deemed to be encumbered within the meaning of this subparagraph by reason of the existence of any of the restrictions, charges, or claims described in section 431:6-308[.];
 - (E) Other obligations secured by first mortgages of leasehold interests in improved real estate; provided that (i) each such leasehold interest at such time shall have a current term extending at least two years beyond the stated maturity of the obligation it secures, and (ii) the amount of the obligation shall not at the time investment is made therein exceed eighty per cent of the value of the respective leasehold interest and improvements, and except that the amount of the obligation, at

the time investment is made therein, may exceed eighty per cent but no more than ninety per cent of the value of the leasehold interest and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer should be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the leasehold interest and improvements mortgaged to secure it. Such insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the leasehold interest and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees[.];

- (F) Obligations for the repayment of home loans guaranteed by the department of Hawaiian home lands pursuant to section 214(b) of the Hawaiian Homes Commission Act, 1920[.]; and
- (G) Obligations secured by second mortgages on improved real estate for which the mortgagor procures a second mortgage on the improved real estate for the purpose of acquiring the leaseholder's fee simple interest in the improved real estate; provided that any prior mortgage does not contain provisions which might jeopardize the security position of the retirement system or the borrower's ability to repay the mortgage loan.

The board of trustees may retain such real estate, including leasehold interests therein, as it may acquire by foreclosure of mortgages or in enforcement of security, or as may be conveyed to it in satisfaction of debts previously contracted; provided that all such real estate, other than leasehold interests, shall be sold within five years after acquiring the same, subject to extension by the governor for additional periods not exceeding five years each, and that all such leasehold interests shall be sold within one year after acquiring the same, subject to extension by the governor for additional periods not exceeding one year each[.];

- (2) Government obligations, etc. Obligations of any of the following classes:
 - (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof, or by the Dominion of Canada or by any province thereof, or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on such obligations are payable in currency of the United States[.];
 - (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State[.]; and
 - (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration[.];

- (3) Corporate obligations. Obligations of any corporation created or existing under the laws of the United States or of any state or district thereof, and qualified under any of the following:
- (A) Fixed interest-bearing obligations, if the average annual net earnings of the obligor or guarantor available for its fixed charges for a period of five fiscal years next preceding the date of the investment have equalled at least one hundred fifty per cent of its average annual fixed charges applicable to the period and if its net earnings for the last year of the period have equalled at least one hundred fifty per cent of its fixed charges for such year[.];
 - (B) Fixed interest-bearing obligations secured by assignment of a lease or leases, or the rentals payable thereunder, of real or personal property (including, without limitation, charters of vessels) to a corporation created or existing under the laws of the United States or of any state or district thereof; provided that (i) the fixed rentals assigned shall be sufficient to repay the principal of and interest on the obligation within the unexpired term of the lease, exclusive of the term which may be provided by any option of renewal, and (ii) the net earnings of the corporation shall meet the requirements described in subparagraph (A)[.]; and
 - (C) Fixed interest-bearing obligations secured by rights or assignment of rights under a contract (including, without limitation, a contract for the sale of products, materials, supplies, or other property, or for the furnishing of transportation or services) with a corporation created or existing under the laws of the United States or of any state or district thereof; provided that (i) the rights securing such obligations shall include the right to receive payments sufficient to repay the principal of and interest on the obligations within the unexpired term of the contract, and (ii) the net earnings of the corporation shall meet the requirements described in subparagraph (A).

As used in this paragraph, the terms "fixed charges" and "net earnings available for fixed charges" shall have the meanings and applications ascribed thereto in sections 431:6-101 and 431:6-102[.];

- (4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country in the Pacific Basin or [Western] Europe[; provided that the book value of the total investment in such stocks shall at no time exceed forty per cent of the total book value of all investments of the system.];
- (5) Obligations eligible by law for purchase in the open market by federal reserve banks[.];
- (6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank[.];
- (7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth, at the time the investment is made, at least fifteen per cent more than the amount of the respective obligations[.];
- (8) Insurance company obligations. Contracts and agreements supple-

- mental thereto providing for participation in one or more accounts of a life insurance company authorized to do business in Hawaii, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interests therein[.];
- (9) Interests in real property. Interests in improved or productive real property in which, in the informed opinion of the board of trustees, it is prudent to invest funds of the system[; provided that the total book value of these investments at no time shall exceed five per cent of the total book value of all investments in the system]. For purposes of this paragraph, “real property” includes any property treated as real property either by local law or for federal income tax purposes. Investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks and trust companies[;], group or unit trusts, limited partnerships, investment trusts, and other pooled funds invested on behalf of the system by investment managers retained by the system[.]; and
- (10) Other securities and futures contracts. Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts [within the meaning of the Commodity Exchange Act and traded on an exchange or board of trade regulated under that Act only] to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system’s securities portfolios; covered put and call options on securities [traded on one or more of the exchanges]; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitations of any of the foregoing paragraphs (including paragraph (4))[; provided that the total book value of investments under this paragraph shall at no time exceed ten per cent of the total book value of all investments of the system].”

SECTION 2. Section 88-119.5, Hawaii Revised Statutes, is amended to read as follows:

“§88-119.5 Investment guidelines. Notwithstanding any other law to the contrary, real estate loans and mortgages made pursuant to section 88-119(1)(D) and (E) shall be in accordance with conditions and restrictions set forth by the board of trustees; provided that the board shall review its policy on the conditions and restrictions from time to time and formulate, amend, or repeal the conditions and restrictions giving full consideration to the prevailing economic conditions in the real estate industry; provided further that for good cause shown, the board of trustees shall duly consider a member’s application for waiver of any condition or restriction imposed by the board of trustees[.]; and provided further that the board may establish the minimum and maximum loan amounts and interest rates for these real estate loans and mortgages by motion, at any duly noticed meeting of the board. The board of trustees shall liberally construe this section; provided that no exception shall be made which may substantially impair the fiscal integrity of the system’s funds. The board of trustees [shall], subject to chapter 91, shall

adopt, amend, and repeal rules having the force of and effect of law to implement all provisions of this section[.] other than those relating to loan amounts and interest rates for its real estate loans and mortgages.”

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 16, 1991.)

ACT 18

H.B. NO. 991

A Bill for an Act Relating to the Hawaii Housing Authority.

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

SECTION 1. Section 521-7, Hawaii Revised Statutes, is amended to read as follows:

“**§521-7 Exclusions from application of chapter.** Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services.
- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii.
- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser.
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization.
- (5) Transient occupancy on a day to day basis in a hotel or motel.
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon such employment or by a pensioner of the owner or landlord.
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease.
- (8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner’s rights.
- (9) Except as provided in section 521-69.5, occupancy in a project for temporary or transitional housing for homeless persons operated by a nonprofit corporation; provided that the nonprofit corporation operating the project has filed a copy of its current rules and regulations governing tenancy at the project, and any changes thereto, with the director of commerce and consumer affairs, which rules and regulations shall be reasonable and a copy of which shall have been provided to each tenant.

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(10) Residence or occupancy in a public housing complex or shelter directly controlled, owned, or managed by the Hawaii housing authority.”

SECTION 2. New statutory material is underscored.

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

(Approved April 17, 1991.)

ACT 19

S.B. NO. 1219

A Bill for an Act Relating to the Statute of Limitations.

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

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§231- **Suspension of running of the period of limitation during bankruptcy proceedings.** The running of the period of limitation provided in chapters 235 to 239, 241 to 245, 236D, 237D, and 244D, to the contrary notwithstanding, shall be suspended for the period during which the director of taxation is prohibited from making an assessment of taxes by reason of title 11 (with respect to bankruptcy) of the United States Code and for sixty days after the prohibition is lifted.”

SECTION 2. New statutory material is underscored.¹

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

(Approved April 17, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 20

S.B. NO. 1220

A Bill for an Act Relating to Estimated Tax Payments.

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

SECTION 1. Section 235-97, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) (1) Individuals [and], corporations[, but not] (including S corporations), estates [or], and trusts, shall annually furnish the department of taxation with a declaration of estimated tax for the current taxable year. Declarations of estimated tax [shall], except as otherwise provided by [regulation,] rule, shall be governed by the provisions as to returns contained in sections 235-94, 235-98, [and] 235-99[.], and 235-128. The declara-

- tions shall be made on estimated tax payment voucher forms. The [declaration] payment voucher shall be filed, in the case of individuals, estates, and trusts on the calendar year basis on or before April 20, and in the case of corporations on the calendar year basis on or before September 20. In the case of a husband and wife who are entitled to [make] submit a joint [declaration] payment voucher for federal purposes, a single [declaration] payment voucher may be [made] submitted by them jointly, in which case the liability with respect to the estimated tax shall be joint and several; if a joint [declaration] payment voucher is [made] submitted but a joint income tax return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife or may be divided between them.
- (2) Each individual, estate, and trust shall transmit, with [the individual's declaration,] the payment voucher, payment of one-quarter of the estimated tax for the current taxable year. In determining this quarterly payment and all other installments, there first shall be deducted from the total estimated tax the amount of estimated tax withholding or collection at source for the taxable year. Thereafter, on the twentieth day of June and September, the individual, estate, and trust shall [pay] transmit with the payment voucher, payment of one-quarter of the estimated tax. The fourth quarter payment of the estimated tax shall be [paid] transmitted with the payment voucher by January 20 of the year following the taxable year for which the estimate was made.
 - (3) Each corporation shall transmit, with its [declaration,] payment voucher, payment of one-half of the estimated tax for the current taxable year. The second half payment of the estimated tax shall be [paid] transmitted with the payment voucher by January 20 of the year following the taxable year for which the estimate was made.
 - (4) Individuals [and], corporations, estates, and trusts operating on a fiscal year basis shall make similar estimates and tax payments, on or before the twentieth day of the fourth month of the fiscal year in the case of individuals, estates, and trusts and the ninth month of the fiscal year in the case of corporations, and periodically thereafter so as to conform to the payments and returns required in the case of those on a calendar year basis.
 - (5) The department [may] by [regulation] rule may excuse individuals from filing an estimate in those cases where the gross income and exemptions are such that no tax is expected to accrue under this chapter, or are such that substantially all the tax will be collected through tax withholding or at the source[, or are such that the total estimated tax is less than \$40 after deducting the total estimated credits allowed].
 - (6) In the case of a foreign corporation, the department may excuse the filing of an estimate and the payment of estimated tax if it is satisfied that less than fifteen per cent of the corporation's business for the taxable year will be attributable to the State. For the purposes of this paragraph, fifteen per cent of a

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corporation's business shall be deemed attributable to the State if fifteen per cent or more of the entire gross income of the corporation (which for the purposes of this paragraph means gross income computed without regard to source in the State) is attributable to the State under [section 235-5 and the] sections 235-21 to 235-39 or other provisions of this chapter [attributable to the State].

- (7) In the case of [a] an individual, estate, trust, or domestic corporation whose tax liability is less than [\$40, the department may excuse] \$100, the filing of an estimate and the payment of estimated tax[.] shall not be required."

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

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1991.

(Approved April 17, 1991.)

ACT 21

S.B. NO. 1227

A Bill for an Act Relating to the General Excise Taxation of Contractors.

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

SECTION 1. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

"§237-13 Imposition of tax. There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

- (1) Tax on manufacturers.

- (A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared, for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.
- (B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
- (C) If any person liable for the tax on manufacturers shall ship or

transport [his] the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or shall sell the same for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph (1). This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department of taxation shall determine the basis for assessment, as provided by this paragraph, as follows:

- (i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, are the measure of the value of the products.
 - (ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining such values.
 - (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make [his] the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce.
 - (iv) In all cases in which products leave the State in an unfinished condition the basis for assessment shall be adjusted so as to deduct such portion of the value as is attributable to the finishing of the goods outside the State.
- (2) Tax on business of selling tangible personal property; producing.
- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as certain retailing is taxed by section 237-16, the tax shall be that

levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business. Upon every person engaging or continuing within this State in the business of a producer the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C) [of this section].

- (B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and acts of Congress, there may be attributed gross proceeds of sales, such gross proceeds shall be so attributed.
- (C) No manufacturer or producer, engaged in such business in the State and selling [his] the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling [his] the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer as such.
- (D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling [his] the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to [him] the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and [he] the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of [his] the products required for the privilege of manufacturing or producing in the State. [He] The manufacturer or producer shall pay the tax imposed in this chapter at the highest rate applicable for any of the privileges exercised by [him] the manufacturer or producer in respect of the particular products, and the value or gross proceeds of sales of the products, thus subjected to tax at the highest rate, may be deducted insofar as duplicated as to the same products by the measure of the tax upon [him] the manufacturer or producer for the other privileges enumerated in this paragraph [(2)], paragraph (1), and section 237-16.

- (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C) [of this section], and in any such case the tax shall be computed pursuant to the election, notwithstanding this paragraph [(2)] or paragraph (1) to the contrary.
- (F) The department, by [regulation,] rule, may provide that a seller may take from the purchaser of tangible personal property a certificate, in such form as the department shall prescribe, certifying that the sale is a sale at wholesale. If the certificate is so provided for by [regulation] rule of the department:
- (i) Any purchaser who shall furnish such a certificate shall be obligated to pay to the seller, upon demand, if the sale in fact is not at wholesale, the amount of the additional tax which by reason thereof is imposed upon the seller; and
 - (ii) The absence of such a certificate [shall], unless the sales of the business are exclusively at wholesale, in itself shall give rise to the presumption that the sale is not at wholesale.
- (3) Tax upon contractors.
- (A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided that insofar as the business of contracting is taxed by section 37-16, which relates to certain retailing, the tax shall be that levied by section 237-16.
- (B) In computing the tax levied under this paragraph [(3)] or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under [paragraph (3)(A)] subparagraph (A) or section 237-16, on [another]:
- (i) Another taxpayer who is a contractor, as defined[, or who is a] in section 237-6;
 - (ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of [his] the specialty contractor's business as such[,]; or
 - (iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State.
- if the tax on the amount so deducted has been paid by the other person, or has been withheld by the taxpayer and shall be paid over by [him] the taxpayer to the assessor at the time of filing the return, such withholding being [hereby] authorized[;] by this paragraph; but any person claiming a deduction under this paragraph shall be required to show in [his] the person's return the name of the person paying the tax on the amount deducted by [him] the person or from whom the tax was withheld, and shall issue a receipt for any amount of tax withheld, which upon filing by the other taxpayer with [his] the taxpayer's return, shall relieve the other taxpayer of liability for the amount of tax withheld.

- (C) In computing the tax levied under this paragraph [(3)] against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:
 - (i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction.
 - (ii) The taxpayer making the sale shall have certified to the department that [he] the taxpayer is taxable with respect to the gross proceeds of the sale, and that [he] the taxpayer elects to have the tax on such gross income computed the same as upon a sale to the state government.
 - (D) A person who, as a business or as a part of a business in which [he] the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by [him] the person (whether held as a leasehold, fee simple, or otherwise), [shall] upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless [he] the person shall show that at the time [he] the person was engaged in making the improvements it was, and for the period of at least one year after completion of the building, structure, or other improvements, it continued to be [his] the person's purpose to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by [paragraph (3)(B).] subparagraph (B). Upon the election of the taxpayer this paragraph may be applied notwithstanding the improvements were not made by the taxpayer, or were not made as or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (10).
- (4) Tax upon theaters, amusements, radio broadcasting stations, etc. Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business.

- (5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by [him.] the person.¹
- (6) Tax on service business. Upon every person engaging or continuing within the State in any service business or calling not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of any such business; provided that where any person engaging or continuing within the State in any service business or calling renders such services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering such services and the ultimate recipient of the benefits of such services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent; and provided that where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, the tax shall be imposed on that portion of gross income received by any such person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(2)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, such gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing such services in the State.
- (7) Tax on insurance solicitors and agents. Upon every person engaged as a licensed solicitor, general agent, or subagent pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to .15 per cent of the commissions due to such activity.
- (8) Professions. Upon every person engaging or continuing within the State in the practice of a profession, including those expounding the religious doctrines of any church, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income on the practice or exposition.
- (9) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or [his] the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received, provided that the tax levied hereunder on any

amount so received and actually disbursed to another by such producer in the form of a benefit payment shall be paid by the person or persons to whom such amount is actually disbursed, and the producer actually making any such benefit payment to another shall be entitled to claim on [his] the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.

- (10) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

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

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved April 17, 1991.)

Note

- 1. So in original.

ACT 22

S.B. NO. 1228

A Bill for an Act Relating to Net Operating Losses.

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

SECTION 1. Section 235-111, Hawaii Revised Statutes, is amended to read as follows:

“§235-111 Limitation period for assessment, levy, collection, or credit[.]; net operating loss carrybacks. (a) General rule. The amount of income taxes imposed by this chapter (also the amount of income taxes imposed by any preceding law of the State) and the liability of any employer in respect of wages, shall be assessed or levied and the overpayment, if any, shall be credited within three years after filing of the final return for the taxable year, or within three years of the due date prescribed for the filing of [said] the return, whichever is later, and no proceeding in court without assessment for the collection of such taxes or the enforcement of such liability shall be begun after the expiration of such period.

(b) Exceptions; fraudulent return or no return. In the case of a false or fraudulent return with intent to evade tax or liability, or of a failure to file return, the tax or liability may be assessed or levied at any time; provided that in the case of a return claimed to be false or fraudulent with intent to evade tax or liability, the determination as to such claim must first be made by a judge of the circuit

court for or in the circuit within which the taxpayer or employer has the taxpayer's or employer's residence or principal place of business, or if none in the State then in the first circuit, upon petition filed by the department of taxation[, which]. The petition and other pleadings and proceedings in the matter shall be governed and conducted in accordance with statutory and other requirements relating to proceedings in equity, including all rights to appeal allowed in such proceedings[, and no]. No assessment or levy of the tax or liability after the expiration of the three-year period shall be made unless so provided in the final decree entered in the proceedings.

(c) Extension by agreement. Where, before the expiration of the time prescribed in subsection (a) [of this section] for the assessment, levy, and collection of the tax or liability, both the department and the taxpayer or employer have consented in writing to its assessment or levy after such date, the tax or liability may be assessed or levied or the overpayment, if any, may be credited at any time prior to the expiration of the period previously agreed upon. The period so agreed upon may be extended by the subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) Overpayment of carrybacks. If an overpayment results from a net operating loss carryback, the statute of limitations in subsection (a) shall not apply. The overpayment shall be credited within three years of the due date prescribed for filing the return (including extensions thereof) for the taxable year of the net operating loss, or the period agreed to under subsection (c) with respect to such taxable year, whichever expires later."

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

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1990.

(Approved April 17, 1991.)

ACT 23

S.B. NO. 1229

A Bill for an Act Relating to the Definition of "Person" for the General Excise Tax.

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

SECTION 1. Section 237-1, Hawaii Revised Statutes, is amended by amending the definition of "person" to read:

““Person” or “company” includes every individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, trustee in bankruptcy, or other entity, whether such persons are doing business for themselves or in a fiduciary capacity, and whether the individuals are residents or nonresidents of the State, and whether the corporation or other association is created or organized under the laws of the State or of another jurisdiction. Any person who has in the person's possession, for sale in the State, the property of a nonresident owner, other than as an employee of such owner, shall be deemed the seller of the property, when sold.”

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SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval

(Approved April 17, 1991.)

ACT 24

S.B. NO. 1702

A Bill for an Act Relating to 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 part VII to be appropriately designated and to read as follows:

“§235- **Transition rule.** (a) A corporation for which an S election was in effect for federal purposes but not for Hawaii purposes for the taxable period immediately preceding the taxable period beginning after December 31, 1989, may elect before December 31, 1992, not to have section 235-125(a) apply to carryforwards from taxable periods preceding the taxable period beginning after December 31, 1989, for which a Hawaii S election was not in effect. An election pursuant to this section shall be applicable to all such carryforward items.

(b) A net operating loss carryforward subject to an election under this section shall be allowed as a deduction in computing S corporation taxable income after all other items of income and deductions have been taken into account in accordance with this part and shall not reduce S corporation taxable income below zero.

(c) A carryforward, other than a net operating loss carryforward, subject to an election under this section shall be taken into account by the corporation in computing taxable income as though an S election were not in effect for the year. In computing taxable income under this subsection, the allowance of a deduction for a net operating loss carryforward shall be determined in accordance with subsection (b).

(d) No carryforwards subject to the election under this section may be carried forward to a C corporation year within the meaning of Internal Revenue Code section 1371(b).

(e) An election pursuant to this section shall be made on a timely filed (including extension) S corporation income tax return for the first taxable period beginning after December 31, 1989, or an amended return filed before December 31, 1992. A copy of the election shall be attached to the S corporation tax return for each year to which the carryforward is carried.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act, upon its approval, shall apply to tax years beginning after December 31, 1989.

(Approved April 17, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 25

S.B. NO. 1218

A Bill for an Act Relating to Return Filing Requirements for the Public Service Company Tax.

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

SECTION 1. Section 239-4, Hawaii Revised Statutes, is amended to read as follows:

“**§239-4 Returns.** Each public service company, on or before [April 20 in each year,] the twentieth day of the fourth month following the close of the taxable year, shall file with the office of the department of taxation for the district within which the principal office of the public service company is maintained a return in such form as the department may prescribe, showing its taxable gross income for the preceding [calendar] taxable year. In case any public service company [carries on] engages in lines of business other than its public service company business, the receipts therefrom shall not be subject to tax under this chapter, but the same tax liabilities shall attach to [such] the public service company on account of [such] the other lines of business as would exist if no public service company business were [done.] engaged in. In the case of a public utility subject to the rate of tax imposed by section 239-5(a) or (b), if the public utility [carries on] engages in lines of business other than its public utility business the real property used in connection with the other lines of business shall be taxed the same as if no public utility business were done.”

SECTION 2. Section 239-7, Hawaii Revised Statutes, is amended to read as follows:

“**§239-7 Assessments; payments; chapter 235 applicable.** The tax imposed by this chapter shall be assessed against each public service company in the manner provided by this chapter, and shall be paid to the department of taxation at the times, and in the manner (in installments or otherwise) hereinafter prescribed.

The total amount of the tax imposed by this chapter shall be [due on January 1 and payable on April 20 in each year.] paid on or before the twentieth day of the fourth month following the close of the taxable year. The public service company may elect to pay the tax in four equal installments, in which case the first installment shall be paid on [April 20, and the second, third, and fourth installments on June 20, September 20, and December 20, respectively. The tax, or any installment thereof, at the election of the public service company may be paid prior to the date above prescribed.] or before the twentieth day of the fourth month following the close of the taxable year, the second installment shall be paid on or before the twentieth day of the sixth month following the close of the taxable year, the third installment shall be paid on or before the twentieth day of the ninth month following the close of the taxable year, and the fourth installment shall be paid on or before the twentieth day of the twelfth month following the close of the taxable year. If any installment is not paid on or before the date fixed for its payment, the department [may], at its election, may cause the whole of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the department.

The department shall prescribe the forms in which returns shall be made

so as to reflect clearly the liability of each public service company subject to this tax, and may provide in the forms for such additional information as it may deem necessary. All provisions of the laws, not inapplicable and not inconsistent with this chapter, relating to returns for income tax purposes; the assessment (including additional assessments), collection, and payment (in installments or otherwise) of income taxes and the powers and duties of the department and the director of finance in connection therewith, and relating to appeals from or other adjustments of such assessments, limitation periods for assessments, enforcement of attendance of witnesses, and the production of evidence, examination of witnesses and records, the effect of assessments, tax books, and lists and other official tax records as evidence, delinquent dates and penalties, and the rights and liabilities (civil and criminal) of taxpayers and other persons in connection with any matters dealt with by chapter 235, are made applicable (1) to the taxes and the assessment, payment, and collection thereof, provided by this chapter, and (2) to the department and director of finance in connection with [such] the taxes and the assessment, payment, or enforcement of payment and collection thereof, and (3) to taxpayers and other persons affected by this chapter, as the case may be. The provisions of chapter 235 regarding the limitation period for assessment and refunds shall run from the filing of the final return for the taxable year, or the due date prescribed for the filing of the return, whichever is later, and not from the due date of any payment."

SECTION 3. Section 239-9, Hawaii Revised Statutes, is amended by amending subsections (a) to (f) to read as follows:

"(a) In general. The tax imposed by this chapter applies to every public service company:

- (1) Which is in business at the commencement of a calendar year, as of January 1 of that year;
- (2) Which begins business after the commencement of a calendar year, as of the commencement of business.

(b) Third year of doing business; earlier years, how governed. If the company is in business at the commencement of the calendar year, and was in business during the whole of the preceding year and prior thereto, the tax shall be returned and paid as provided in sections 239-4 and 239-7.

However, if [paragraph (2) of] subsection (a)(2) applies, or if the company though in business at the commencement of the calendar year was not in business during the preceding [calendar] year, or was in business during the preceding [calendar] year or a part thereof but not prior thereto, the tax shall be returned and paid as provided in subsections (c) and (d).

(c) First year of doing business. The measure of the tax for the year in which the company begins business is an estimate of the gross income of the public service company for that year or for the part of that year in which it is in business.

The tax thereon for the year in which the company begins business shall be at the following rate:

- (1) If [paragraph (2) of] subsection (a)(2) applies, at the rate of four per cent, or
- (2) If [paragraph (1) of] subsection (a)(1) applies but the company though in business at the commencement of the calendar year[,] was not in business during any part of the preceding [calendar] year, the tax shall be at the rate provided by sections 239-5 and 239-6, except that there shall be no adjustment of the rate of tax on account of the

ratio of the net income to the gross income being in excess of fifteen per cent and it shall be assumed for purposes of this subsection and subsection (e) that the ratio is fifteen per cent or less.

The estimate shall be made and the tax returned on or before the twentieth day of the third month after the month in which the company begins business and shall be subject to [redetermination by the director of taxation and] adjustment by the filing of an amended return as provided in subsection (e). Payment of the tax shall accompany the return unless time for payment is extended by the director of taxation[; such]. The extension may be granted by the director in order to provide for payment of the tax in installments during the remainder of the [calendar] taxable year.

(d) Second year of doing business. The measure of the tax for the year following the year in which the company began business is an estimate of the average gross income for a [calendar] taxable year, subject to [redetermination and] adjustment by the filing of an amended return as provided in subsection (e). The estimate shall be made and the tax returned and paid at the times provided for other companies which are in business at the commencement of the calendar year. The tax thereon shall be at the rate provided by sections 239-5 and 239-6, except that there shall be no adjustment of the rate of tax on account of the ratio of the net income to the gross income being in excess of fifteen per cent and it shall be assumed for purposes of this subsection and subsection (e) that the ratio is fifteen per cent or less.

(e) Adjustment of estimates. [Every estimate made under subsections (c) and (d) shall be subject to redetermination by the director after the close of the year for which the estimate is made, and the final amount of tax shall be based upon the estimated gross income as adjusted under this subsection.] An amended return shall be filed after the close of the applicable taxable year for each year for which an estimated tax return was filed under subsection (c) or (d).

If the year for which the estimate is made is the year in which the company commenced doing business and subsection (c) applies, any variance between the estimate and the actual gross income for that year shall be adjusted [by the director] and a credit or refund made, or [assessment issued, dependent] payment of additional tax due, depending upon whether the estimate was in excess of, or less than, the actual gross income of the company for that year.

If the year for which the estimate is made is the year following the year in which the company commenced doing business and subsection (d) applies, the average monthly gross income during the period from and after the commencement of business to the close of the year for which the estimate was made shall be determined and multiplied by twelve. [The amount so computed shall be compared with the estimate and an adjustment made so as to allow a credit or refund if and to the extent that the estimate was in excess of this amount, or issue an assessment if and to the extent that the estimate was less than this amount.] Any variance between the estimate and the amount so computed shall be adjusted and a credit or refund made, or payment of additional tax due, depending upon whether the estimate was in excess of, or less than, the amount computed.

The amended return shall be made and filed and any additional tax due paid on or before the twentieth day of the fourth month following the close of the taxable year in which the company commenced business.

The adjustment of the tax imposed under this chapter and the making of an amended return as provided under this section shall apply only to the first and second taxable years of doing business.

(f) Acquisition of business of another company. Whenever any public service company subject for any year to the tax imposed by this chapter, shall have

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acquired by purchase or otherwise during the preceding year the business or any part thereof of another public service company liable to tax under this chapter for [such] the preceding year but not liable for the year following [such] the sale or disposition, and the acquiring company continues the operation of the business so acquired, the gross income to be reported by the acquiring company for the purpose of determining the amount of its tax under this chapter for the year following the year in which the business was so acquired shall include, in addition to the gross income of the acquiring company during the year ending December 31 or fiscal year preceding, whichever is applicable, the gross income of the business or part thereof so acquired for [such] the portion of [such] the preceding year as [such] the business was not operated by the acquiring company.

This subsection shall not apply to any company whose tax for the year involved is measured under subsection (c) by an estimate of gross income for [such] the year subject to adjustment after the close of the year.

If the first paragraph of this subsection applies but the tax of the acquiring company for the year is governed by subsection (d) and adjusted under subsection (e), then in determining the average monthly gross income for that purpose there shall be included, in addition to the gross income of the acquiring company for the period involved in the determination of the average, the gross income of the business or part thereof acquired by the company for the portion of that period in which the business was not operated by the acquiring company.”

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

SECTION 5. This Act shall take effect on January 1, 1992, so that this Act shall apply to the entire gross income received for the calendar year 1991, and for calendar years thereafter. In the case of a taxpayer operating on a fiscal year basis, the Act shall apply to the entire gross income received for the fiscal year in which January 1, 1992, occurs and for fiscal years thereafter.

(Approved April 18, 1991.)

ACT 26

H.B. NO. 30

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 291-34, Hawaii Revised Statutes, is amended to read as follows:

“§291-34 **Size of vehicles; width, height, and length.** (a) Width. No motor vehicle or other power vehicle having an overall width greater than nine feet, including load, shall be operated or moved upon any public road, street, or highway within the State, except as hereinafter provided.

(b) Height. No motor vehicle or other power vehicle having an overall height greater than [thirteen and one-half] fourteen feet, including load, shall be operated or moved upon any public road, street, or highway within the State except as hereinafter provided; and provided further that no motor vehicle or other power vehicle shall be operated under or through any bridge or other highway structure if the height of the motor vehicle or other power vehicle exceeds

the posted height for the bridge or other highway structure.

(c) Length:

- (1) No single motor vehicle or other power vehicle having a total overall length greater than forty feet, including load, shall be operated or moved upon any public road, street, or highway within the State, except as hereinafter provided.
- (2) No truck-tractor and semitrailer having a total overall length greater than sixty feet, including load, shall be operated or moved upon any public road, street, or highway, other than interstate highways and certain qualifying federal aid highways as designated by the director of transportation, within the State, except as hereinafter provided; provided that for truck-tractors and semitrailers used for agricultural purposes, or articulated buses for public transit purposes, the total combined length of the truck-tractor and semitrailer or articulated bus shall not exceed sixty-five feet in length; provided further that the length of the semitrailer shall not exceed forty-five feet in length.
- (3) No combination of motor vehicles or other power vehicles coupled together shall consist of more than two units and no such combination of vehicles having a total overall length greater than sixty-five feet, including load, shall be operated or moved upon any public road, street, or highway other than interstate highways and certain qualifying federal aid highways as designated by the director of transportation, within the State, except as hereinafter provided. A truck-tractor and semitrailer shall be regarded as a single unit when determining the number of units in a combination.
- (4) No motor vehicle, self-propelled construction or farm equipment, trailer, or semitrailer shall be operated upon any public road, street, or highway within the State if it is carrying or otherwise has projecting to the front or rear, a load, boom, mast, or other projecting structure or attachment unless:
 - (A) With respect to self-propelled construction or farm equipment,
 - (i) The length of the equipment measured on a horizontal axis, including the projection, is not greater than forty feet;
 - (ii) The projection is either held securely in place or is controlled by the driver or an operator;
 - (iii) The projection does not obstruct the driver's vision;
 - (iv) The projection does not impair the driver's ability to control the equipment;
 - (v) The projection beyond the front tires is at least seven feet above the roadway surface;
 - (vi) The projection does not extend more than four feet past the extremity of the piece of equipment, or if it extends more than four feet, an escort vehicle is provided by the owner or operator either to the front or to the rear of the projection to call attention to the projection; or
 - (B) With respect to a motor vehicle, or a motor vehicle with attached trailer or semitrailer,
 - (i) The overall length of a motor vehicle including the projection, is not greater than forty feet or the overall length of the motor vehicle with attached trailer or semitrailer, including the projection, is not greater than sixty feet

except that this limitation on a motor vehicle with attached trailer or semitrailer, including the projection, shall not be applicable on interstate highways and certain qualifying federal aid highways, as designated by the director of transportation;

- (ii) The projection is either held securely in place or is controlled by the driver or an operator;
 - (iii) The projection does not obstruct the driver's vision;
 - (iv) The projection does not impair the driver's ability to control the equipment;
 - (v) The projection beyond the front tires is at least seven feet above the roadway surface;
 - (vi) The projection does not extend more than four feet past the extremity of the trailer or semitrailer, or, if it extends more than four feet, an escort vehicle is provided by the owner or operator either to the front or to the rear of the projection to call attention to the projection.
- (5) The foregoing limitations upon length shall not apply to vehicles transporting pipe, poles, timbers, reinforcing steel, structural steel, or other objects of a structural nature which cannot be readily dismembered; provided that when transported by night every such vehicle shall be equipped with a sufficient number of clearance lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load."

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, 1991.)

ACT 27

H.B. NO. 62

A Bill for an Act Relating to Pilotage.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

1991: "(b) The following chapters are hereby repealed effective December 31,

- (1) Chapter 458 (Board of Dispensing Opticians)
- (2) Chapter 460J (Pest Control Board)
- [(3) Chapter 462A (Pilotage)
- (4)] (3) Chapter 468K (Travel Agencies)"

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) The following chapters are hereby repealed effective December 31,

1997:

- (1) Chapter 438 (Board of Barbers)
- (2) Chapter 448 (Board of Dental Examiners)
- (3) Chapter 455 (Board of Examiners in Naturopathy)
- (4) Chapter 459 (Board of Examiners in Optometry)
- (5) Chapter 471 (Board of Veterinary Examiners)
- (6) Chapter 462A (Pilotage)

SECTION 3. 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; [or]
- (3) Fishing vessels that have been issued a fishery license or appropriately endorsed registry under the laws of the United States of America[.]; or
- (4) Tugs or towboats of 1,600 gross tons or less which are registered in the United States if the master, mate, or operator is licensed in the United States and has made a minimum of six round trips into and out of the pilotage water which the vessel is traversing.

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 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 18, 1991.)

ACT 28

H.B. NO. 818

A Bill for an Act Relating to New Motor Vehicle Warranties.

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

SECTION 1. Section 490:2-313.2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The submission of any dispute to arbitration in which the consumer elects nonbinding arbitration shall not limit the right of any party to a subsequent trial de novo upon written demand made upon the opposing party to the arbitration within thirty days after service of the arbitration award, and the award shall not be admissible as evidence at that trial. If the party demanding a trial de novo does not improve its position as a result of the trial by at least twenty-five per cent, then the court shall order that all of the reasonable costs of trial, consultation, and attorney’s fees be paid for by the party making the demand.

ACT 29

If neither party to a nonbinding arbitration demands a trial de novo within thirty days after service of the arbitration award, the arbitrator's decision shall become binding on both parties upon the expiration of the thirty-day period."

SECTION 2. New statutory material is underscored.

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

(Approved April 18, 1991.)

ACT 29

H.B. NO. 819

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 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 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:

- (1) Satisfactory proof that the person is a graduate of a high school approved and recognized by the board; and
- (2) Satisfactory proof that the person has fulfilled all of the requirements of the board.

An applicant shall be required to pass a [written and practical] licensing examination."

SECTION 2. Section 451A-6, Hawaii Revised Statutes, is amended to read as follows:

"§451A-6¹ Scope of the licensing examination. The licensing examination shall [include] assess the applicant's knowledge of:

- [(1) Written tests of knowledge in the following subjects:
 - (A) (1) Basic physics of sound;
 - [(B)] (2) Anatomy and physiology of the ear; [and
 - (C)] (3) Function of hearing aids[.];
- [(2) Practical tests of proficiency in the following techniques:
 - (A) (4) Pure tone audiometry, including air and bone conduction testing;
 - [(B)] (5) Live voice or recorded voice speech audiometry, including speech reception threshold and speech discrimination testing;
 - [(C)] (6) Masking when indicated;
 - [(D)] (7) Recording and [evaluation of audiometry] analyzing test results to determine proper selection [and adaptation] of [a] hearing [aid] aids; and
 - [(E)] (8) Taking earmold impressions."

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 18, 1991.)

Note

1. So in original.

ACT 30

H.B. NO. 822

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 485-18.7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§485-18.7]]~~ **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 the commissioner's 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] such contracts shall be suspended [or], completed[.], or rescinded. The commissioner shall have the discretion to include in the order an assessment of an administrative 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. An administrative penalty of not more than \$100,000 may be assessed for each violation.

(b) Upon the issuance of an order by the commissioner under subsection (a), the commissioner shall promptly notify the respondent that [it] an order 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[.]; provided that any penalty shall not take effect until the final order is issued.

(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 cease and desist order shall constitute the final order issued and 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.”

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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 five years from the date of the 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] ten 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. Section 485-20.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§485-20.5]]~~ **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[.] for each violation.

(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. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved April 18, 1991.)

ACT 31

H.B. NO. 903

A Bill for an Act Relating to the Energy Resources Coordinator.

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

SECTION 1. Section 196-3, Hawaii Revised Statutes, is amended to read as follows:

“§196-3 **Energy resources coordinator.** The director of [planning and] business, economic development, and tourism shall serve as energy resources coordinator.”

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, 1991.)

ACT 32

H.B. NO. 935

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 amending Part X to read as follows:

“PART X. [VENEREAL] SEXUALLY TRANSMITTED DISEASES

[[§321-111]] [Venereal] Sexually transmitted disease prevention program. (a) The departments of health and education shall cooperate with each other and other public and private authorities as they may deem advisable for the education of minors and members of the general public on [venereal disease] sexually transmitted diseases and the prevention of [venereal disease.] sexually transmitted diseases. For the purpose of this section, “minor” means any person fourteen years of age or older and under the age of majority.

(b) The department of health shall formulate, supervise, and coordinate throughout the State an educational program for the purposes of preventing [venereal disease.] sexually transmitted diseases, instructing the general public in detecting the diseases, and encouraging early treatment.

(c) The information shall be made available upon request to all minors and members of the general public without parental consent and the information shall be distributed to all public school counselors requesting educational materials concerning [venereal] sexually transmitted disease prevention, detection, and treatment.

[[§321-115]] Prophylactics. (a) As used in this section “prophylactic” means any device or appliance used or to be used for the prevention of [venereal disease.] sexually transmitted diseases.

(b) No person shall publicly vend prophylactics in mechanical coin-oper-

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ated machines unless the person shall have obtained a permit from the department of health. The department of health shall adopt rules and charge fees to regulate the sale of prophylactics through vending machines and require that they be stocked with adequately labeled and scientifically approved devices only.

(c) It shall be unlawful for any person to vend prophylactics in mechanical coin-operated machines on the premises of any school in this State. The term "school" as used herein shall have the same meaning as defined by section 297-1."

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, 1991.)

ACT 33

H.B. NO. 1032

A Bill for an Act Relating to Operation of Thrill Craft.

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

SECTION 1. Section 267-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall operate a thrill craft unless the person is fifteen years of age or older. No person shall permit, or mislead another person into permitting, a person under fifteen years of age to operate a thrill craft."

SECTION 2. New statutory material is underscored.

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

(Approved April 18, 1991.)

ACT 34

H.B. NO. 1034

A Bill for an Act Relating to Harbors.

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

SECTION 1. Section 266-2, Hawaii Revised Statutes, is amended to read as follows:

"**§266-2 Powers and duties of department.** The department of transportation shall have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the State relative to the control and management of [the shores, shore] ocean waters[,] and navigable streams[,] of the

State, harbors, harbor and waterfront improvements, ports, docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State, and the shipping using the same, and shall have the authority to use and permit and regulate the use of the docks, wharves, piers, [bulkheads,] quays, bulkheads, and landings belonging to or controlled by the State for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor, and, subject to all applicable provisions of law, to fix and regulate from time to time rates [for] and charges for: (1) services rendered in mooring vessels, [charges for] (2) the use of moorings belonging to or controlled by the State, [rates or charges for] (3) wharfage or demurrage, [rents or charges for warehouses or] (4) warehouse space, [for offices or] office space, [for] and storage [of] space for freight, goods, wares and merchandise, [for storage space, for the use of donkey engines,] and (5) the use of derrick[s], or other equipment belonging to the State[,] or under the control of the department, and to make other charges including toll or tonnage charges on freight passing over or across docks, wharves, piers, [docks,] quays, bulkheads, or landings. The department shall likewise have power to appoint and remove clerks, [wharfingers,] harbor agents and their assistants, [pilot boat crews,] and all such other employees as may be necessary, and to fix their compensation; to make rules pursuant to chapter 91 and not inconsistent with law; and generally shall have all powers necessary [fully] to fully carry out this chapter.

Notwithstanding any law or provision to the contrary, the department of transportation is authorized to plan, construct, operate, and maintain any harbor facility in the State, including, but not limited to, the acquisition and use of lands necessary to stockpile dredged spoils, without the approval of county agencies.

All moneys appropriated for harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the department, subject to this chapter and chapter 103.

All contracts and agreements authorized by law to be entered into by the department shall be executed on its behalf by the director of transportation.

The department shall prepare and submit annually to the governor a report of its official acts during the preceding fiscal year, together with its recommendations as to harbor improvements throughout the State."

SECTION 2. All acts passed by the legislature during this Regular Session of 1991 relating to section 266-2 of the Hawaii Revised Statutes, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

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 18, 1991.)

A Bill for an Act Relating to Statewide Transportation Planning.

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

SECTION 1. Section 279A-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§279A-7 **Statewide transportation council; responsibilities.**~~]]~~ In addition to its responsibility for coordinating the development of a statewide transportation plan, the council shall be responsible for the following functions:

- (1) The council shall be responsible for [all transportation planning and approval of] making recommendations on projects for submission to the legislature which [involves] involve solely and exclusively either state highways, harbors and water-borne transit, and airports and air transportation; solely and exclusively state funds; or solely state lands. All other [transportation planning and approval of] projects for submission to the legislature, including intra-county mass transit projects, shall be the responsibility of the counties.
- (2) In respect to transportation projects for which the counties are responsible for planning and approval prior to submission to the legislature, the council shall review such projects and prepare comments for the legislature regarding:
 - (A) The degree to which an intra-island transportation project interfaces efficiently with existing proposed inter-island transportation system[.]; and
 - (B) The relationship between the specific projects' possible requirements for state financial assistance and projections as to the state's total potential financial commitments required for development of a statewide transportation system.
- (3) Counties which do not have metropolitan planning organizations may request from the council, and the council shall provide, technical assistance to the counties in the preparation of their respective county transportation plans as components of the statewide transportation planning process. The amounts of technical assistance to be provided hereunder are within the discretion of the chairman who shall consider in making the chairman's determinations the magnitude of the problems which exist in the requesting counties, the availability of local resources, the degree to which they are cooperatively participating in the statewide planning process and the adequacy of the council's budget considering the financial requirements of overall council operations.”

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, 1991.)

ACT 36

H.B. NO. 1036

A Bill for an Act Relating to State Highways.

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

SECTION 1. Section 264-13, Hawaii Revised Statutes, is amended to read as follows:

“**§264-13 Easements, etc., along state highways.** Notwithstanding any [provisions of the] law to the contrary, [the director of transportation, subject to the approval of] the governor[,] or the director of transportation as his designee, may dispose of easements within and access rights along the state highway rights-of-way under such terms and conditions which, in the director’s opinion, are in the best interest of the public.”

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, 1991.)

ACT 37

H.B. NO. 1428

A Bill for an Act Relating to Access to Recreational Areas.

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

SECTION 1. The legislature finds that the public right of transit along Hawaii’s shorelines should not be defined by ambiguous language. The defective language used to define the manner by which citizens may traverse along Hawaii’s shorelines may encourage certain misguided property owners to create or maintain unsafe conditions in those areas in hope of limiting the public’s access on Hawaii’s beaches and waterline areas. The purpose of this Act is to clarify existing law regarding the citizens’ right of transit along Hawaii’s shorelines.

SECTION 2. Section 115-4, Hawaii Revised Statutes, is amended to read as follows:

“**[§115-4] Right of transit along shorelines.** The right of access to Hawaii’s shorelines includes the right of transit along the shorelines [under conditions of safety for the public].”

SECTION 3. Statutory material to be repealed is bracketed.

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

(Approved April 18, 1991.)

ACT 38

H.B. NO. 1995

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 as follows:

“**§455-3 Qualifications of applicants.** Each applicant shall be a graduate of a school, university, or college of naturopathy which has received candidacy status with, or has been accredited by, a regional [accrediting association of secondary schools and colleges] or [has been accredited by] a national professional accrediting body either of which [approved by the board or the Commission on Accreditation of the Council of Naturopathic Medical Education, incorporated in Washington, D.C.; provided that after January 1, 1990, such school, university, or college] shall have been [accredited by a professional accrediting agency] recognized by the United States Department of Education.”

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, 1991.)

ACT 39

S.B. NO. 1410

A Bill for an Act Making Emergency Appropriations for Operating Expenses for Community Hospitals.

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

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with Article VII, Section 9, of the Constitution of the State of Hawaii.

SECTION 2. In accordance with Article VII, Section 9, of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the State general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$15,000,000, or 0.58 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 3. Act 316, Session Laws of Hawaii 1989, as amended by Act 299, Session Laws of Hawaii 1990, appropriated a certain designated sum to the department of health to provide funds for public hospitals and medical services under the division of community hospitals for the fiscal period beginning July 1, 1989, and ending June 30, 1991.

A critical funding emergency exists. The community hospitals system will

run out of appropriated funds before the end of the current fiscal year and the division will be unable to meet its fiscal obligations to operate its hospitals. The rapid escalation of health care costs in Hawaii is the cause of this financial crisis. The health care industry has experienced an inflation rate that has averaged thirteen per cent. In addition, the cost of personnel, equipment, and medical supplies has increased substantially.

To prevent the reduction or discontinuance of services, additional funds are urgently needed.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$15,000,000, or so much thereof as may be necessary for fiscal year 1990-1991, to be used for the following purposes:

- (1) \$14,000,000 shall be used by the department of health to "repay" the loan from the department of budget and finance; and
- (2) \$1,000,000 shall be used by the department of health to make up for the shortfall in fiscal year 1990-1991;

provided that:

- (1) All of the funds appropriated in this section shall be allotted to the department of health not as a "loan" but as a free and clear addition to the department's budget for community hospitals;
- (2) The department of health's overall budget shall not be restricted to "make room" for the additional appropriation; and
- (3) The department of budget and finance shall report to the legislature no later than July 1, 1991, on its overall strategy for providing adequate funding for the community hospitals.

SECTION 5. The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 22, 1991.)

ACT 40

H.B. NO. 661

A Bill for an Act Relating to the Uniform Commercial Code.

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

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article to read as follows:

"ARTICLE 2A LEASES

§490:2A-101 Short title. This Article shall be known and may be cited as the Uniform Commercial Code – Leases.

§490:2A-102 Scope. This Article applies to any transaction, regardless of form, that creates a lease.

§490:2A-103 Definitions and index of definitions. (a) In this Article unless the context otherwise requires:

- (1) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (2) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
- (3) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
- (4) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.
- (5) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.
- (6) "Fault" means wrongful act, omission, breach, or default.
- (7) "Finance lease" means a lease with respect to which:
 - (i) The lessor does not select, manufacture, or supply the goods;
 - (ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
 - (iii) One of the following occurs:
 - (A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
 - (B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
 - (C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
 - (D) If the lease is not a consumer lease, the lessor, before the

- lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
- (8) “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (section 490:2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.
 - (9) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.
 - (10) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.
 - (11) “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.
 - (12) “Lease contract” means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.
 - (13) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.
 - (14) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
 - (15) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease con-

tract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

- (16) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
- (17) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.
- (18) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.
- (19) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
- (20) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
- (21) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
- (22) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
- (23) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
- (24) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.
- (25) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.
- (26) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(b) Other definitions applying to this Article and the sections in which they appear are:

- "Accessions". Section 490:2A-310(a).
- "Construction mortgage". Section 490:2A-309(a)(4).
- "Encumbrance". Section 490:2A-309(a)(5).
- "Fixtures". Section 490:2A-309(a)(1).
- "Fixture filing". Section 490:2A-309(a)(2).
- "Purchase money lease". Section 490:2A-309(a)(3).

(c) The following definitions in other Articles apply to this Article:

- "Account". Section 490:9-106.
- "Between merchants". Section 490:2-104(3).
- "Buyer". Section 490:2-103(1)(a).
- "Chattel paper". Section 490:9-105(1)(b).
- "Consumer goods". Section 490:9-109(1).
- "Document". Section 490:9-105(1)(f).
- "Entrusting". Section 490:2-403(3).
- "General intangibles". Section 490:9-106.
- "Good faith". Section 490:2-103(1)(b).
- "Instrument". Section 490:9-105(1)(j).

“Merchant”. Section 490:2-104(1).

“Mortgage”. Section 490:9-105(1)(k).

“Pursuant to commitment”. Section 490:9-105(1)(l).

“Receipt”. Section 490:2-103(1)(c).

“Sale”. Section 490:2-106(1).

“Sale on approval”. Section 490:2-326.

“Sale or return”. Section 490:2-326.

“Seller”. Section 490:2-103(1)(d).

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§490:2A-104 Leases subject to other law. (a) A lease, although subject to this Article, is also subject to any applicable:

- (1) Certificate of title statute of this State, such as the applicable sections in part III of chapter 286;
- (2) Certificate of title statute of another jurisdiction (section 490:2A-105); or
- (3) Consumer protection statute of this State, or final consumer protection decision of a court of this State existing on the effective date of this Article.

(b) In case of conflict between this Article, other than sections 490:2A-105, 490:2A-304(c), and 490:2A-305(c), and a statute or decision referred to in subsection (a), the statute or decision controls.

(c) Failure to comply with an applicable law has only the effect specified therein.

§490:2A-105 Territorial application of Article to goods covered by certificate of title. Subject to the provisions of sections 490:2A-304(c) and 490:2A-305(c), with respect to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (i) surrender of the certificate, or (ii) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

§490:2A-106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum. (a) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter or in which the goods are to be used, the choice is not enforceable.

(b) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

§490:2A-107 Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

§490:2A-108 Unconscionability. (a) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at

the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(c) Before making a finding of unconscionability under subsection (a) or (b), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(d) In an action in which the lessee claims unconscionability with respect to a consumer lease:

- (1) If the court finds unconscionability under subsection (a) or (b), the court shall award reasonable attorney's fees to the lessee.
- (2) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action the lessee knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.
- (3) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (a) and (b) is not controlling.

§490:2A-109 Option to accelerate at will. (a) A term providing that one party or that party's successor in interest may accelerate payment of performance or require collateral or additional collateral "at will" or "when the party deems the party's self insecure" or in words of similar import must be construed to mean that the party has power to do so only if the party in good faith believes that the prospect of payment or performance is impaired.

(b) With respect to a consumer lease, the burden of establishing good faith under subsection (a) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

§490:2A-201 Statute of frauds. (a) A lease contract is not enforceable by way of action or defense unless:

- (1) The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or
- (2) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(b) Any description of leased goods or of the lease term is sufficient and satisfies subsection (a)(2), whether or not it is specific, if it reasonably identifies what is described.

(c) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (a)(2) beyond the lease term and the quantity of goods shown in the writing.

(d) A lease contract that does not satisfy the requirements of subsection (a), but which is valid in other respects, is enforceable:

- (1) If the goods are to be specially manufactured or obtained for the

- lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;
- (2) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or
 - (3) With respect to goods that have been received and accepted by the lessee.
- (e) The lease term under a lease contract referred to in subsection (d) is:
- (1) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agency specifying the lease term, the term so specified;
 - (2) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or
 - (3) A reasonable lease term.

§490:2A-202 Final written expression: parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- (1) By course of dealing or usage of trade or by course of performance; and
- (2) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

§490:2A-203 Seals inoperative. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

§490:2A-204 Formation in general. (a) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(b) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(c) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

§490:2A-205 Firm offers. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

§490:2A-206 Offer and acceptance in formation of lease contract. (a) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(b) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§490:2A-207 Course of performance or practical construction. (a) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(b) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(c) Subject to the provisions of section 490:2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

§490:2A-208 Modification, rescission and waiver. (a) An agreement modifying a lease contract needs no consideration to be binding.

(b) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(c) Although an attempt at modification or rescission does not satisfy the requirements of subsection (b), it may operate as a waiver.

(d) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

§490:2A-209 Lessee under finance lease as beneficiary of supply contract. (a) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(b) The extension of the benefit of a supplier's promises and of warranties to the lessee (section 490:2A-209(a)) does not: (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(c) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to

have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(d) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (a), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

§490:2A-210 Express warranties. (a) Express warranties by the lessor are created as follows:

- (1) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.
- (2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.
- (3) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

§490:2A-211 Warranties against interference and against infringement; lessee's obligation against infringement. (a) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(b) Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind, a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(c) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

§490:2A-212 Implied warranty of merchantability. (a) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(b) Goods to be merchantable must be at least such as:

- (1) Pass without objection in the trade under the description in the lease agreement;
- (2) In the case of fungible goods, are of fair average quality within the description;
- (3) Are fit for the ordinary purposes for which goods of that type are used;
- (4) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

- (5) Are adequately contained, packaged, and labeled as the lease agreement may require; and
 - (6) Conform to any promises or affirmations of fact made on the container or label.
- (c) Other implied warranties may arise from course of dealing or usage of trade.

§490:2A-213 Implied warranty of fitness for particular purpose.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

§490:2A-214 Exclusion or modification of warranties. (a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 490:2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(b) Subject to subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (c), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

(c) Notwithstanding subsection (b), but subject to subsection (d):

- (1) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;
- (2) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and
- (3) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(d) To exclude or modify a warranty against interference or against infringement (section 490:2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

§490:2A-215 Cumulation and conflict of warranties express or implied. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

- (1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

- (2) A sample from an existing bulk displaces inconsistent general language of description.
- (3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

§490:2A-216 Third-party beneficiaries of express and implied warranties. A warranty to or for the benefit of a lessee under this Article, whether express or implied, extends to any person who may reasonably be expected to use, consume, or be affected by the goods and who is injured by breach of the warranty. The operation of this section may not be excluded, modified, or limited with respect to injury to the person of an individual to whom the warranty extends, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against the beneficiary designated under this section.

§490:2A-217 Identification. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

- (1) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;
- (2) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or
- (3) When the young are conceived, if the lease contract is for a lease of unborn young of animals.

§490:2A-218 Insurance and proceeds. (a) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(b) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(c) Notwithstanding a lessee's insurable interest under subsections (a) and (b), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(d) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(e) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

§490:2A-219 Risk of loss. (a) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(b) Subject to the provisions of this Article on the effect of default on risk of loss (section 490:2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

- (1) If the lease contract requires or authorizes the goods to be shipped by carrier:
 - (i) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but
 - (ii) If it does require delivery at a particular destination and the

goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

- (2) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.
- (3) In any case not within paragraph (1) or (2), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

§490:2A-220 Effect of default on risk of loss. (a) Where risk of loss is to pass to the lessee and the time of passage is not stated:

- (1) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.
- (2) If the lessee rightfully revokes acceptance, the lessee, to the extent of any deficiency in the lessee's effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(b) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in the lessor's or the supplier's effective insurance coverage, may treat the risk of loss as resting on the lessee for a commercially reasonable time.

§490:2A-221 Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 490:2A-219, then:

- (1) If the loss is total, the lease contract is avoided; and
- (2) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

PART 3. EFFECT OF LEASE CONTRACT

§490:2A-301 Enforceability of lease contract. Except as otherwise provided in this Article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods, and against creditors of the parties.

§490:2A-302 Title to and possession of goods. Except as otherwise provided in this Article, each provision of this Article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

§490:2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights. (a) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of section 490:9-102(1)(b).

(b) Except as provided in subsections (c) and (d), a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (e), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(c) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (e) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(d) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (e).

(e) Subject to subsections (c) and (d):

- (1) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 490:2A-501(b);
- (2) If paragraph (1) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(f) A transfer of “the lease” or of “all my rights under the lease”; or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(g) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(h) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

§490:2A-304 Subsequent lease of goods by lessor. (a) Subject to section 490:2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (b) and section 490:2A-527(d), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

- (1) The lessor’s transferor was deceived as to the identity of the lessor;
- (2) The delivery was in exchange for a check which is later dishonored;
- (3) It was agreed that the transaction was to be a “cash sale”; or
- (4) The delivery was procured through fraud punishable as larcenous under the criminal law.

(b) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor’s and the existing lessee’s rights to the goods, and takes free of the existing lease contract.

(c) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

§490:2A-305 Sale or sublease of goods by lessee. (a) Subject to the provisions of section 490:2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (b) and section 490:2A-511(d), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

- (1) The lessor was deceived as to the identity of the lessee;
- (2) The delivery was in exchange for a check which is later dishonored;
or
- (3) The delivery was procured through fraud punishable as larcenous under the criminal law.

(b) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(c) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

§490:2A-306 Priority of certain liens arising by operation of law. If a person in the ordinary course of the person's business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this Article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

§490:2A-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods. (a) Except as otherwise provided in section 490:2A-306, a creditor of a lessee takes subject to the lease contract.

(b) Except as otherwise provided in subsections (c) and (d) and in sections 490:2A-306 and 490:2A-308, a creditor of a lessor takes subject to the lease contract unless:

- (1) The creditor holds a lien that attached to the goods before the lease contract became enforceable;
- (2) The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or
- (3) The creditor holds a security interest in the goods which was perfected (section 490:9-303) before the lease contract became enforceable.

(c) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 490:9-303) and the lessee knows of its existence.

(d) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

§490:2A-308 Special rights of creditors. (a) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(b) Nothing in this Article impairs the rights of creditors of a lessor if the lease contract (i) becomes enforceable, not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security, or the like,

and (ii) is made under circumstances which under any statute or rule of law apart from this Article would constitute the transaction a fraudulent transfer or voidable preference.

(c) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

§490:2A-309 Lessor's and lessee's rights when goods become fixtures.

(a) In this section:

- (1) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;
- (2) A "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 490:9-402(5);
- (3) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;
- (4) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and
- (5) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(b) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(c) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(d) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

- (1) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or
- (2) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(e) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

- (1) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease,

and before the goods become fixtures the lease contract is enforceable; or

- (2) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or
- (3) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or
- (4) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(f) Notwithstanding subsection (d)(1) but otherwise subject to subsections (d) and (e), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(g) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(h) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this Article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(i) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions (Article 9).

§490:2A-310 Lessor's and lessee's rights when goods become accessions. (a) Goods are "accessions" when they are installed in or affixed to other goods.

(b) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (d).

(c) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (d) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(d) The interest of a lessor or a lessee under a lease contract described in subsection (b) or (c) is subordinate to the interest of:

- (1) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or
- (2) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(e) When under subsections (b) or (c) and (d) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this Article, or (ii) if necessary to enforce other rights and remedies under this Article, remove the goods from the whole, free and clear of all interests in the whole, but the removing party must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

§490:2A-311 Priority subject to subordination. Nothing in this Article prevents subordination by agreement by any person entitled to priority.

PART 4. PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED, AND EXCUSED

§490:2A-401 Insecurity: adequate assurance of performance. (a) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(b) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which the insecure party has not already received the agreed return.

(c) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.

(d) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(e) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

§490:2A-402 Anticipatory repudiation. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

- (1) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

- (2) Make demand pursuant to section 490:2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or
- (3) Resort to any right or remedy upon default under the lease contract or this Article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this Article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 490:2A-524).

§490:2A-403 Retraction of anticipatory repudiation. (a) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(b) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 490:2A-401.

(c) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

§490:2A-404 Substituted performance. (a) If without fault of the lessee, the lessor, and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(b) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

- (1) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and
- (2) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

§490:2A-405 Excused performance. Subject to section 490:2A-404 on substituted performance, the following rules apply:

- (1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.
- (2) If the causes mentioned in paragraph (1) affect only part of the lessor's or the supplier's capacity to perform, the lessor or the sup-

plier shall allocate production and deliveries among the lessor's or the supplier's customers but at the lessor's or the supplier's option may include regular customers not then under contract for sale or lease as well as the lessor's or supplier's own requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.

- (3) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (2), of the estimated quota thus made available for the lessee.

§490:2A-406 Procedure on excused performance. (a) If the lessee receives notification of a material or indefinite delay or an allocation justified under section 490:2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 490:2A-510):

- (1) Terminate the lease contract (section 490:2A-505(b)); or
- (2) Except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(b) If, after receipt of a notification from the lessor under section 490:2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected.

§490:2A-407 Irrevocable promises: finance leases. (a) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(b) A promise that has become irrevocable and independent under subsection (a):

- (1) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and
- (2) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(c) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

PART 5. DEFAULT SUBPART A. IN GENERAL

§490:2A-501 Default: procedure. (a) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

(b) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

(c) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

(d) Except as otherwise provided in section 490:1-106(1) or this Article or the lease agreement, the rights and remedies referred to in subsections (b) and (c) are cumulative.

(e) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

§490:2A-502 Notice after default. Except as otherwise provided in this Article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

§490:2A-503 Modification or impairment of rights and remedies. (a) Except as otherwise provided in this Article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article.

(b) Resort to a remedy provided under this Article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this Article.

(c) Consequential damages may be liquidated under section 490:2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(d) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this Article.

§490:2A-504 Liquidation of damages. (a) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(b) If the lease agreement provides for liquidation of damages, and such provision does not comply with subsection (a), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

(c) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 490:2A-525 or 490:2A-526), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:

- (1) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (a); or
 - (2) In the absence of those terms, twenty per cent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or \$500.
- (d) A lessee's right to restitution under subsection (c) is subject to offset to the extent the lessor establishes:
- (1) A right to recover damages under the provisions of this Article other than subsection (a); and
 - (2) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

§490:2A-505 Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies. (a) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(b) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(c) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(d) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this Article for default.

(e) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

§490:2A-506 Statute of limitations. (a) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(b) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(c) If an action commenced within the time limited by subsection (a) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(d) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective.

§490:2A-507 Proof of market rent: time and place. (a) Damages based on market rent (section 490:2A-519 or 490:2A-528) are determined according to

the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(b) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this Article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(c) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this Article offered by one party is not admissible unless and until that party has given the other party notice the court finds sufficient to prevent unfair surprise.

(d) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

SUBPART B. DEFAULT BY LESSOR

§490:2A-508 Lessee's remedies. (a) If a lessor fails to deliver the goods in conformity to the lease contract (section 490:2A-509) or repudiates the lease contract (section 490:2A-402), or a lessee rightfully rejects the goods (section 490:2A-509) or justifiably revokes acceptance of the goods (section 490:2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 490:2A-510), the lessor is in default under the lease contract and the lessee may:

- (1) Cancel the lease contract (section 490:2A-505(a));
- (2) Recover so much of the rent and security as has been paid and is just under the circumstances;
- (3) Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 490:2A-518 and 490:2A-520), or recover damages for nondelivery (sections 490:2A-519 and 490:2A-520);
- (4) Exercise any other rights or pursue any other remedies provided in the lease contract.

(b) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

- (1) If the goods have been identified, recover them (section 490:2A-522); or
- (2) In a proper case, obtain specific performance or replevy the goods (section 490:2A-521).

(c) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in section 490:2A-519(c).

(d) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 490:2A-519(d)).

(e) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent

and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to section 490:2A-527(e).

(f) Subject to the provisions of section 490:2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

§490:2A-509 Lessee's rights on improper delivery; rightful rejection.

(a) Subject to the provisions of section 490:2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(b) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

§490:2A-510 Installment lease contracts: rejection and default.

(a) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (b) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(b) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

§490:2A-511 Merchant lessee's duties as to rightfully rejected goods.

(a) Subject to any security interest of a lessee (section 490:2A-508(e)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the merchant lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(b) If a merchant lessee (subsection (a)) or any other lessee (section 490:2A-512) disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten per cent of the gross proceeds.

(c) In complying with this section or section 490:2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(d) A purchaser who purchases in good faith from a lessee pursuant to this section or section 490:2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article.

§490:2A-512 Lessee's duties as to rightfully rejected goods. (a) Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 490:2A-511) and subject to any security interest of a lessee (section 490:2A-508(e)):

- (1) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;
 - (2) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 490:2A-511; but
 - (3) The lessee has no further obligations with regard to goods rightfully rejected.
- (b) Action by the lessee pursuant to subsection (a) is not acceptance or conversion.

§490:2A-513 Cure by lessor of improper tender or delivery; replacement. (a) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(b) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or the supplier seasonably notifies the lessee.

§490:2A-514 Waiver of lessee's objections. (a) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

- (1) If, stated seasonably, the lessor or the supplier could have cured it (section 490:2A-513); or
 - (2) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.
- (b) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

§490:2A-515 Acceptance of goods. (a) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

- (1) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or
- (2) The lessee fails to make an effective rejection of the goods (section 490:2A-509(b)).

(b) Acceptance of a part of any commercial unit is acceptance of that entire unit.

§490:2A-516 Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over. (a) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(b) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(c) If a tender has been accepted:

(1) Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(2) Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 490:2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(3) The burden is on the lessee to establish any default.

(d) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(1) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(2) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 490:2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(e) Subsections (c) and (d) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 490:2A-211).

§490:2A-517 Revocation of acceptance of goods. (a) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(1) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(2) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except

in the case of a finance lease, by the difficulty of discovery before acceptance.

(b) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(c) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(d) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(e) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

§490:2A-518 Cover; substitute goods. (a) After a default by a lessor under the lease contract of the type described in section 490:2A-508(a), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 490:2A-504) or otherwise determined pursuant to agreement of the parties (sections 490:1-102(3) and 490:2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(c) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (b), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 490:2A-519 governs.

§490:2A-519 Lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods. (a) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 490:2A-504) or otherwise determined pursuant to agreement of the parties (sections 490:1-102(3) and 490:2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 490:2A-518(b), or is by purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(b) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(c) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 490:2A-516(c)), the measure of damages for non-conforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(d) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

§490:2A-520 Lessee's incidental and consequential damages. (a) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses, or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(b) Consequential damages resulting from a lessor's default include:

- (1) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
- (2) Injury to person or property proximately resulting from any breach of warranty.

§490:2A-521 Lessee's right to specific performance or replevin. (a) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(b) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(c) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

§490:2A-522 Lessee's right to goods on lessor's insolvency. (a) Subject to subsection (b) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 490:2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(b) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

SUBPART C. DEFAULT BY LESSEE

§490:2A-523 Lessor's remedies. (a) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and

with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 490:2A-510), the lessee is in default under the lease contract and the lessor may:

- (1) Cancel the lease contract (section 490:2A-505(a));
- (2) Proceed respecting goods not identified to the lease contract (section 490:2A-524);
- (3) Withhold delivery of the goods and take possession of goods previously delivered (section 490:2A-525);
- (4) Stop delivery of the goods by any bailee (section 490:2A-526);
- (5) Dispose of the goods and recover damages (section 490:2A-527), or retain the goods and recover damages (section 490:2A-528), or in a proper case recover rent (section 490:2A-529);
- (6) Exercise any other rights or pursue any other remedies provided in the lease contract.

(b) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (a), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(c) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

- (1) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsections (a) or (b); or
- (2) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (b).

§490:2A-524 Lessor's right to identify goods to lease contract. (a) A lessor aggrieved under section 490:2A-523(a) may:

- (1) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
- (2) Dispose of goods (section 490:2A-527(a)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(b) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

§490:2A-525 Lessor's right to possession of goods. (a) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(b) After a default by the lessee under the lease contract of the type described in section 490:2A-523(a) or 490:2A-523(c)(1), or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor

may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 490:2A-527).

(c) The lessor may proceed under subsection (b) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

§490:2A-526 Lessor's stoppage of delivery in transit or otherwise. (a)

A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(b) In pursuing its remedies under subsection (a), the lessor may stop delivery until:

- (1) Receipt of the goods by the lessee;
 - (2) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
 - (3) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.
- (c)
- (1) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
 - (2) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.
 - (3) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§490:2A-527 Lessor's rights to dispose of goods. (a) After a default by a lessee under the lease contract of the type described in section 490:2A-523(a) or 490:2A-523(c)(1) or after the lessor refuses to deliver or takes possession of goods (section 490:2A-525 or 490:2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 490:2A-504) or otherwise determined pursuant to agreement of the parties (sections 490:1-102(3) and 490:2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 490:2A-530, less expenses saved in consequence of the lessee's default.

(c) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (b), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 490:2A-528 governs.

(d) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods

free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

(e) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 490:2A-508(e)).

§490:2A-528 Lessor's damages for non-acceptance, failure to pay, repudiation, or other default. (a) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 490:2A-504) or otherwise determined pursuant to agreement of the parties (sections 490:1-102(3) and 490:2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 490:2A-527(b), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 490:2A-523(a) or 490:2A-523(c)(1), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 490:2A-530, less expenses saved in consequence of the lessee's default.

(b) If the measure of damages provided in subsection (a) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 490:2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

§490:2A-529 Lessor's action for the rent. (a) After default by the lessee under the lease contract of the type described in section 490:2A-523(a) or 490:2A-523(c)(1) or, if agreed, after other default by the lessee, if the lessor complies with subsection (b), the lessor may recover from the lessee as damages:

- (1) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 490:2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 490:2A-530, less expenses saved in consequence of the lessee's default; and
- (2) For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 490:2A-530, less expenses saved in consequence of the lessee's default.

(b) Except as provided in subsection (c), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(c) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (a). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by section 490:2A-527 or section 490:2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to section 490:2A-527 or 490:2A-528.

(d) Payment of the judgment for damages obtained pursuant to subsection (a) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(e) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (section 490:2A-402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for non-acceptance under sections 490:2A-527 and 490:2A-528.

§490:2A-530 Lessor's incidental damages. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care, and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

§490:2A-531 Standing to sue third parties for injury to goods. (a) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (i) the lessor has a right of action against the third party, and (ii) the lessee also has a right of action against the third party if the lessee:

- (1) Has a security interest in the goods;
- (2) Has an insurable interest in the goods; or
- (3) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(b) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, the party plaintiff's suit or settlement, subject to the party plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

(c) Either party with the consent of the other may sue for the benefit of whom it may concern.

§490:2A-532 Lessor's rights to residual interest. In addition to any other recovery permitted by this Article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee."

SECTION 2. Section 490:1-105, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only

to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 490:2-402.

Applicability of the Article on Leases. Sections 490:2A-105 and 490:2A-

106.

Applicability of the Article on Bank Deposits and Collections. Section 490:4-102.

Bulk transfers subject to the Article on Bulk Transfers. Section 490:6-102.

Applicability of the Article on Investment Securities. Section 490:8-106.

Perfection provisions of the Article on Secured Transactions. Section 490:9-103.”

SECTION 3. Section 490:1-201, Hawaii Revised Statutes, is amended by amending the definition of “security interest” to read as follows:

“(37) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 490:2-401) is limited in effect to a reservation of a “security interest”. The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of [such] those goods to a contract for sale under section 490:2-401 is not a “security interest”, but a buyer may also acquire a “security interest” by complying with Article 9. Unless a [lease or] consignment is intended as security, reservation of title thereunder is not a “security interest”, but a consignment [is] in any event is subject to the provisions on consignment sales (section 490:2-326). [Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.]

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

- (a) The original term of the lease is equal to or greater than the remaining economic life of the goods;
- (b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- (c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement;
or
- (d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

- (a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at

- the time the lease is entered into;
- (b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;
 - (c) The lessee has an option to renew the lease or to become the owner of the goods;
 - (d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
 - (e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

- (x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;
- (y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and
- (z) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into."

SECTION 4. Section 490:9-113, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-113 Security [interest] interests arising under Article on Sales[,] or under Article on Leases. A security interest arising solely under the Article on Sales (Article 2) or the Article on Leases (Article 2A) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

- (a) No security agreement is necessary to make the security interest enforceable; and
- (b) No filing is required to perfect the security interest; and
- (c) The rights of the secured party on default by the debtor are governed (i) by the Article on Sales (Article 2)[.] in the case of a security interest arising solely under that Article or (ii) by the Article on Leases (Article 2A) in the case of a security interest arising solely under that Article."

SECTION 5. Statutory material to be repealed is bracketed. New statutory

material is underscored.

SECTION 6. This Act shall take effect on January 1, 1992.

(Approved April 24, 1991.)

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H.B. NO. 662

A Bill for an Act Relating to the Uniform Commercial Code Article 4A – Funds Transfer.

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

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article to be designated and to read as follows:

“ARTICLE 4A. FUNDS TRANSFERS PART 1. SUBJECT MATTER AND DEFINITIONS

§490:4A-101 Short title. This Article may be cited as Uniform Commercial Code – Funds Transfers.

§490:4A-102 Subject matter. Except as otherwise provided in section 490:4A-108, this Article applies to funds transfers defined in section 490:4A-104.

§490:4A-103 Payment order – definitions. (a) In this Article:

- (1) “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:
 - (i) The instruction does not state a condition to payment to the beneficiary other than time of payment;
 - (ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and
 - (iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.
- (2) “Beneficiary” means the person to be paid by the beneficiary’s bank.
- (3) “Beneficiary’s bank” means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.
- (4) “Receiving bank” means the bank to which the sender’s instruction is addressed.
- (5) “Sender” means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

§490:4A-104 Funds transfer - definitions. In this Article:

- (1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.
- (2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.
- (3) "Originator" means the sender of the first payment order in a funds transfer.
- (4) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

§490:4A-105 Other definitions. (a) In this Article:

- (1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.
- (2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.
- (3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.
- (4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.
- (5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.
- (6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (7) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 490:1-201(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

- "Acceptance". Section 490:4A-209.
- "Beneficiary". Section 490:4A-103.
- "Beneficiary's bank". Section 490:4A-103.
- "Executed". Section 490:4A-301.
- "Execution date". Section 490:4A-301.
- "Funds transfer". Section 490:4A-104.
- "Funds-transfer system rule". Section 490:4A-501.
- "Intermediate bank". Section 490:4A-104.

“Originator”. Section 490:4A-104.

“Originator’s bank”. Section 490:4A-104.

“Payment by beneficiary’s bank to beneficiary”. Section 490:4A-405.

“Payment by originator to beneficiary”. Section 490:4A-406.

“Payment by sender to receiving bank”. Section 490:4A-403.

“Payment date”. Section 490:4A-401.

“Payment order”. Section 490:4A-103.

“Receiving bank”. Section 490:4A-103.

“Security procedure”. Section 490:4A-201.

“Sender”. Section 490:4A-103.

(c) The following definitions in Article 4 apply to this Article:

“Clearing house”. Section 490:4-104.

“Item”. Section 490:4-104.

“Suspends payments”. Section 490:4-104.

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§490:4A-106 Time payment order is received. (1)¹ The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 490:1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article.

§490:4A-107 Federal reserve regulations and operating circulars. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

§490:4A-108 Exclusion of consumer transactions governed by federal law. This Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. §1693 et seq.) as amended from time to time.

PART 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER

§490:4A-201 Security procedure. “Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or

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the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

§490:4A-202 Authorized and verified payment orders. (a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in section 490:4A-203(a)(1), rights and obligations arising under this section or section 490:4A-203 may not be varied by agreement.

§490:4A-203 Unenforceability of certain verified payment orders. (a) If an accepted payment order is not, under section 490:4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 490:4A-202(b), the following rules apply:

- (1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.
- (2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not

caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

§490:4A-204 Refund of payment and duty of customer to report with respect to unauthorized payment order. (a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 490:4A-202, or (ii) not enforceable, in whole or in part, against the customer under section 490:4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in section 490:1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

§490:4A-205 Erroneous payment orders. (a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

- (1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 490:4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).
- (2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.
- (3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to

pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

§490:4A-206 Transmission of payment order through funds-transfer or other communication system. (a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

§490:4A-207 Misdescription of beneficiary. (a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

- (1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.
- (2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and

number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

- (1) If the originator is a bank, the originator is obliged to pay its order.
 - (2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.
- (d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:
- (1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.
 - (2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

§490:4A-208 Misdescription of intermediary bank or beneficiary's bank. (a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

- (1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.
 - (2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.
- (b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.
- (1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.
 - (2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by

paragraph (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

- (3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.
- (4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 490:4A-302(a)(1).

§490:4A-209 Acceptance of payment order. (a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

- (1) When the bank (i) pays the beneficiary as stated in section 490:4A-405(a) or 490:4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;
- (2) When the bank receives payment of the entire amount of the sender's order pursuant to section 490:4A-403(a)(1) or 490:4A-403(a)(2); or
- (3) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 490:4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

§490:4A-210 Rejection of payment order. (a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 490:4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

§490:4A-211 Cancellation and amendment of payment order. (a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

- (1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.
- (2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

§490:4A-212 Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 490:4A-209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement.

PART 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK

§490:4A-301 Execution and execution date. (a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

§490:4A-302 Obligations of receiving bank in execution of payment order. (a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to section 490:4A-209(a), the bank has the following obligations in executing the order:

- (1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.
- (2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its pay-

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ment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

§490:4A-303 Erroneous execution of payment order. (a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 490:4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 490:4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

§490:4A-304 Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in section 490:4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under section 490:4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

§490:4A-305 Liability for late or improper execution or failure to execute payment order. (a) If a funds transfer is completed, but execution of a payment order by the receiving bank in breach of section 490:4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of section 490:4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of the agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

PART 4. PAYMENT

§490:4A-401 Payment date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

§490:4A-402 Obligation of sender to pay receiving bank. (a) This section is subject to sections 490:4A-205 and 490:4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to section 490:4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance

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by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in section 490:4A-204 and section 490:4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d), but is unable to do so because it is not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in section 490:4A-302(a)(1), to route the funds transfer through that intermediary bank, is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

§490:4A-403 Payment by sender to receiving bank. (a) Payment of the sender's obligation under section 490:4A-402 to pay the receiving bank occurs as follows:

- (1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.
- (2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.
- (3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 490:4A-

402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under section 490:4A-402(b) or 490:4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

§490:4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary. (a) Subject to sections 490:4A-211(e), 490:4A-405(d), and 490:4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

§490:4A-405 Payment by beneficiary's bank to beneficiary. (a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under section 490:4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 490:4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the

beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 490:4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under section 490:4A-406, and (iv) subject to section 490:4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under section 490:4A-402(c) because the funds transfer has not been completed.

§490:4A-406 Payment by originator to beneficiary; discharge of underlying obligation. (a) Subject to sections 490:4A-211(e), 490:4A-405(d), and 490:4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 490:4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is

deemed to be in the amount of the originator's order unless upon demand by the beneficiary, the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

PART 5. MISCELLANEOUS PROVISIONS

§490:4A-501 Variation by agreement and effect of funds-transfer system rule. (a) Except as otherwise provided in this Article, rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in sections 490:4A-404(c), 490:4A-405(d), and 490:4A-507(c).

§490:4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank. (a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

- (1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.
- (2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.
- (3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other

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bank served with the creditor process is not obliged to act with respect to the process.

§490:4A-503 Injunction or restraining order with respect to funds transfer. For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

§490:4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account. (a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

§490:4A-505 Preclusion of objection to debit of customer's account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

§490:4A-506 Rate of interest. (a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by three hundred sixty. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

§490:4A-507 Choice of law. (a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

- (1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in

which the receiving bank is located.

- (2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.
- (3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue."

SECTION 2. Section 490:1-105, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 490:2-402.

Applicability of the Article on Bank Deposits and Collections. Section 490:4-102.

Governing law in the Article on Funds Transfers. Section 490:4A-507.

Bulk transfers subject to the Article on Bulk Transfers. Section 490:6-102.

Applicability of the Article on Investment Securities. Section 490:8-106.

Perfection provisions of the Article on Secured Transactions. Section 490:9-103."

SECTION 3. New statutory material is underscored.

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SECTION 4. This Act shall take effect on January 1, 1992.
(Approved April 24, 1991.)

Note

- 1. So in original.

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H.B. NO. 933

A Bill for an Act Relating to Radiologic Technology.

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

SECTION 1. Section 466J-2, Hawaii Revised Statutes, is amended to read as follows:

“§466J-2 Radiologic technology board; appointment; duties. The governor shall appoint and may remove in the manner prescribed in section 26-34 a [board of radiologic technologists] radiologic technology board, to be placed in the department for administrative purposes.

The board shall consist of nine members. The membership shall be composed of two persons licensed to practice medicine pursuant to chapter 453 and certified by the American Board of Radiology; four persons, each with at least five years' experience and certified in the practice of radiography, two of whom shall be persons engaged in the hospital practice of radiography; and one person who practices [radiologic technology for therapeutic purposes] radiation therapy technology, and one person from the general public. The director or the director's designated representative shall be the ninth, ex officio voting member of the board.

The board shall:

- (1) Select its own chairperson from among its members;
- (2) Adopt, amend, or repeal such rules pursuant to chapter 91 as are necessary to effectuate the purposes of this chapter;
- (3) Determine minimum standards for and approve such educational institutions which provide a course of instruction in radiologic technology which meets the requirements of this chapter;
- (4) Withdraw approval or deny approval of educational institutions for failure to meet prescribed standards;
- (5) Examine[, license, and grant, deny, or revoke the licenses of] qualified applicants and grant, deny, suspend, or revoke licenses which are authorized by this chapter and impose such conditions as may be necessary in connection with the granting, denial, suspension, or revocation of licenses;¹
- (6) Keep a record of all its proceedings; and
- (7) Make an annual report to the governor.

Members of the board shall serve without compensation, but shall be reimbursed for expenses; including travel expenses, necessary for the performance of their duties.”

SECTION 2. Section 466J-5, Hawaii Revised Statutes, is amended to read as follows:

“§466J-5 Radiographers and radiation therapy technologists; qualifications, licenses, examination. (a) An applicant for a license to practice as a radiographer or as a radiation therapy technologist shall submit to the board written evidence[;],¹ verified by oath or affirmation, that the applicant:

- (1) Has satisfactorily completed a course in an approved school for radiologic technology or an approved training program for radiographers or radiation therapy technologists; and
- (2) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency.

(b) The board shall adopt rules pursuant to chapter 9I to further define and regulate the practices authorized for radiographers and for radiation therapy technologists.

(c) The applicant shall be required to pass the appropriate examination specified and administered by the board; provided that the board may accept in lieu of the examination a certificate of another agency or organization that certifies radiographers or radiation therapy technologists, if the certificate was issued on the basis of an examination reasonably equivalent to the examination administered by the board.

(d) The board shall adopt rules pursuant to chapter 9I to enable licensed radiographers and licensed radiation therapy technologists from other states having standards that are comparable to those in Hawaii to obtain licensure without the need for examination.

(e) The applicant applying for a license to practice as a radiographer or as a radiation therapy technologist shall pay a non-refundable fee of \$10 to the department, plus the cost of an examination. All fees received by the department and moneys collected under this chapter shall be deposited with the [[]director[]] of finance to the credit of the general fund.

(f) Any person who holds a license to practice as a radiographer shall have the right to use the title “certified radiographer”, and the abbreviation C.R. No other person shall assume this title or use its abbreviation or any other words, letters, signs, or devices to indicate that the person is a certified radiographer.

(g) Any person who holds a license to practice as a radiation therapy technologist shall have the right to use the title “certified radiation therapy technologist”[.], and the abbreviation C.R.T. No other person shall assume this title or use its abbreviation or any other words, letters, signs, or devices to indicate that the person is a certified radiation therapy technologist.

(h) The form of every license shall be prescribed by and issued in the name of the board.”

SECTION 3. Section 466J-1.5, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed.² New statutory material is underscored.

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

(Approved April 24, 1991.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Transfer of Funds Among Business Loan Revolving Funds.

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

SECTION 1. The purpose of this Act is to authorize the department of business, economic development, and tourism to transfer moneys among the business loan revolving funds for the large fishing vessel loan program, small fishing vessel loan program, capital loan program, and the innovation development loan program as the need arises. The flexibility to transfer funds will permit more efficient use of available funds by allowing the department to transfer funds according to need and would keep intact the intent of each loan program.

SECTION 2. Section 189-23, Hawaii Revised Statutes, is amended to read as follows:

“§189-23 Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund. There is established the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided for in this part. The department may transfer moneys from the revolving fund established by this section either to the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-43, the Hawaii capital loan revolving fund established by section 210-3, or the Hawaii innovation development revolving fund established by section 211E-2, and moneys from these three funds shall be disbursed by the department pursuant to chapters 189, 210, and 211E, respectively, and further, the department may transfer moneys from the revolving funds enumerated in this section to the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred into any revolving fund shall not exceed \$1,000,000 for each revolving fund within the calendar year; and
- (2) The department shall report any transfer under this section to the legislature within ten days of the transfer.”

SECTION 3. Section 189-43, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) There is established the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund into which shall be paid all moneys received as repayment of loans and interest payments as provided in this part. The department may transfer moneys from the revolving fund established by this section either to the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-23, the Hawaii capital loan revolving fund established by section 210-3, or the Hawaii innovation development loan revolving fund established by section 211E-2, and moneys from these three funds shall be disbursed by the department pursuant to chapters 189, 210, and 211E, respectively, and further, the department may transfer moneys from the revolving funds enumerated in this

section to the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred into any revolving fund shall not exceed \$1,000,000 for each revolving fund within the calendar year; and
- (2) The department shall report any transfer under this section to the legislature within ten days of the transfer.”

SECTION 4. Section 210-3, Hawaii Revised Statutes, is amended to read as follows:

“§210-3 Hawaii capital loan revolving fund. There is established the Hawaii capital loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided in this chapter. The department may transfer moneys from the loan revolving fund established by this section either to the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-23, the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-43, or the Hawaii innovation development loan revolving fund established by section 211E-2, and moneys from these three funds shall be disbursed by the department pursuant to chapters 189 and 211E, respectively, and further, the department may transfer moneys from the revolving funds enumerated in this section to the Hawaii capital loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred into any revolving fund shall not exceed \$1,000,000 for each revolving fund within the calendar year; and
- (2) The department shall report any transfer under this section to the legislature within ten days of the transfer.”

SECTION 5. Section 211E-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a revolving fund to be known as the Hawaii innovation development fund to be administered by the department of business, economic development, and tourism for the purpose of promoting the development of new products or inventions that have direct economic benefits for Hawaii. The department shall provide low interest loans pursuant to subsection (b) to inventors for the development of their new product or invention. All moneys received as repayment of loans and interest payment shall be deposited in the fund. The department may transfer moneys from the loan revolving fund established by this section to the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-23, the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-43, or the Hawaii capital loan revolving fund established by section 210-3, and moneys from these three funds shall be disbursed by the department pursuant to chapters 189 and 210, respectively, and further, the department may transfer moneys from the revolving funds enumerated in this section to the Hawaii innovation development loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred into any revolving fund shall not exceed \$1,000,000 for each revolving fund within the calendar year; and
- (2) The department shall report any transfer under this section to the legislature within ten days of the transfer.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved April 24, 1991.)

Note

1. No bracketed material.

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S.B. NO. 388

A Bill for an Act Relating to Condominium Public Reports.

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

SECTION 1. Section 514A-11, Hawaii Revised Statutes, is amended to read as follows:

“§514A-11 Recordation and contents of declaration. The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration to which section 514A-20 refers shall express the following particulars:

- (1) Description of the land, whether leased or in fee simple, on which the building or buildings and improvements are or are to be located.
- (2) Description of the building or buildings, stating the number of stories and basements, the number of apartments, and the principal materials of which it or they is or are constructed or to be constructed.
- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common element to which it has access, designated parking stall, if considered a limited common element, and any other data necessary for its proper identification.
- (4) Description of the common elements.
- (5) Description of the limited common elements, if any, stating to which apartments their use is reserved.
- (6) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting.
- (7) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use.
- (8) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of

- the person which shall be within the county or city and county in which the property is located.
- (9) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, or restore the property in the event of damage or destruction of all or part of the property.
 - (10) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter.
 - (11) The method by which the declaration may be amended, consistent with this chapter, provided that an amendment to the declaration shall require a vote or written consent of not less than seventy-five per cent of all apartment owners, except as otherwise provided in this chapter.
 - (12) Description as to any additions, deletions, modifications, and reservations as to the property, including without limitation provisions concerning the merger or addition of later phases of the project. To the extent provided in the declaration, an amendment to the declaration which is made to implement such additions, deletions, modifications, reservations or merger provisions shall require the vote or written consent of only the declarant or such percentage of apartment owners as is provided in the declaration.
 - (13) In the case of a project which includes one or more existing structures being converted to condominium status, a statement that the project is in compliance with all zoning and building ordinances[,] and codes[, rules, regulations, or other requirements in force at the time of its construction.] applicable to the project, and specifying, if applicable:
 - (A) Any variances which have been granted to achieve such compliance; and
 - (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal non-conforming uses or structures.
 - [(14) In the case of a project which includes one or more existing structures being converted to condominium status, statement of whether any variance has been granted from any ordinance, code, rule, regulation, or other requirement in force at the time of its construction or from any current ordinance, code, rule, regulation, or other requirement.]”

SECTION 2. Section 514A-31, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-31 Notification of intention.** Prior to the time when apartments in a condominium project [is] are to be offered for sale in this State, the developer shall [notify the real estate commission] register the project with the commission by notifying the commission in writing of the developer’s intention to sell such [offerings.] apartments. No offer of sale or sale shall be made [without the issuance of a] until the project has been registered with the commission and the commission has issued an effective date for the project’s preliminary or final public report.”

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SECTION 3. Section 514A-32, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-32 Questionnaire and filing fee.** The notice of intention shall be accompanied by [a]:

- (1) A nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; [and by a]
- (2) A verified copy of a questionnaire properly filled in[.]; and
- (3) Such documents and information concerning the project as may be specified by the commission.

The questionnaire shall be in such form and content as [will require full disclosure of all material facts reasonably available.] prescribed by the commission.”

SECTION 4. Section 514A-33, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-33 Inspection.** After appropriate notification has been made or additional information has been received pursuant to [section 514A-31 and 514A-32,] sections 514A-31, 514A-32, 514A-40, or 514A-41, an inspection of the condominium project may be made by the [real estate] commission.”

SECTION 5. Section 514A-34, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-34 Inspection expenses.** When an inspection is to be made of projects, the [notice of intention shall be accompanied by the filing fee, together with] developer shall be required to pay an amount estimated by the [real estate] commission to be necessary to cover the actual expenses of the inspection, not to exceed [\$20] \$500 a day for each day consumed in the examination of the project plus reasonable first-class transportation expenses.”

SECTION 6. Section 514A-35, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-35 Waiver of inspection.** The [real estate] commission may waive [initial] an inspection when in its opinion, a preliminary, [or] final, or supplementary public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries. [Failure of the commission to notify the developer of its intent to inspect the developer’s project within ten days after notification of intention is properly filed pursuant to sections 514A-31 and 514A-32 will be construed a waiver of the inspection.]”

SECTION 7. Section 514A-36, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-36 Public reports and [issuance] registration fees.** (a) [When the real estate commission makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts reasonably available. A public report shall neither be construed to be an approval nor disapproval of a project. No] Concurrently with its filing with the commission of the notification of intention pursuant to sections 514A-31 and 514A-32, the developer shall prepare and submit to the commission a public report disclosing all material facts pertaining to the project. The public report shall be in such form and

content as prescribed by the commission. Such public report may not be used for the purpose of selling any apartments in the project unless and until the commission issues an effective date for the public report. The commission's issuance of an effective date for a public report shall not be construed to constitute the commission's approval or disapproval of the project, or the commission's representation that all material facts concerning the project have been fully or adequately disclosed, or the commission's judgment of the value or merits of the project. No effective date for a final public report [for a condominium project] shall be issued until execution and recordation of the deed or master lease, the declaration, [with a true copy of] the bylaws, [annexed thereto,] and floor plans as approved by the county officer having jurisdiction over the issuance of permits for the construction of buildings, as provided by sections 514A-12, 514A-20, and 514A-81.

(b) The [real estate] commission may determine when a public report will supersede the public reports previously issued for the project.

(c) The developer shall be assessed a nonrefundable fee as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, for [the issuance of a subsequent public report and for the issuance of a supplementary public report.] each effective date requested for a public report, including extensions, if any."

SECTION 8. Section 514A-37, Hawaii Revised Statutes, is amended to read as follows:

"§514A-37 Preliminary public [report.] reports. [A preliminary public report may be issued by the real estate commission upon] The commission may issue an effective date for a preliminary public report upon the commission's receipt of a notice of intention the filing of which is complete except for some particular requirement, or requirements, which is, or are, at the time not fulfilled, but which may reasonably be expected to be completed. [No preliminary report shall be issued unless the commission is satisfied] Preliminary public reports shall not be used for any sale under a contract for the sale of an apartment in a condominium project, unless the developer of the project has filed with the commission those documents and that information required to be submitted with the notification of intention referred to in sections 514A-31 and 514A-32, including a specimen copy of the proposed contract of sale and an executed copy of an escrow agreement with a third party depository for retention and disposition of purchasers' funds in accordance with section 514A-65. The developer shall prepare the preliminary public report so as to ensure that the report adequately discloses all material facts which a prospective purchaser should consider [and] in purchasing an apartment in the project, and shall ensure that adequate protection for [purchaser's] purchasers' funds has been provided."

SECTION 9. Section 514A-38, Hawaii Revised Statutes, is amended to read as follows:

"§514A-38 Request for [public report] effective date or hearing by developer. [If, within thirty days after notice of intention is properly filed pursuant to sections 514A-31 and 514A-32, a public report has not been issued by the real estate commission, the developer may, in writing, request of the commission that the report be prepared by a private consultant, and when requested by the commission, the] The director of commerce and consumer affairs may contract with private consultants for the [preparation of public reports prescribed in] review of documents and information submitted to the commission pursuant to

this chapter. The cost of [preparation of public reports] such review by private consultants shall be borne by the developer. If [the commission does not request the director to let the contract, or if the director determines not to let the contract, or when a final or preliminary] an effective date for a public report is not [otherwise] issued within a reasonable time after [notice of intention is properly filed pursuant to sections 514A-31 and 514A-32, or when a substitute public report is not issued within a reasonable time after requested or required, or] compliance with registration requirements, or if the developer is materially grieved by the form or content of [a] the public report, the developer may, in writing, request and shall be given a hearing by the [real estate] commission within a reasonable time after receipt of request."

SECTION 10. Section 514A-40, Hawaii Revised Statutes, is amended to read as follows:

"§514A-40 [Issuance of final] Final reports. (a) [No final public report shall be issued] No effective date shall be issued by the commission for a final public report prior to completion of construction of the project, unless there is filed with the [real estate] commission:

- (1) A verified statement showing all costs involved in completing the project, including land payments or lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the [building;] project;
- (2) A verified estimate of the time of completion of construction of the total project;
- (3) Satisfactory evidence of sufficient funds to cover the total project cost from purchasers' funds, equity funds, interim or permanent loan commitments, or other sources;
- (4) A copy of the executed construction contract;
- (5) Satisfactory evidence of a performance bond issued by a surety licensed in the State of not less than one hundred per cent of the cost of construction[;], or such other substantially equivalent or similar instrument or security approved by the commission;
- (6) If purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the trust fund required under section 514A-67 for financing construction, which expressly shall provide for:
 - (A) No disbursements by the escrow agent for payment of construction costs, unless bills are submitted with the request for disbursements that have been approved or certified for payment by the[mortgagee or a] project lender or an otherwise qualified financially disinterested person; and
 - (B) No disbursements from the balance of the trust fund after payment of construction costs pursuant to the preceding paragraph until construction of the project has been completed and the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute; and
- (7) A parking plan to include designated residence parking stalls and guest parking, if any, exclusive of assignment to individual apartments, if parking stalls are to be considered limited common elements.

(b) No [final public report] effective date shall be issued by the commission for a final public report for a project that includes one or more existing structures being converted to condominium status unless there is filed with the [real estate] commission all items required under subsection (a) and:

- [(1) A verified statement signed by an appropriate county official that the project is in compliance with all ordinances, codes, rules, regulations, and other requirements in force at the time of its construction;
- (2) A verified statement signed by an appropriate county official of whether any variance has been granted from any ordinance, code, rule, regulation, or any other requirement in force at the time of its construction or from any current ordinance, code, rule, regulation, or other requirement;]
- (1) A verified statement signed by an appropriate county official that the project is in compliance with all zoning and building ordinances and codes applicable to the project, and specifying, if applicable:
 - (A) Any variances which have been granted to achieve such compliance; and
 - (B) Whether the project contains any legal non-conforming uses or structures as a result of the adoption or amendment of any ordinances or codes.
- [(3)] (2) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the [condominium;] project; and
- [(4)] (3) A statement by the declarant of the expected useful life of each item reported on in paragraph [(3)] (2) or a statement that no representations are made in that regard; provided that this paragraph and paragraph (2) apply only to apartments that may be occupied for residential use and have been in existence for five years or more.
- [(5) A list of any outstanding notices of uncured violations of building code or other county regulations, together with the cost of curing these violations; and
- (6) A statement whether the project is on a lot or has structures or uses that do not conform to present zoning requirements; provided that paragraphs (3), (4), and (5) apply only to apartments that may be occupied for residential use and have been in existence for five years.]

(c) No [final public report or supplementary public report, which supersedes a final public report shall be issued for a project] effective date shall be issued by the commission for a final public report until the developer has paid into the condominium management education fund a nonrefundable fee of \$5 for each apartment in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Payments required under this subsection shall be due after June 13, 1989.”

SECTION 11. Section 514A-41, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-41 Supplementary public report.** (a) If after [any public report has been issued,] the effective date has been issued by the commission for a public report, any circumstance occurs which would render the public report misleading

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as to purchasers in any material respect, the developer shall stop all sales and immediately submit [sufficient information to the real estate commission to enable it to issue] to the commission a supplementary public report, together with such supporting information as may be required by the commission, to update the information contained in the public report[.], accompanied by a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Sales shall not resume until [the supplementary public report has been issued. Unless the supplementary public report has been superseded, all prospective purchasers shall receive a true copy of any supplementary public report issued after a final public report.] an effective date has been issued by the commission for the supplementary public report. The developer shall provide all prospective purchasers with a true copy of the supplementary public report and all prior public reports not superseded by the supplementary public report.

(b) The [real estate] commission may determine when a supplementary public report will supersede the public reports previously issued for the project.

(c) Notwithstanding the provisions of this section, the rescission rights, if any, of a purchaser shall be governed exclusively by sections 514A-62 and 514A-63. This does not preclude a purchaser from exercising any rescission rights pursuant to a contract for sale or any applicable common law remedies.”

SECTION 12. Section 514A-42, Hawaii Revised Statutes, is amended to read as follows:

“§514A-42 True copies of public report[.]; no misleading information. [The true copies of the real estate commission’s public report shall be an exact reproduction of those prepared by the commission.] The public reports given by the developer to prospective purchasers shall be an exact reproduction of the public report for which the commission has issued an effective date. All documents (including the public report) prepared by or for the developer and submitted to the commission in connection with the developer’s registration of the project, and all information contained in such documents, shall be true, complete and accurate in all respects, and shall not contain any misleading information, or omit any information which would render the information or documents submitted to the commission misleading in any material respect.”

SECTION 13. Section 514A-43, Hawaii Revised Statutes, is amended to read as follows:

“§514A-43 Automatic expiration of public reports. A public report shall expire thirteen months after the effective date of [issuance, unless a supplementary report has been issued or the real estate commission,] the report, unless the commission, upon review of the registration, and payment of a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, issues an order extending the effective period of the report.”

SECTION 14. Section 514A-44, Hawaii Revised Statutes, is amended to read as follows:

“§514A-44 Deposit of fees. All fees collected under this chapter shall, unless otherwise provided in this chapter, be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.”

SECTION 15. Section 514A-45, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-45 Supplemental regulations governing a condominium property regime.** Whenever they deem it proper, the [real estate] commission, the county councils of the various counties or the city council of the city and county of Honolulu may adopt supplemental rules and regulations governing a condominium property regime established under this chapter in order to implement this program; provided that any of the supplemental rules and regulations adopted shall not conflict with this chapter or with any of the rules and regulations adopted by the [real estate] commission to implement this chapter.”

SECTION 16. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-46 Investigatory powers.** If the commission has reason to believe that [a developer, an association of apartment owners, or a managing agent is violating] any person is violating or has violated any provision set forth in [section] sections 514A-2, 514A-31 to [514A-39, 514A-41, 514A-42, 514A-44 to] 514A-49, [514A-62,] 514A-61 to 514A-63, 514A-65, [514A-68, 514A-69,] 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, [or] 514A-98, or the rules of the commission adopted pursuant thereto, the commission may [investigate the developer’s project, the association of apartment owners, or the managing agent] conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association, the managing agent, real estate broker, or [those used in the project of] the developer. For the purposes of examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and to make such records accessible to the commission upon reasonable notice and demand.”

SECTION 17. 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 commission has reason to believe that any person is violating or has violated [section] sections 514A-2, 514A-31 to [514A-39, 514A-41, 514A-42, 514A-44 to] 514A-49, [514A-62 to] 514A-61 to 514A-63, 514A-65, [514A-68, 514A-69,] 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, [or] 514A-134, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon the 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 or the rules of the commission adopted pursuant thereto, charged in the complaint. If upon the hearing the commission is of the opinion that this chapter, or the rules of the commission adopted pursuant thereto, 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

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issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person complained of, within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.”

SECTION 18. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-48 Power to enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated any of [section] sections 514A-2, 514A-31 to [514A-39, 514A-41, 514A-42, 514A-44 to] 514A-49, [514A-62,] 514A-61 to 514A-63, 514A-65, [514A-68, 514A-69,] 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, [or] 514A-134, 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 19. Section 514A-49, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-49 Penalties.** (a) Any person who in any respect violates or fails to comply with any of the provisions set forth in [section] sections 514A-2, 514A-31 to [514A-39, 514A-41, 514A-42, 514A-44 to] 514A-49, [514A-62,] 514A-61 to 514A-63, 514A-65, [514A-68, 514A-69,] 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, or 514A-134, is guilty of a misdemeanor and shall be punished by a fine not exceeding [\$2,000] \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person 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 commission under [section] sections 514A-2, 514A-31 to [514A-39, 514A-41, 514A-42, 514A-44 to] 514A-49, [514A-62,] 514A-61 to 514A-63, 514A-65, [514A-68, 514A-69,] 514A-67 to 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, or 514A-134 shall be punished by a fine not exceeding [\$2,000.] \$10,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto also shall be subject to a civil penalty not exceeding [\$2,500] \$10,000 for any violation. Each violation shall constitute a separate offense and the collection of the fine shall be by suit brought by the attorney general on behalf of the commission.”

SECTION 20. Section 514A-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the case of a project which includes one or more existing structures being converted to condominium status:

- (1) A statement by the declarant, based upon a report prepared by an independent Hawaii registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

- (2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard;
 - (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations;
 - (4) A statement whether the project is on a lot, or has structures[,] or uses, which do not conform to present zoning requirements;
- provided that paragraphs (1), (2), and (3) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years.”

SECTION 21. Section 514A-61, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This section shall be administered by the [real estate] commission. The [real estate] commission may waive the requirements of subsections (a), [and] (b), and (c) if the information required to be contained in the disclosure abstract is included in the [real estate] commission’s public report on the project.”

SECTION 22. Section 514A-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“**§514A-62 Copy of public report to be given to prospective purchaser.**¹ (a) The developer (or any other person offering any apartment in a condominium project prior to completion of its construction) shall not enter into a contract or agreement for the sale or resale of an apartment which is binding upon any prospective purchaser until:

- (1) [A true copy of the real estate commission’s final public report thereon has been delivered] The commission has issued an effective date for a final public report on the project, and the developer has delivered, or caused to be delivered, to the prospective purchaser, either personally or by registered or certified mail with return receipt requested, a true copy of the final public report together with a true copy of all [other public reports thereon, if any, issued prior to the date of such delivery and not] prior public reports on the project, if any, which have not been previously delivered to such prospective purchaser[.]; [Public reports issued prior to the final public report] except that such prior public reports need not be delivered to the prospective purchaser if[:] the final public report supersedes such prior public reports. If, prior to the entering into of such contract or agreement for sale or resale, the commission has, subsequent to its issuance of an effective date for the final public report, issued an effective date for a supplementary public report on the project, then a true copy of such supplementary public report shall also be delivered to such prospective purchaser in the same manner as the final public report, except that if the supplementary public report supersedes all prior public reports on the project, then only the supplementary public report need be delivered to the prospective purchaser.

[(A) The final public report supersedes all prior public reports; or

- (B) A supplementary public report has been issued which supersedes the final public report and any other prior public reports,

in which case a true copy of the real estate commission's supplementary public report shall be delivered instead of the final public report.]

- (2) The prospective purchaser has been given an opportunity to read the report or reports; and
- (3) The prospective purchaser (A) executes the form of the receipt and notice set forth in subsection (d); and (B) waives the prospective purchaser's right to cancel; provided that if the prospective purchaser does not execute and return the receipt and notice within thirty days from the date of delivery of such reports, or if the apartment is conveyed to the prospective purchaser prior to the expiration of such thirty-day period, the prospective purchaser shall be deemed to have accepted for the reports and to have waived the prospective purchaser's right to cancel."

SECTION 23. Section 514A-62, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

"(d) Whenever a final public report or supplementary public report is delivered to a prospective purchaser pursuant to subsection (a), two copies of the receipt and notice set out below shall also be delivered to such purchaser, one of which may be used by the purchaser to cancel the transaction. Such receipt and notice shall be printed in capital and lower case letters of not less than twelve-point type on one side of a separate statement. The receipt and notice shall be in the following form:

"RECEIPT FOR PUBLIC REPORT(S) AND NOTICE OF RIGHT TO CANCEL

I acknowledge receipt of the [Hawaii Real Estate Commission's] Developer's (Preliminary, Final, and Supplementary) Public Report(s) and Disclosure Abstract, contained in the public report, in connection with my purchase of apartment(s) (insert apartment numbers) in the (insert name of condominium project) condominium project.

I understand that I have a legal right under Hawaii law to cancel my purchase, if I desire to do so, without any penalty or obligation within thirty days from the date the above Public Report or Reports were delivered to me. If I cancel, I understand that I will be entitled to receive the refund of any downpayment or deposit, less any escrow cancellation fees and other costs, up to \$250.

If I decide to cancel, I understand that I can do so by notifying (insert name of seller) at (insert address of seller) by mail or telegram sent before: (1) the conveyance of my apartment(s) to me; or (2) midnight of the thirtieth day after delivery of the Public Report(s) to me, whichever is earlier. If I send or deliver my written notice some other way, it must be delivered to the above address no later than that time. I understand that I can use any written statement that is signed and dated by me and states my intention to cancel, or I may use this notice by checking the appropriate box and by signing and dating below.

I understand that if I do not act within the above thirty-day period or if the apartment is conveyed to me within the above thirty-day period, I will be considered to have executed this receipt and to have waived my right to cancel my purchase. I also understand that I can waive my right to cancel by checking the appropriate box, by signing and dating below, and by returning this notice to (insert name of seller).

I HAVE RECEIVED A COPY OF:

- (1) THE [HAWAII REAL ESTATE COMMISSION'S] DEVELOPER'S (PRELIMINARY, FINAL, AND SUPPLEMENTARY) PUBLIC REPORT(S) ON (insert name of condominium project); AND
- (2) THE DISCLOSURE ABSTRACT CONTAINED IN THE PUBLIC REPORT.

 Purchaser's signature

 Date

I HAVE HAD AN OPPORTUNITY TO READ THE PUBLIC REPORT(S) AND

[] I WAIVE MY RIGHT TO CANCEL.

[] I HEREBY EXERCISE MY RIGHT TO CANCEL.

 Purchaser's signature

 Date"

(e) No obligation to purchase an apartment under any agreement for the purchase or reservation of an apartment entered into prior to the [issuance] purchaser's receipt of a final public report is enforceable against the purchaser under such agreement."

SECTION 24. Section 514A-65, Hawaii Revised Statutes, is amended to read as follows:

"§514A-65 Escrow requirement. All moneys paid by purchasers prior to [issuance of final reports] the purchaser's receipt of the final public report on the project shall be deposited in trust under escrow arrangement with instructions that no disbursements shall be made from such trust funds on behalf of the seller until the contract has become [effective,] binding, and the requirements of sections [514A-39] 514A-40 and 514A-63 have been met."

SECTION 25. Section 514A-39, Hawaii Revised Statutes, is repealed.

SECTION 26. Statutory material to be repealed is bracketed.² New statutory material is underscored.

SECTION 27. This Act shall take effect on July 1, 1991.

(Approved April 26, 1991.)

Notes

- 1. So in original.
- 2. 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 578-15, Hawaii Revised Statutes, is amended to read as follows:

"§578-15 Secrecy of proceedings and records. (a) The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of human services or the director's agent, or by any proper person on a showing of good cause therefor, upon order of the court. Except in the case of an individual being adopted by a person married to the legal father or mother of the individual or unless authorized by the court, no petition for adoption shall set forth the name of the individual sought to be adopted or the name of either of the parents of the individual; provided that the legal name of the individual and the name of each of the individual's legal parents may be added to the petition by amendment during the course of the hearing thereof and shall be included in the decree. The hearing of the petition shall be in chambers and shall not be open to the public.

(b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except:

- (1) Upon order of the family court upon a showing of good cause;
- (2) For adoptions which occurred prior to January 1, 1991, after the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or the adoptive parents in accordance with the following:
 - (A) Within [thirty] sixty calendar days after receipt of a request for inspection, the family court, by [registered] certified mail with return receipt requested, shall mail to the last known address of each natural parent a notice of the request for inspection of adoption records, a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents [filed] submitted in support of the request. The notice shall inform the natural parent that unless an affidavit signed by the natural parent requesting confidentiality is received by the family court within sixty calendar days of the date of receipt of the notice, the natural parent will be deemed to have waived any rights of confidentiality and the records shall be subject to inspection by the adopted individual or the adoptive parent who [filed] submitted the request. The notice shall also inform the natural parent that an affidavit requesting confidentiality for a period of ten years may be filed. [An] A blank affidavit to be completed and signed by the natural parent [to request confidentiality] shall be mailed with the notice;
 - (B) If the family court has received a return receipt for the notice

- [sent] but an affidavit requesting confidentiality is not received by the family court within sixty calendar days of the date of receipt of the notice, the family court shall allow inspection under this section;
- (C) If [a] the notice [by registered mail] is returned as undeliverable to a natural parent, the family court shall designate an agent or agency to conduct a good faith and diligent search to locate the natural parent and to provide the notice and all other documents required under subparagraph(A). The search shall extend over a period [of] not to exceed one hundred [twenty] eighty calendar days. Contacts with natural parents by a designated agent or agency under this section shall be personal, whenever possible, and confidential [and shall not be made by mail]. The family court shall provide the designated agent or agency with a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents [filed] submitted in support of the request, and the designated agent or agency shall present the copies to the natural parent when contacted. The family court and the designated agent or agency shall ensure that no person other than a natural parent or the agent or agency through which a natural parent obtained assistance for the adoption is informed of the adoptive individual's existence and the relationship to the natural parent;
- (D) If a natural parent cannot be located after the search conducted under subparagraph (C), the family court shall allow inspection under this section;
- (E) If an affidavit requesting confidentiality is received by the family court within sixty calendar days of the date of receipt of the notice provided under subparagraph (A) or (C), the family court shall not allow inspection during the effective period of the affidavit;
- (F) If a ten-year affidavit is filed under subparagraph (E), the natural parent may refile affidavits every ten years thereafter to maintain confidentiality, or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits subsequent to the initial affidavit may be filed within ninety calendar days before the last effective day of the initial affidavit. If there is no effective affidavit on file with the family court at the time a request for inspection is received by the court, the court shall allow inspection under this paragraph;
- (G) An affidavit requesting confidentiality shall be effective until the last day of the period for which the affidavit was filed, until the natural parent revokes the affidavit, or until the natural parent is deceased, whichever occurs sooner; and
- (H) Where two natural parents are involved and confidentiality is waived under this paragraph by only one natural parent, the inspection of the records shall not include any identifying information concerning the other natural parent;
- (3) For adoptions occurring after December 31, 1990, in accordance with the following:
- (A) [At the time of the placement of the adopted individual for adoption, the family court shall inform each] Each natural

- parent shall be informed of the procedures required under this paragraph if the natural parent desires to maintain confidentiality after the adopted individual attains the age of eighteen;
- (B) Within ninety calendar days before the adopted individual attains the age of eighteen a natural parent may file an affidavit with the family court to request confidentiality and the natural parent may refile affidavits every ten years thereafter to maintain confidentiality or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits after the initial affidavit may be filed within ninety calendar days before the last effective day of the initial affidavit;
 - (C) If a natural parent declines or fails to file an affidavit under subparagraph (B), the family court shall allow inspection of the record by the adopted individual or the adoptive parents at any time after the adopted individual has attained the age of eighteen; and
 - (D) Where two natural parents are involved and confidentiality is waived under this paragraph by only one natural parent, the inspection of the records shall not include any identifying information concerning the other natural parent;
- (4) For all adoptions, regardless of date of occurrence, after the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by a natural parent; provided that the adopted individual shall have the same rights and obligations applicable to natural parents under [paragraph] paragraphs (2) and (3), including rights of notice and opportunity to file affidavits requesting confidentiality.
 - (5) For all adoptions, regardless of date of occurrence, after the adopted individual attains the age of eighteen and upon submission of an affidavit by a natural parent consenting to the inspection of records by the adoptee or an affidavit submitted by an adoptee consenting to the inspection of records by the natural parents; provided that where only one natural parent files an affidavit for consent, the inspection of records shall not include any identifying information concerning the other natural parent;
 - (6) Upon request by the adopted individual or the adoptive parents for information contained in the records concerning ethnic background and necessary medical information, notwithstanding any affidavit requesting confidentiality; or
 - (7) Upon request by a natural parent for a copy of the original birth certificate.

As used in this subsection, "natural parent" means a biological mother or father, or a legal parent who is not also the biological parent.

(c) The clerk of the court shall keep a docket of all adoption proceedings, which may be inspected only by order of the family court."

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

SECTION 3. This Act shall take effect on July 1, 1992.

(Approved April 26, 1991.)

ACT 46

S.B. NO. 791

A Bill for an Act Relating to the State Commission on the Status of Women.

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

SECTION 1. Chapter 367, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§367- Compensation. The members shall serve without compensation but shall be reimbursed for their necessary expenses in attending meetings of the commission and in the discharge of their duties.”

SECTION 2. Section 367-2, Hawaii Revised Statutes, is amended to read as follows:

“§367-2 State commission on status of women: membership[, organization, etc]. (a) There is created a state commission on the status of women[,] within the department of human services for administrative purposes[, which].

(b) The commission shall consist of not fewer than fifteen nor more than twenty-five members. The membership shall include[, ex]:

(1) Ex officio, [a representative of the attorney general,] the [chairman] director of the [commission on] office of children and youth, the superintendent of education, the president of the University of Hawaii, the director of labor and industrial relations, the director of personnel services, [and] the director of human services[.], and the director of health.

(2) The remaining members shall be appointed by the governor in accordance with section 26-34. [One-third of the appointed members shall be appointed initially for the term of four years, one-third for the term of three years, and one-third for the term of two years, and thereafter the terms of office of each member shall be four years.]

(c) Of the appointed members there shall be at least one member from each of the counties of Hawaii, Maui, and Kauai. [The members shall serve without compensation but shall be reimbursed for their necessary expenses in attending meetings of the commission and in the discharge of their duties.]

(d) The members shall be selected on the basis of their interests and knowledge in, and their ability to make contributions to, the solution of problems relating to the status of women. The [chairman] chairperson shall be elected annually from the nongovernmental members of the commission[. There shall be no less than four meetings of the commission each year to be held at times and places agreed upon by the commission.] as defined in subsection (b)(2).”

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 April 26, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

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 26-9, Hawaii Revised Statutes, is amended to read as follows:

“§26-9 Department of commerce and consumer affairs. (a) The department of commerce and consumer affairs shall be headed by a single executive to be known as the director of commerce and consumer affairs.

(b) The department shall protect the interests of consumers, depositors, and investors throughout the State. It shall set standards and enforce all laws and rules governing the licensing and operation of, and register and supervise the conduct of, trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

(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 professional engineers, architects, surveyors, and landscape architects, 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 psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to [sections] section 26H-4, or chapters 484, 514A, and 514E are placed within the department of commerce and consumer affairs for administrative purposes.

(d) Except as otherwise provided by this chapter, the functions, duties, and powers, subject to the administrative control of the director of commerce and consumer affairs, and the composition of each board and commission shall be as heretofore provided by law.

(e) Notwithstanding any provision to the contrary, the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees under the administrative control of this department shall be determined by the director of commerce and consumer affairs subject only to applicable personnel laws.

(f) The director of commerce and consumer affairs may appoint a hearings officer or officers not subject to chapters 76 and 77 to hear and decide any case or controversy regarding licenses and the application and enforcement of rules involving any of the boards [or], commissions, or regulatory programs within the department of commerce and consumer affairs. The hearings officer or officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and a recommended decision; provided that the conclusions and decisions shall be subject to review and redetermination by the officer, board, or commission which would have heard the case in the first instance in

the absence of a hearings officer. The review shall be conducted in accordance with chapter 91.

(g) The director of commerce and consumer affairs may appoint an information officer not subject to chapters 76 and 77 who shall ensure the prompt and efficient handling of consumer inquiries and the development of a strong consumer education program.

(h) The director may appoint a complaints and enforcement officer not subject to chapters 76 and 77 who shall facilitate the receipt, arbitration, investigation, prosecution, and hearing of complaints regarding any person who furnishes commodities [or], services, or real estate for which a license, registration, or certificate is required from the department or any board [or], commission, or regulatory program thereunder. In representing the State in bringing any action to enjoin unlicensed, unregistered, or uncertified activities, the department of commerce and consumer affairs' attorneys shall be empowered to exercise all authority granted to the attorney general and to the director of the office of consumer protection under sections 487-12, 487-14, 480-3.1, 480-15, 480-15.1, 480-20(c), and 480-22, as these sections now exist and as they subsequently may be amended. The attorneys also shall be empowered to exercise all authority granted to the attorney general and to the responsible attorneys of the various counties under section 92-51 in all cases involving documents and records within the custody or control of the regulated industries complaints office.

(i) The functions and authority previously exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as constituted are transferred to the department of commerce and consumer affairs established by this chapter. The director of commerce and consumer affairs also shall be the commissioner of securities.

(j) In the course of an investigation of matters affecting the interest of consumers, depositors, or investors or of any other matter within the jurisdiction of the department, the director shall have the power to subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects which the director deems relevant or material to the inquiry. Upon application by the director, obedience to the subpoena may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court.

The director shall appoint and commission one or more investigators to serve subpoenas as the exigencies of the public service may require. Subpoenas served by persons appointed and commissioned by the director shall have the same force and effect as subpoenas served by police officers or deputy sheriffs. Nothing in this subsection shall be construed to entitle persons commissioned and appointed by the director to retirement benefits applicable to police officers under chapter 88.

(k) The director may adopt, amend, or repeal rules pursuant to chapter 91 to effectuate the purposes of all laws within the jurisdiction of the department of commerce and consumer affairs. The director's authority to adopt rules shall not modify, impair, or otherwise affect the power of boards and commissions placed [with] within the department of commerce and consumer affairs for administrative purposes from adopting, amending, or repealing rules, except as provided for in subsection (1). [The director may establish, amend, or repeal registration, renewal, and late renewal fees by rules pursuant to chapter 91 for any regulatory program placed with the department.]

(l) Any law to the contrary notwithstanding, [the fees assessed or charged by any board or commission placed within the department of commerce and con-

sumer affairs for administrative purposes or by the department for services provided to the public may be increased or decreased by the director of commerce and consumer affairs by rules adopted pursuant to chapter 91 to maintain a reasonable relation between the revenue derived from the fee and the cost or value of services rendered; provided that with regard to the fees assessed or charged by any board or commission, the director may establish the fees as separate application, examination, and license fees.] the director of commerce and consumer affairs may establish, increase, decrease, or repeal fees relating to any aspect of the registration, certification, or licensure process for all laws within the jurisdiction of the department. The fee assessed shall bear a reasonable relationship between the revenue derived from the fee and the cost or value of services rendered. Amendments to fee assessments shall be made pursuant to chapter 91.

(m) Notwithstanding section 92-17 or any other law to the contrary, all boards [or], commissions, and regulatory programs placed within the department of commerce and consumer affairs for administrative purposes shall delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the department. [No board or commission shall delegate its authority to take disciplinary action against a licensee.]

(n) Each board and commission, as well as the director, by written order, may delegate to the executive secretary or other personnel of the department any of its powers or duties as it deems reasonable and proper for the administration of the licensing laws in section 26H-4 which are within the jurisdiction of the department of commerce and consumer affairs. The delegated powers and duties may be exercised by the executive secretary or other personnel of the department in the name of the board, commission, or the director. The board, commission, and director shall not, however, delegate its authority to adopt, amend, or repeal rules, or take final disciplinary action against a licensee.

[(n)] (o) Every person licensed under any chapter subject to section 26H-4, other than chapter 468, and every person licensed 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 a 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, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal [of any filing], restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, or reinstatement of the [filing.] license. If the [accrued] fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license [or filing]. The director may establish, increase [or], decrease, or repeal 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] representatives 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] department personnel [hired under this subsection.] and penalties or fines or reimbursement of costs or attorneys fees assessed as a result of actions brought for violations of chapters 480 and 487. [The] Any law to the contrary notwithstanding.

ing, 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 or applicant under any chapter subject to section 26H-4, other than chapter 468, has complied with that chapter;
- (2) Any person 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)[.];
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce.

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 shall be repealed effective July 1, 2001.

[(o)] (p) Any law to the contrary notwithstanding, the department of commerce and consumer affairs, or any board or commission placed within it for administrative purposes, may contract with professional testing services to prepare, administer, and grade examinations and tests for license applicants. For these purposes, the department may require applicants to pay the examination fee directly to the testing agency.

[(p)] (q) Any law to the contrary notwithstanding, when any type of bond or insurance required to be maintained by any licensee under a regulatory program of the department of commerce and consumer affairs, or of any board or commission assigned to the department of commerce and consumer affairs, cannot reasonably be secured, the department, board, or commission may provide by rule for alternative forms of security to the consumer so long as that alternate security is no less than that provided by the type of bond or insurance initially 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 April 26, 1991.)

ACT 48

S.B. NO. 1204

A Bill for an Act Relating to Long Term Care Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to part V of article 10A a new section to be appropriately designated and to read as follows:

“§431:10A- Life insurance policies offering long-term care benefits.

(a) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary at the time of the applicant’s request, but regardless of request shall deliver the policy summary no later than at the time of policy delivery. The policy summary shall comply with the requirements of section 431:10A-527 and shall also include:

- (1) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
- (2) An illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits if any, for each covered person;
- (3) Any exclusions, reductions, and limitations on benefits of long-term care; and
- (4) If applicable to the policy type, a disclosure of the effects of exercising other rights under the policy, a disclosure of guarantees related to long-term care costs of insurance charges, and current and projected maximum lifetime benefits.

(b) When a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder. The report shall include:

- (1) A description of and the amount of any long-term care benefits paid out during the month;
- (2) An explanation of any changes in the policy due to long-term care benefits being paid out; and
- (3) The amount of long-term care benefits existing or remaining.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding to part V of article 10A a new section to be appropriately designated and to read as follows:

“§431:10A- Prior hospitalization; prior institutionalization. (a) No long-term care insurance policy may be delivered or issued for delivery in this State if the policy:

- (1) Conditions eligibility for any benefits on a prior hospitalization requirement;
- (2) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or
- (3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

(b) A long-term care insurance policy containing post- confinement, post-acute care, or recuperative benefits shall contain a clear label, in a separate paragraph of the policy or certificate, entitled “limitations or conditions on eligibility for benefits,” setting forth the limitations or conditions as set forth in subsection (a), including any required number of days of confinement.

(c) A long term care insurance policy or rider that conditions eligibility of non-institutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days.”

SECTION 3. Section 431:10A-521, Hawaii Revised Statutes, is amended by deleting the definition of “commissioner”.

[““Commissioner” means the insurance commissioner of this State.”]

SECTION 4. Section 431:10A-521, Hawaii Revised Statutes, is amended by amending the definition of “group long-term care insurance” to read:

““Group long-term care insurance” means a long-term care insurance policy:

- (1) Delivered] delivered or issued for delivery in this State and issued to:
 - [(A)] (1) One or more employers or labor organizations, or a trust or the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or
 - [(B)] (2) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
 - [(i)] (A) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
 - [(ii)] (B) Has been maintained in good faith for purposes other than obtaining insurance; or
- (3) An association or a trust or the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering the policy within this State, the association or the insurer of the association shall file evidence with the commissioner that the association has at the outset a minimum of one hundred persons; has been organized and maintained in good faith for purposes other than that of obtaining insurance; has been in active existence for at least one year; and has a constitution and bylaws which provide that:
 - (A) The association holds regular meetings at least annually to further purposes of the members;
 - (B) Except for credit unions, the association collects dues or solicits contributions from members; and
 - (C) The members have voting privileges and representation on the governing board and committees.

Thirty days after the filing the association will be deemed to satisfy the organizational requirements unless the commissioner makes a finding that the association does not satisfy those organizational requirements.
- [(C)] (4) A group other than as described in [subparagraphs (A) and (B),] paragraphs (1), (2), and (3), subject to a finding by the commissioner that:
 - [(i)] (A) The issuance of the group policy is not contrary to the best interest of the public;
 - [(ii)] (B) The issuance of the group policy would result in economies of acquisition or administration; and
 - [(iii)] (C) The benefits are reasonable in relation to the premiums charged.
- (2) Affording coverage to a resident of this State under a group policy issued in another state to a group described in paragraph (1)(C), if this State or another state having statutory and regulatory

requirements substantially similar to those adopted in this State has made a determination that the requirements have been met.]”

SECTION 5. Section 431:10A-521, Hawaii Revised Statutes, is amended by amending the definition of “long-term care insurance” to read:

““Long-term care insurance” means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual [policies or riders whether] annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance. The term also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or loss of functional capacity. Long-term care insurance may be issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. Long-term care insurance shall not include any insurance policy [which is] offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income [protection] or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.”

SECTION 6. Section 431:10A-522, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-522 Prohibition. (a) No insurance policy may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this part. [A policy which is expressly or implicitly advertised, marketed, or offered as long-term care insurance shall meet the requirements of this part. A policy which is not expressly or implicitly advertised, marketed, or offered as long-term care insurance need not meet the requirements of this part.]

(b) No group long-term care insurance may be offered to a resident of this State under a group policy issued in another state to a group described in paragraph (4) of the definition of “group long-term care insurance” unless this State, or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this State, has made a determination that the requirements have been met.”

SECTION 7. Section 431:10A-524, Hawaii Revised Statutes, is amended to read as follows:

“[[§431:10A-524] Preexisting condition.] Policy standards. (a) No long-term care insurance policy may:

- (1) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; [or]
- (2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in

benefits voluntarily selected by the insured individual or group policyholder[.]; or

- (3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled nursing care in a facility than coverage for lower levels of care.

(b) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group meeting the requirements of paragraph (1) of the definition of "group long-term care insurance" shall use a definition of pre-existing condition which is more restrictive than the following: "preexisting condition" means [the existence of symptoms which were treated by a provider of health care services within the periods specified below:

- (1) Six months preceding the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage; or
- (2) Twenty-four months preceding the effective date of coverage of an insured person who is under sixty-five years of age on the effective date of coverage.] a condition for which medical advice or treatment was recommended by or received from a provider of health care services within six months preceding the effective date of coverage of an insured person.

(c) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group meeting the requirements of paragraph (1) of the definition of "group long-term care insurance" may exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within [the periods specified below:

- (1) Six months following the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage; or
- (2) Twenty-four months following the effective date of coverage of an insured person who is under sixty-five years of age on the effective date of coverage.] six months following the effective date of coverage of an insured person.

(d) The commissioner may extend the limitation periods in subsections (b) and (c) as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(e) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application or not, need not be covered until the waiting period described in subsection (c) expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (c)."

SECTION 8. Section 431:10A-527, Hawaii Revised Statutes, is amended to read as follows:

"[§431:10A-527] Outline of coverage required. [An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct

response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall make the delivery not later than at the time of policy delivery.] (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose. In the case of agent solicitations, an agent shall deliver the outline of coverage before the presentation of an application or enrollment form. In the case of direct response solicitation, the outline of coverage shall be presented with any application or enrollment form.

(b) The outline of coverage shall include:

- (1) A description of the principal benefits and coverage provided in the policy;
- (2) A statement of the principal exclusions, reductions, and limitations contained in the policy;
- (3) A statement of the [renewal provisions,] terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums[; and]. Continuation or conversion provisions of group coverage shall be specifically described;
- (4) A statement that the outline of coverage is a summary [of the policy issued or applied for,] only, not a contract of insurance, and that the policy [should be consulted to determine] or group master policy contains governing contractual provisions[.];
- (5) A description of the terms under which the policy or certificate may be returned and premium refunded; and
- (6) A brief description of the relationship of costs of care and benefits,

(c) The commissioner may prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage."

SECTION 9. Section 431:10A-528, Hawaii Revised Statutes, is amended to read as follows:

"[§431:10A-528] Right to return; free look provision. [(a) Individual long-term care insurance policies] Long-term care applicants shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy[,] or certificate, the [policyholder] applicant is not satisfied for any reason. [Individual long-term] Long-term care insurance policies and certificates shall have a notice prominently printed on the first page [of the policy] or attached thereto stating in substance that the [policyholder] applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy[,] or certificate, other than a certificate issued pursuant to a policy issued to a group defined in paragraph (1) of the definition of "group long-term care insurance", the [policyholder] applicant is not satisfied for any reason.

[(b) A person insured under a long-term care insurance policy issued pursuant to a direct response shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within thirty days of its delivery

and to have the premium refunded if after examination the insured person is not satisfied for any reason.]”

SECTION 10. Section 431:10A-531, Hawaii Revised Statutes, is amended to read as follows:

“[[§431:10A-531]] Rules. The commissioner shall adopt necessary rules under chapter 91 to implement this part[.] and to establish minimum standards for marketing practices, compensation arrangements, and reporting practices for long-term care insurance.”

SECTION 11. Section 431:10A-525, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 13. This Act shall take effect on December 1, 1991.

(Approved April 26, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 49

S.B. NO. 1205

A Bill for an Act Relating to Refunds.

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

SECTION 1. Section 481B-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person engaged in the business of offering goods for sale at retail who accepts the return of goods for refund, which goods were paid for at the time of purchase by cash, check, credit card, or by charging the purchase price to a credit account administered by the person making the sale, shall refund the full amount of the payment, including any ancillary charges or taxes incident to the purchase returned, in the following manner:

- (1) If payment was made in cash, in cash at the time of the return of goods;
- (2) If payment was made by check, in cash at the time of the return of goods; provided that if the check has not cleared the bank on which it is drawn, the refund may be delayed until the check has cleared;
- (3) If payment was made by credit card, by credit to the purchaser’s credit card account; provided that the seller shall initiate the submittal of the charge card credit memo or other appropriate documentation to the seller’s financial institution within five banking business days after the return of the goods; or
- (4) If payment was made by charging a credit account administered by the person making the sale, by credit to the purchaser’s credit account[;] initiated at the time of the return of the goods;

provided that before making the refund, the person accepting the return of goods

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may require proof of purchase at the person's place of business by sales slips, receipts, or other evidence of purchase of the goods returned."

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 26, 1991.)

ACT 50

S.B. NO. 1207

A Bill for an Act Relating to Osteopathy.

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

SECTION 1. 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 any person to solicit patients for one's self;
- (3) Wilfully betraying a professional secret;
- (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, the uniform controlled substance [act] law, or any [regulation] rule adopted thereunder; or
- (14) Failure to report to the board by a licensee, in writing, any disciplinary [action taken] decision issued in another jurisdiction against the licensee [in another jurisdiction.] within thirty days after the disciplinary decision is issued, or¹ failure to report to the board by an applicant, in writing, any disciplinary decision issued in another jurisdiction against the applicant prior to the application or during the pendency of the application.”

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 26, 1991.)

Note

1. So in original.

ACT 51

S.B. NO. 1211

A Bill for an Act Relating to Dental Hygienists.

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

SECTION 1. Section 447-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person [eighteen]

(1) Eighteen years of age or over [and holding];

(2) Holding or having a diploma or a proper certificate of graduation from an accredited high school employing at least a four year course of instruction [and likewise holding];

(3) Holding and having a diploma or proper certificate of graduation from a dental hygiene school accredited by the American Dental Association (A.D.A.) Commission on Dental Accreditation requiring at least a two year course, recognized by the board of dental examiners[,]; and [having]

(4) Having been officially certified in the administration of intra-oral infiltration local anesthesia by an accredited dental hygiene school or by a certification program previously approved by the board[,];

upon written application made to and filed with the secretary of the board at least [thirty] sixty days prior to the date selected by the board for the examination, may be examined by the board for qualification as a dental hygienist.

The application for examination shall be accompanied by the applicant’s certificate of graduation from an accredited dental hygiene school together with documentary proof of applicant’s certification in the administration of intra-oral infiltration local anesthesia and, at the time of filing the application, the applicant shall pay to the board application and examination fees, which fees, together with all other fees or charges in this chapter, shall be as provided in rules adopted by

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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 26, 1991.)

ACT 52

S.B. NO. 1212

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 453-5.3, Hawaii Revised Statutes, is amended as follows:

(1) By amending subsections (c) and (d) to read:

“(c) Upon satisfactory proof of compliance with the required medical educational and training standards, the board may grant state certification to [the] a person [upon the person’s satisfactory completion] who has been granted certification based upon passage of a national certifying examination and who holds a current certificate from the national certifying entity approved by the board.

(d) The board shall approve temporary certification of an applicant under this section [if the]. The applicant [has] shall have graduated from a board approved training program within twelve months of the date of application and [has] never taken a national certifying examination approved by the board but otherwise [meets] meet the requirements of this section[, has]. The applicant shall [file] file a complete application with the board[,] and [has paid] pay all required fees. If the applicant fails to apply for, or to take, the [next succeeding] first examination [or] scheduled by the board following the issuance of the temporary certificate, fails to pass the examination, or fails to receive [a certificate,] certification, all privileges under this section shall automatically cease upon written notification sent to the applicant by the board. A temporary certificate [may] shall be issued only once to each person.”

(2) By amending subsections (g) and (j)¹ to read:

“(g) [The] Any certification of a physician assistant [shall] may be [subject to revocation, limitation, or suspension] denied, not recertified, revoked, limited, or suspended under section 453-8 [and an application for certification may be denied for the same reasons].

(h) The board shall establish the application procedure, medical[,] educational[,] and training standards, examination requirement, if any, and degrees of supervision by rule.

(i) Every person holding a certificate under this section shall [reregister] apply for recertification with the board no later than January 31 of each even-numbered year and pay a renewal fee. Failure to [reregister] apply for recertification shall constitute a forfeiture of the certificate which may only be restored upon written application for [registration] recertification and payment to the board of a restoration fee.

(j) A certificate that has been forfeited for one renewal term shall be auto-

matically terminated and cannot be restored[, and a]. A new application for certification shall be required.”

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

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

(Approved April 26, 1991.)

Note

1. So in original.

ACT 53

S.B. NO. 1213

A Bill for an Act Relating to Restitution for Consumers.

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

SECTION 1. Section 487-14, Hawaii Revised Statutes, is amended to read as follows:

“§487-14 Restitution. (a) In any [civil] action brought by the director of the office of consumer protection [to collect civil penalties or enjoin unlawful acts or practices], the court [hearing the action] may include in its orders or judgments such provisions as may be necessary to effect restitution. [to any person who is injured as a result of the unlawful acts and practices which are the subject of the action and who submits proof of entitlement to restitution in the prosecution of the action.] Any person in whose favor restitution is ordered need not accept restitution, but the person’s acceptance and full performance of restitution shall bar recovery by the person of any other damages in any action on account of the same acts or practices against the person making restitution.

(b) Whenever a corporation is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the corporation and the individual directors, officers, or agents of the corporation who authorized, ordered, or had done, or participated in any of the unlawful acts and practices which caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment [or] of restitution.

(c) The office of consumer protection may establish and maintain an account for purposes of holding and disbursing moneys received or recovered by it and which are due consumers as restitution.

(d) The director of the office of consumer protection may assign to a consumer for collection that portion of any judgment awarding restitution to that consumer.”

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 26, 1991.)

A Bill for an Act Relating to Conformity to the Internal Revenue Code.

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

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

“§235-2.3 Conformance to the federal Internal Revenue Code; general application. (a) For all taxable years beginning after December 31, [1989,] 1990, 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, [1989,] 1990, 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, this section, and sections 235-2.4 and 235-2.5 do not apply or are otherwise limited in application; provided that section 1202 (with respect to deductions for capital gains) of the Internal Revenue Code of 1954 as amended as of December 31, 1986, shall be operative for the purposes of this chapter until March 31, 1987, and shall apply to any capital gains properly taken before April 1, 1987, except that the deduction provided in section 1202(a) shall be fifty-five per cent of the net capital gain.

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 59A) (with respect to determination of tax liability), except section 42 (with respect to the low-income housing credit), except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property), and except section 51 (with respect to the targeted jobs credit). For treatment, see sections 235-110.7, 235-110.8, and 235-55.91.
- (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 state and local bonds). For treatment, see section 235-7(b).
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see [sections 235-2.4 and] section 235-7(a)(9) to (11).
- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).
- (7) Section 135 (with respect to income from United States saving bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1).

- (8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds).
- (9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- (10) Section 196 (with respect to deduction for certain unused investment credits).
- (11) [Subchapter B, part VIII (sections] Sections 241 to [250)] 247 (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).
- (12) Section 269A (with respect to personal service corporations formed or availed of to avoid or evade income tax).
- (13) Section 280C (with respect to certain expenses for which credits are allowable).
- [(14) Section 280D, (with respect to portion of chapter 45 taxes for which credit or refund is allowable under section 6429).
- (15)] (14) Section 291 (with respect to special rules relating to corporate preference items).
- [(16)] (15) Section 367 (with respect to foreign corporations).
- [(17)] (16) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
- [(18)] (17) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
- [(19)] (18) Section 521 (with respect to exemption of farmers cooperatives from tax). For treatment, see section 421-23.
- [(20)] (19) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- [(21)] (20) Subchapter H (sections 581 to 597) (with respect to banking institutions). For treatment, see chapter 241.
- [(22)] (21) Section 642(a), (b), and (d) (with respect to special rules for credits and deductions).
- [(23)] (22) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- [(24)] (23) Subchapter L (sections 801 to [847]) 848 (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204.
- [(25)] (24) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- [(26)] (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).
- [(27)] (26) Section 1055 (with respect to redeemable ground rents).
- [(28)] (27) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- [(29)] (28) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).
- [(30)] (29) Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421.”

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SECTION 2. Section 235-7.5, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

- “(g) Election to claim certain unearned income of child on parent’s return.
- (1) If:
 - (A) Any child to whom this section applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),
 - (B) Such gross income is more than \$500 and less than \$5,000,
 - (C) No estimated tax payments for such year are made in the name and social security number of such child, and no amount has been deducted and withheld under section 3406 (with respect to backup withholding) of the Internal Revenue Code, and
 - (D) The parent of such child (as determined under subsection (e)) elects the application of paragraph (2),
 such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under this chapter.
- (2) In the case of a parent making the election under this subsection:
 - (A) The gross income of each child to whom such election applies (to the extent the gross income of such child exceeds \$1,000) shall be included in such parent’s gross income for the taxable year,
 - (B) The tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of:
 - (i) The amount determined under section 235-51 after the application of subparagraph (A), plus
 - (ii) For each such child, the lesser of [\$75] \$10 or [fifteen] two per cent of the excess of the gross income of such child over \$500.
- (3) The director shall prescribe such rules as may be necessary or appropriate to carry out the purposes of this subsection.”

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, 1990.

(Approved April 26, 1991.)

ACT 55

S.B. NO. 1223

A Bill for an Act Relating to the Fuel Tax.

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

SECTION 1. Section 243-1, Hawaii Revised Statutes, is amended by amending the definition of “person” to read as follows:

““Person”, except where the context or sense otherwise requires, means and includes individuals, firms, associations, [or] corporations[.], trusts, estates,

or partnerships.”

SECTION 2. Section 243-10, Hawaii Revised Statutes, is amended to read as follows:

“§243-10 **Statements and payments.** Each distributor and each person subject to section 243-4(b) [shall], on or before the last day of each calendar month, shall file with the director of taxation, on forms prescribed, prepared, and furnished by the director, a statement, authenticated as provided in section 231-15, showing separately for each county and for the [islands] island of Lanai and the island of Molokai within which and whereon fuel is sold or used during each preceding month of the calendar year, the following:

- (1) The total number of gallons of fuel refined, manufactured, or compounded by the distributor or person within the State and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (2) The total number of gallons of fuel imported by the distributor or person [or] and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (3) The total number of gallons of fuel acquired by the distributor or person during the month from persons not subject to the tax on the transaction or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (4) The total number of gallons of [such] fuel sold by the distributor or person to the United States or any department or agency thereof, or to any other person or entity, or used in any manner, the effect of which sale or use is to exempt the fuel from the tax imposed by this chapter;

[The statement shall further show:]

- (5) The total number of gallons of fuel on hand in the distributor’s or person’s possession in all of the counties and on the island of Lanai and on the island of Molokai at the beginning of the month, the total number of gallons thereof refined, manufactured, produced, compounded by the distributor or person, or acquired from persons not subject to the tax on such transaction, or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, or imported during the month, and the total number of gallons thereof on hand in the distributor’s or person’s possession at the end of the month; and
- (6) [Such additional] Additional information relative to the acquisition, purchase, manufacture, or importation into the State, and the sale, use, or other disposition, of diesel oil by [such] the distributor or person during the month, as the department of taxation [shall] by [regulation] rule shall prescribe.

At the time of submitting the foregoing report to the department, each [such] distributor and person shall pay the tax on each gallon of fuel (including diesel oil) sold or used by the distributor or person in each county and on the [islands] island of Lanai and the island of Molokai during the preceding month, as shown by the statement and required by this chapter; provided that the tax shall not apply to any fuel exempted and so long as the same is exempted from the imposition of the tax by the Constitution or laws of the United States; and the

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tax shall be paid only once upon the same fuel; provided further that a licensed distributor shall be entitled, in computing the tax the licensed distributor is required to pay, to deduct from the gallons of fuel reported for the month for each county or for the island of Lanai or the island of Molokai, as the case may be, one gallon for each ninety-nine gallons of like liquid fuel sold by retail dealers in that county or on that island during the month, as shown by certificates furnished by the retail dealers to the distributor and attached to the distributor's report. All [such] taxes payable for any month shall be delinquent after the expiration of the last day of the following month.

Statements filed under this section concerning the number of gallons of fuel refined, manufactured, compounded, imported, sold or used by the distributor or person are public records."

SECTION 3. Section 243-13, Hawaii Revised Statutes, is amended to read as follows:

"§243-13 Director empowered to make examinations, penalty, etc. The director of taxation and the director's authorized assistants may subpoena witnesses, compel the production of books, papers, and other records, administer oaths, examine books and records, and hear and take such evidence in relation to any matters within the director's jurisdiction, and upon which it is necessary or proper that the director be informed, under this chapter, as in the director's discretion the director may deem proper. The circuit courts shall have power, upon request of the director or any such assistant, to enforce by proper contempt proceedings the attendance of witnesses and the giving of testimony by them, and the production of books, papers, and records. False swearing under oath as to any material fact at any hearing held under this section shall [constitute perjury.] be subject to chapter 710, part V. If the examination discloses that any reports of distributors or other persons theretofore filed with the director by [such] the distributors or other persons, pursuant to the requirements of this chapter, have shown incorrectly the number of gallons of fuel sold or used, or the tax accruing thereon, so that any additional license [fees] taxes are due and payable under this chapter, the director shall proceed to collect such unpaid license [fees.] taxes."

SECTION 4. Section 243-14, Hawaii Revised Statutes, is amended to read as follows:

"§243-14 Assessments[.]; limitation period; exceptions; extension by agreement. (a) In any case of computation of the tax by the director of taxation, as provided in sections 243-12 and 243-13, the amount of the tax shall be assessed against the person liable therefor, and notice shall be given to the person of the amount of tax so assessed with penalties and interest[, which]. The notice may be given by mail, addressed to the person assessed at the person's last known residence or place of business.

(b) The amount of license taxes imposed by this chapter shall be assessed or levied, or the overpayment, if any, shall be credited within three years after filing of the monthly statement, or within three years of the due date prescribed for the filing of the statement, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall begin after the expiration of the three year period.

(c) In the case of a false or fraudulent statement with intent to evade tax or liability, or of a failure to file a statement, the tax or liability may be assessed or levied at any time; provided that in the case of a statement claimed to be false or

fraudulent with intent to evade tax or liability, the determination as to the claim must first be made by a judge of the circuit court as provided in section 235-111(b) which shall apply to the tax imposed by this chapter.

(d) Where, before the expiration of the time prescribed in this section for the assessment, levy, and collection of the tax or liability, both the department and the taxpayer have consented in writing to its assessment or levy after the expiration date, the tax or liability may be assessed or levied, or the overpayment, if any, may be credited at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by a subsequent agreement in writing made before the expiration of the period previously agreed upon.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1991.

(Approved April 26, 1991.)

ACT 56

S.B. NO. 1240

A Bill for an Act Relating to the Uniform Unclaimed Property Act.

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

SECTION 1. Section 523A-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The report shall be verified and shall include:

- (1) Except with respect to travelers checks and money orders, the name, if known, [and] last known address, and taxpayer identification number, if any, of each person appearing from the records of the holder to be the owner of property of the value of \$50 or more presumed abandoned under this part;
- (2) In the case of unclaimed funds of \$50 or more held or owing under any life or endowment insurance policy or annuity contract, the full name [and], last known address, and taxpayer identification number, if any, of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;
- (3) In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the director and any amounts owing to the holder;
- (4) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under \$50 each may be reported in the aggregate;
- (5) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and
- (6) Other information the director prescribes by rule as necessary for the administration of this chapter.”

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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 26, 1991.)

ACT 57

S.B. NO. 1242

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 269-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission.”

SECTION 2. Section 271-4, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission.”

SECTION 3. Section 271G-5, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission.”

SECTION 4. Section 269-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 the chairman 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, research assistants, economists, legal secretaries, enforcement officers, 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, research assistants, economists, legal secretaries, enforcement officers, hearings officers, and attorneys shall be exempt from chapters 76 and 77. Other employees shall be appointed as may be needed by the chairman in accordance with chapters 76 and 77.”

SECTION 5. Section 269-7, Hawaii Revised Statutes, is amended to read as follows:

“§269-7 Investigative powers. (a) The public utilities commission and

each commissioner shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

(b) The commission may investigate any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated under this chapter.

(c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint. A majority of the commission shall constitute a quorum.”

SECTION 6. Section 269-8, Hawaii Revised Statutes, is amended to read as follows:

“§269-8 Public utilities to furnish information. Every public utility or other person subject to investigation by the commission, shall at all times, upon request, furnish to the public utilities commission all information that it may require respecting any of the matters concerning which it is given power to investigate, and shall permit the examination of its books, records, contracts, maps, and other documents by the commission, or any of its members, or any person authorized by it in writing to make such examination, and shall furnish the commission with a complete inventory of its property in such form as the commission may direct.”

SECTION 7. Section 269-10, Hawaii Revised Statutes, is amended to read as follows:

“§269-10 Commission may compel attendance of witnesses, etc. In all investigations made by the public utilities commission, and in all proceedings before it, the commission and each commissioner shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, examining witnesses, and punishing for contempt, as are possessed by circuit courts. In case of disobedience by any person to any order of the commission or of any commissioner, or any subpoena issued by it or the commissioner, or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit court, on application by the commission or a commissioner, shall compel obedience as in case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein. No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by a hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill,

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document, paper, or account required of the person may tend to incriminate the person or subject the person to penalty or forfeiture; but no person shall be prosecuted[,] for any crime, punished[,] for any crime, or subjected to any criminal penalty or criminal forfeiture for or on account of any act, transaction, matter, or thing concerning which the person shall under oath have testified or produced documentary evidence. Nothing herein shall be construed as in any manner giving to any public utility or any person immunity of any kind. The fees and traveling expenses of witnesses shall be the same as allowed witnesses in the circuit courts and shall be paid by the State out of any appropriation available for the expenses of the commission. All meetings and hearings of the commission shall be public.”

SECTION 8. Section 269-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever an investigation is undertaken by the public utilities commission, reasonable notice in writing of such fact and of the subject or subjects to be investigated shall be given to the public utility or the person concerned, and when based upon complaints made to it as prescribed in section 269-7, a copy of the complaint, and a notice in writing of the date and place fixed by the commission for beginning the investigation, shall be served upon the public utility or the person concerned, or other respondent and the complainant not less than two weeks before the date designated for the hearing.”

SECTION 9. Section 269-13, Hawaii Revised Statutes, is amended to read as follows:

“**§269-13 Right to be represented by counsel.** At any investigation by or proceeding before the public utilities commission the public utility or the person concerned, or other respondent or party and any complainant or permitted intervenor shall have the right to be present and represented by counsel, to present any evidence desired, and to cross-examine any witness who may be called.”

SECTION 10. Section 269-15, Hawaii Revised Statutes, is amended to read as follows:

“**§269-15 Commission may institute proceedings to enforce chapter.** (a) If the public utilities commission is of the opinion that any public utility or any person is violating or neglecting to comply with any provision of this chapter or of any rule, regulation, order, or other requirement of the commission, or of any provisions of its franchise, charter, or articles of association, if any, or that changes, additions, extensions, or repairs are desirable in its plant or service to meet the reasonable convenience or necessity of the public, or to insure greater safety or security, or that any rates, fares, classifications, charges, or rules are unreasonable or unreasonably discriminatory, or that in any way it is doing what it ought not to do, or not doing what it ought to do, it shall in writing inform the public utility or the person and may institute such proceedings before it as may be necessary to require the public utility or the person to correct any such deficiency. In such event, the commission may by order direct the director of commerce and [consumers] consumer affairs to appear in such proceeding, to carry out the purposes of this section. The commission may examine into any of the matters referred to in section 269-7, notwithstanding that the same may be within the jurisdiction of any court or other body; provided that this section shall not be con-

strued as in any manner limiting or otherwise affecting the jurisdiction of any such court or other body.

(b) In addition to any other remedy available, the commission or its enforcement officer may issue citations to any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated thereunder.

- (1) The citation may contain an order of abatement and an assessment of civil penalties as provided in section 269-28(c). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the supreme court provided that the operation of an abatement order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection."

SECTION 11. Section 269-28, Hawaii Revised Statutes, is amended to read as follows:

“§269-28 Penalty. (a) Any public utility violating or neglecting or failing in any particular to conform to or comply with this chapter or any lawful order of the public utilities commission shall be subject to a civil penalty not to exceed \$25,000 for each day such violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91. The commission may order the public utility to cease carrying on its business while the violation, neglect, or failure continues.

(b) Notwithstanding the provisions of subsection (a), any public utility violating or neglecting or failing in any particular to conform to or comply with any rule or order of the commission setting forth safety requirements applicable to the transmission of gas shall be subject to a civil penalty not to exceed \$25,000 for each day that the violation, neglect or failure continues; provided that the maximum penalty for related violations arising out of the same act, omission, or occurrence shall not exceed \$500,000.

(c) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper.]

(c) Notwithstanding the provisions of subsection (a), any person acting in the capacity of or engaging in the business of a public utility in the State without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder may be subject to a civil penalty not to exceed \$5,000 for each such offense, and, in the case of a continuing violation, \$5,000 for each day that uncertified activity continues.

(d) If any civil penalty imposed pursuant to this section is not paid within such period as the commission may direct, the attorney general shall institute a civil action for recovery of same in circuit court.]

(d) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper.

(e) If any civil penalty imposed pursuant to this section is not paid within such period as the commission may direct, the attorney general shall institute a civil action for recovery of same in circuit court.”

SECTION 12. Section 271-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The general duties and powers of the public utilities commission shall be:

- (1) To regulate common carriers by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to continuous and adequate service, leasing of motor vehicles, uniform system of accounts, records, and reports, and preservation of records.
- (2) To regulate contract carriers[,] by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to leasing of motor vehicles, uniform system of accounts, records, and reports, and preservation of records.
- (3) To administer, execute, and enforce this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedures for the administration.
- (4) For purposes of the administration of this chapter, to inquire into the management of the business of motor carriers, and into the manage-

ment of the business of persons controlling, controlled by, or under [the] common control with, motor carriers to the extent that the business of these persons is related to the management of the business of one or more motor carriers, and the commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from the carriers and persons such information as the commission deems necessary to carry out the provisions of this chapter.

- (5) To investigate any person acting in the capacity of or engaging in the business of a motor carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated thereunder.”

SECTION 13. Section 271-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in this section and in section 271-16, no person shall engage in the business of a common carrier by motor vehicle [shall engage in operations] on any public highway in this State, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the public utilities commission authorizing such operation.”

SECTION 14. Section 271-27, Hawaii Revised Statutes is amended to read as follows:

“§271-27 Unlawful operation. (a) Any person knowingly and wilfully violating any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate or permit for which a penalty is not otherwise herein provided, shall be guilty of a misdemeanor.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who knowingly offers, grants, or gives, or solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provisions of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, knowingly and wilfully assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who knowingly and wilfully by any such means or otherwise fraudulently seeks to evade or defeat regulation as in this chapter provided for motor carriers, shall be deemed guilty of a misdemeanor.

(c) Any special agent, accountant, or examiner who knowingly and wilfully divulges any fact or information which may come to the special agent's, accountant's, or examiner's knowledge during the course of any examination or inspection made under authority of sections [271-9(a)(5)]¹ 271-9(a)(4), 271-23, and 271-25, except as the special agent, accountant, or examiner may be directed by the commission or by a court or judge thereof, shall be guilty of a misdemeanor.

(d) It shall be unlawful for any motor carrier or any officer, receiver, trustee, lessee, agent, or employee of the carrier, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee

without the consent of the shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to the motor carrier for transportation, which information may be used to the detriment or prejudice of the shipper or consignee, or which may improperly disclose the shipper's or consignee's business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(e) Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the government of the United States or of any state or of any political subdivision of any state, in the exercise of the officer's or agent's power or to any officer or other duly authorized person seeking the information for the prosecution of persons charged with or suspected of crimes or to another carrier, or its duly authorized agents, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of the carriers.

(f) Any motor carrier or any officer, agent, employee, or representative thereof, who wilfully fails or refuses to make a report to the commission as required by this chapter, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the commission, or to keep accounts, records, and memoranda in the form and manner prescribed by the commission, or knowingly and wilfully falsifies, destroys, mutilates, or alters any report, account, record, or memorandum or knowingly and wilfully files with the commission any false report, account, record, or memorandum, or knowingly and wilfully neglects or fails to make full, true, and correct entries in the accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this chapter to keep the same, or knowingly and wilfully keeps accounts, records, or memoranda contrary to the rules, regulations, or orders of the commission with respect thereto, shall be deemed guilty of a misdemeanor. As used in this subsection, the words "keep" and "kept" mean made, prepared, or compiled, as well as retained.

[(g) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, requirement or order thereunder, may be assessed a civil penalty payable to the State in the sum of \$100 for each such offense, and, in the case of a continuing violation, not to exceed \$50 for each additional day during which such failure or refusal shall continue.]

(g) Except when required by state law to take immediately before a district judge a person arrested for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter, the commission's enforcement officer, upon arresting a person for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter shall issue to the alleged violator a summons or citation printed in the form hereinafter described, warning the alleged violator to appear and answer to the charge against the alleged violator at a certain place and at a time within seven days after such arrest.

- (1) The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.
- (2) The original of a summons or citation shall be given to the alleged violator and the other copy or copies distributed in the manner

- prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copy.
- (3) Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.
 - (4) Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer upon the person's arrest for violation of any provision of this chapter, including any rule or regulation promulgated pursuant to this chapter, shall be guilty of a misdemeanor.
 - (5) In the event any person fails to comply with a summons or citation issued to such person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest.
 - (6) When a complaint is made to any prosecuting officer of the violation of any provision of this chapter, including any rule or regulation promulgated thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official whose name has been submitted to the prosecuting officer and who has been designated by the commission to administer the same.

[(h) Notwithstanding subsection (g), a motor carrier who fails to file, within the prescribed time, a financial report with the commission pursuant to its rules and regulations shall be assessed a civil penalty payable to the State in the sum of one-sixteenth of one per cent of the gross revenues from the motor carrier's business during the preceding calendar year, if the failure is for not more than one month, with an additional one-sixteenth of one per cent for each additional month or fraction thereof during which the failure continues, but in no event shall the total civil penalty be less than the sum of \$50.]

(h) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, requirement or order thereunder, may be assessed a civil penalty payable to the State in the sum of \$100 for each such offense, and, in the case of a continuing violation, not to exceed \$50 for each additional day during which such failure or refusal shall continue.

[(i) Except when required by state law to take immediately before a district judge a person arrested for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter, any person authorized to enforce the provisions of this chapter, hereinafter referred to as enforcement officer, upon arresting a person for violation of any provision of this chapter, including any rule or regulation adopted and promulgated pursuant to this chapter shall issue to the alleged violator a summons or citation printed in the form hereinafter described, warning the alleged violator to appear and answer to the charge against the alleged violator at a certain place and at a time within seven days after such arrest.

The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of a summons or citation shall be given to the alleged violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copy.

Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer upon the person's arrest for violation of any provision of this chapter, including any rule or regulation promulgated pursuant to this chapter, shall be guilty of a misdemeanor.

In the event any person fails to comply with a summons or citation issued to such person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest.

When a complaint is made to any prosecuting officer of the violation of any provision of this chapter, including any rule or regulation promulgated thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official whose name has been submitted to the prosecuting officer and who has been designated by the director of commerce and consumer affairs to administer the same.]

(i) Notwithstanding subsection (h), a motor carrier who fails to file, within the prescribed time, a financial report with the commission pursuant to its rules and regulations may be assessed a civil penalty payable to the State up to the sum of one-sixteenth of one per cent of the gross revenues from the motor carrier's business during the preceding calendar year, if the failure is for not more than one month, with an additional one-sixteenth of one per cent for each additional month or fraction thereof during which the failure continues, but in no event shall the total civil penalty be less than the sum of \$50.

(j) In addition to any other remedy available, the commission or its enforcement officer may issue citations to persons acting in the capacity of or engaging in the business of a motor carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder.

- (1) The citation may contain an order of abatement, and an assessment of civil penalties as provided in subsection (h). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.

- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the supreme court provided that the operation of an abatement order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection.”

SECTION 15. Section 271G-7, Hawaii Revised Statutes, is amended to read as follows:

“§271G-7¹ General duties and powers of the commission. The general duties and powers of the public utilities commission shall be:

- (1) To regulate water carriers, and to that end the commission shall have and utilize the investigative powers set forth in section 269-7 as well as all of the duties and powers specifically enumerated in this chapter, and water carriers shall be subject to the duties set forth in sections 269-8 and 269-9 as well as all of the duties specifically enumerated herein.
- (2) To establish such just and reasonable classifications of water carriers as the special nature of the services performed by the carriers shall require, and such just and reasonable rules, regulations, and requirements, consistent with this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or desirable in the public interest. Such classifications, rules, regulations, and requirements shall be adopted and promulgated pursuant to the provisions of chapter 91 and shall have the force and effect of law.
- (3) Upon complaint in writing to the commission by any person or body politic, or upon its own initiative without complaint, the commission may investigate whether any water carrier has failed to comply with any provision of this chapter, or with any rule or order adopted or issued hereunder.
- (4) The commission may investigate any person acting in the capacity of or engaging in the business of a water carrier within the State, without having a certificate of public convenience and necessity or

other authority previously obtained under and in compliance with this chapter or the rules promulgated under this chapter.”

SECTION 16. Section 271G-19, Hawaii Revised Statutes, is amended to read as follows:

“§271G-19 Unlawful operation. (a) Any person knowingly and wilfully violating any provision of this chapter, or violating any certificate for which violation a penalty is not otherwise herein provided, shall be fined not less than \$100 nor more than \$500 for the first offense, and not less than \$200 nor more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who knowingly offers, grants, or gives, or solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provisions of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, knowingly and wilfully assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who knowingly and wilfully by any such means or otherwise fraudulently seeks to evade or defeat regulation as in this chapter provided for water carriers, shall be fined not less than \$200 nor more than \$500 for the first offense and not less than \$250 nor more than \$2,000 for any subsequent offense.

(c) Any special agent, accountant, or examiner who knowingly and wilfully divulges any fact or information which may come to the special agent's, accountant's, or examiner's knowledge during the course of any examination or inspection made under authority of section 271G-18, except as the special agent, accountant, or examiner may be directed by the commission or by a court or judge thereof, shall be guilty of a misdemeanor, and shall be subject to a fine of not more than \$500 or imprisonment for not exceeding one year, or both.

(d) Any water carrier, or any officer, agent, employee, or representative thereof, who shall fail or refuse to comply with any provision of this chapter, or any rule, regulation, filed tariff or requirement or order thereunder, shall pay a civil penalty to the State in the sum of not less than \$100, nor more than \$5,000 for each offense, and, in the case of a continuing violation, not to exceed \$5,000 for each additional day during which the failure or refusal continues. A penalty shall become due and payable when the person incurring it receives a notice in writing reasonably describing the violation and advising that the penalty is due.

(e) In addition to any other remedy available, the commission or its enforcement officer may issue citations to persons acting in the capacity of or engaging in the business of a water carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder.

- (1) The citation may contain an order of abatement, and an assessment of civil penalties of not less than \$100, nor more than \$500 for each such offense, and, in the case of a continuing violation, not less than \$200 nor more than \$500 for each day that uncertified activity continues. All penalties collected under this subsection shall be

- deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the supreme court provided that the operation of an abatement order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection.”

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval.

(Approved April 26, 1991.)

Note

1. So in original.

A Bill for an Act Relating to Private Activity Bonds.

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

SECTION 1. Chapter 39B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§39B- Report of unused allocation; reversion to State. The director of finance of each county shall report to the department in writing by December 15 of each year as to the amount of allocation to such county which has not been applied to private activity bonds in such year or assigned pursuant to this chapter.

In preparing such report, the director of finance of the county shall deduct any allocation which is unused or unassigned as of December 15 but will be applied to private activity bonds on or prior to December 31 of such year.

Unless the director of finance of the county or any issuer, by written certificate, indicates to the department prior to December 15 of each year that it intends to carry forward all or any portion of its allocation which has not been applied to private activity bonds in such year or assigned pursuant to this chapter, such unused or unassigned allocation shall revert to the State on December 31 and the State shall be entitled to carry forward such unused or unassigned allocation as permitted by federal law.”

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall 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. New statutory material is underscored.¹

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

(Approved April 26, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

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 291-33, Hawaii Revised Statutes, is amended to read as follows:

“§291-33 Projections on face of wheels prohibited. There shall not be operated or moved upon any public road, street, or highway within the State, any vehicle, motor vehicle, or other power vehicle the face of the wheels of which are fitted or equipped with flanges, ribs, clamps, cleats, lugs, chains, spikes or other projections, other than rubber blocks, destructive to the road surfaces. This provision applies to all rings or flanges upon guiding or steering wheels of such

vehicles, but it shall not be so construed as to prevent (1) the use of ordinary detachable tire or skid chains[.], or (2) the use of studded snow tires on either the Mauna Kea access road above Hale Pohaku or on any other road within the Mauna Kea Science Reserve leased to the University of Hawaii.

This section shall not apply to traction engines, tractors, or other vehicles of the tracklaying type when the portions of the movable tracks in contact with the roadway surface present plane surfaces of sufficient area to prevent damage thereto.”

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 26, 1991.)

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S.B. NO. 1332

A Bill for an Act Relating to Highway Safety.

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.** (a) 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; 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 the applicant resides or where 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 transportation. At the time of examination, an application for voter registration by mail shall be made available to every applicant.

(b) 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, a province of the Dominion of Canada, or the Commonwealth of the Northern Mariana Islands for the operation of vehicles in categories 1 through 3 of section 286-102.

(c) As part of the examination required by this section the applicant for a driver’s license shall produce and display a valid no-fault or liability insurance identification card for the motor vehicle required by section [294-8.5,] 431:10C-107 and section 431:10G-106, when the applicant demonstrates the ability to

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operate a motor vehicle to the satisfaction of the examiner of drivers. If no valid no-fault or liability insurance identification card is displayed, the examiner of drivers shall not issue a driver's license to the applicant."

SECTION 2. Section 286-116, Hawaii Revised Statutes, is amended to read as follows:

"§286-116 License, insurance identification card, possession, exhibition. (a) Every licensee shall have a valid driver's license in the licensee's immediate possession at all times, and a valid no-fault or liability insurance identification card applicable to the motor vehicle operated as required under section [294-8.5,] 431:10C-107 and section 431:10G-106, when operating a motor vehicle, and shall display the same upon demand of a police officer. Every police officer or law enforcement officer when stopping a vehicle or inspecting a vehicle for any reason shall demand that the driver or owner display the driver's or owner's driver's license and insurance identification card. No person charged with violating this section shall be convicted if the person produces in court, or proves from the proper official or other records that the person was the holder of a driver's license or a no-fault or liability insurance identification card and policy conforming to article 10C and article 10G of chapter [294.] 431 or a certificate of self insurance issued by the commissioner of motor vehicle insurance pursuant to section [284-8.5(b),] 431:10C-107 and 431:10G-103, theretofore issued to the person and valid at the time of the person's arrest.

(b) At any time a law enforcement officer finds a motor vehicle in operation by a driver not in possession of the no-fault or liability insurance identification card required under section [294-8.5,] 431:10C-107 and section 431:10G-106, the officer shall issue a citation with the earliest possible date for court appearance in every instance.

(c) In all instances in which a citation shall be issued under subsection (b), whenever the driver cited is not found to be the registered owner of the motor vehicle under operation, the citation shall also be issued to the driver as the owner's agent and to the registered owner of the motor vehicle. Whenever the registered owner of any motor vehicle permits any person to operate the registered owner's motor vehicle, the registered owner appoints, designates, and constitutes the driver the registered owner's agent for all purposes under this section and [sections 294-8.5,] section 431:10C-107, section 431:10G-106, and section 805-13.

(d) The operation of any motor vehicle required to be licensed on a highway by a driver, whether or not licensed, who knows, or has reason to believe, that the motor vehicle is not insured in compliance with article 10C and article 10G of chapter [294,] 431, shall constitute a violation of this chapter.

(e) Any registered owner of any motor vehicle required to be licensed, who directly or indirectly permits the operation of such motor vehicle on any highway at any time the motor vehicle is not insured in compliance with article 10C and article 10G of chapter [294,] 431, shall be guilty of a violation of this chapter. The registered owner shall, in all cases, be presumed to know whether a motor vehicle is insured in compliance with article 10C and article 10G of chapter [294.] 431."

SECTION 3. Section 286-117, Hawaii Revised Statutes, is amended to read as follows:

"§286-117 Duplicate permits[, and licenses[, and badges]. The holder

of an instruction permit or driver's license may upon payment of the reasonable cost of its issuance obtain a duplicate; provided that the holder shall surrender the original permit or license or furnish satisfactory proof of loss or destruction of the same.

The chief of police or a police officer shall notify a holder that the holder's permit or license is illegible and that the holder shall within ten days surrender the holder's license and apply for a duplicate. Upon failure to comply with a notice to surrender an illegible license and apply for a duplicate, the person to whom the permit or license is issued shall be subject to the punishment in section 286-136."

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 26, 1991.)

ACT 61

S.B. NO. 1353

A Bill for an Act Relating to Home and Community-Based Care.

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

SECTION 1. Section 346D-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A ceiling shall be placed on the nursing home without walls program expenditures, limiting total expenditures to not more than [seventy-five per cent of the annual medicaid cost to maintain the nursing home without walls program caseload at their appropriate level of institutional care. The medicaid cost which shall be the basis for the expenditure ceiling shall be determined by the department of human services.] the amount authorized by the federal Health Care Financing 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 26, 1991.)

ACT 62

S.B. NO. 1529

A Bill for an Act Relating to Torts.

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

SECTION 1. Section 2 of Act 300, Session Laws of Hawaii 1989, is amended to read as follows:

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“SECTION 2. Section 31 of Act 2, First Special Session Laws of Hawaii 1986, is amended to read as follows:

“SECTION 31. This Act shall take effect upon its approval, and Sections 2 to 7, Section 17, and Section 20 shall be repealed on October 1, [1991] 1993.”

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 26, 1991.)

ACT 63

S.B. NO. 1799

A Bill for an Act Relating to Speech and Hearing Impaired.

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

SECTION 1. The legislature believes that everyone has a natural and basic need to communicate. For many deaf, hearing-impaired, and speech-impaired people, the fulfillment of this need depends on extra communication means such as a telecommunication device for the deaf. These extra tools of communication have not always been readily available nor uniformly accessible, yet without them, hearing-impaired and speech-impaired people are deprived of the right to fully participate in society. The legislature finds that relay services for the deaf make the phone system usable by hearing-impaired and speech-impaired persons who have a telecommunications device for the deaf. In 1988, the legislature enacted Act 207, Session Laws of Hawaii 1988, to assure telecommunication devices for the deaf are available for the deaf and hearing-impaired. Those persons who are speech-impaired were not included.

The purpose of this Act is to ensure the availability of relay services for the speech-impaired.

SECTION 2. Section 269-16.6, Hawaii Revised Statutes, is amended:

1. By amending its title and subsections (a), (b), and (c) to read:

“**§269-16.6 Relay services for the deaf [and], hearing-impaired[.], and speech-impaired.** (a) The public utilities commission shall implement a program to achieve relay services for the deaf and hearing-impaired not later than July 1, 1989[.], and the speech impaired not later than July 1, 1992.

(b) “Relay services for the deaf [and hearing-impaired]”, hearing-impaired, and speech-impaired” means a twenty-four-hour operator-assisted telephone relay service staffed by persons who are able to receive and transmit phone calls between deaf [and], hearing-impaired, and speech-impaired and hearing persons using a telecommunication device for the deaf in conjunction with a telephone.

(c) The commission shall investigate the availability of experienced providers of quality relay services for the deaf [and], hearing-impaired[.], and speech-impaired. Contracts for the provision of these relay services to be rendered on or after July 1, 1992, shall be awarded by the commission to the

provider or providers which the commission determines to be best qualified to provide these services. In reviewing the qualifications of the provider or providers, the commission shall consider the factors of cost, quality of services, and experience, and such other factors as the commission deems appropriate.”

2. By amending subsection (f) to read:

“(f) The commission shall require every telephone public utility providing local telephone service to file a schedule of rates and charges and every provider of relay service to maintain a separate accounting for the costs of providing for relay services for the deaf [and], hearing-impaired[.], and speech-impaired.”

SECTION 3. Section 269-16.7, Hawaii Revised Statutes, is amended as follows:

“**§269-16.7 Telecommunications; expedition of ratemaking procedures.**¹ Whenever a public utility providing local exchange telecommunications services applies for approval of rates, charges, or fees in tariffs for specialized services for the deaf [or], hearing-impaired or speech-impaired, the commission shall expedite to the greatest extent possible any necessary ratemaking procedures. Further, the commission shall be authorized to approve interim surcharges imposed on all subscriber lines, in order to permit the recovery of those actual costs incurred from the time of commencement of the specialized services for the deaf [and], hearing-impaired and speech-impaired to the time of the next general rate increase.”

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 26, 1991.)

Note

1. So in original.

ACT 64

H.B. NO. 985

A Bill for an Act Relating to the General Appropriations Act of 1989.

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

SECTION 1. Act 316, Session Laws of Hawaii 1989, is amended by amending section 219 to read as follows:

“SECTION 219. Provided that, notwithstanding any appropriation or position ceiling, the governor may transfer positions and funds between existing programs of the state government to work force attraction, selection, classification, and effectiveness (PER 102) for the purpose of implementing a centralized workers' compensation program[,] and paying any claims against the State as required under chapter 386. Notwithstanding any other law to the contrary, the governor shall notify the legislature of each transfer made pursuant to this section, within ten days.”

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SECTION 2. This Act is recommended by the governor for immediate passage in accordance with Article VII, Section 9, of the Constitution of the State of Hawaii.

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 29, 1991.)

ACT 65

S.B. NO. 25

A Bill for an Act Relating to Abandoned Vehicles.

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

SECTION 1. Purpose. The purpose of this Act is to facilitate the disposal of abandoned vehicles by the counties by requiring that a notice be deemed received by the legal or registered owner five days after mailing rather than requiring a mail receipt signed by the registered owner. This will resolve a problem that occurs when a registered or legal owner of the vehicle refuses to accept the certified mail.

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

“§290-2 Notice to owner. Upon taking custody of any abandoned vehicle, a written notice shall immediately be sent by registered or certified mail[, with a return receipt,] to the legal and registered owner of the vehicle at the address on record at the vehicle licensing division. The notice shall contain a brief description of the vehicle, the location of custody, and intended disposition of the vehicle if not repossessed within ten days after the mailing of the notice. A 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. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing.”

SECTION 3. Section 290-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall charge not more than \$35 a tow, \$40 for a tow using a dolly, plus \$1 a mile for any towing mileage over five miles, and \$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 the owner's 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.] Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing. 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."

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 29, 1991.)

ACT 66

S.B. NO. 1249

A Bill for an Act Relating to the Housing Finance and Development Corporation.

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

SECTION 1. Section 201E-2, Hawaii Revised Statutes, is amended by amending the definition of "qualified resident" to read as follows:

““Qualified resident” means a person who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is domiciled in the State and has a bona fide intent to reside in the dwelling unit purchased or rented under this chapter;
- (4) In the case of purchase of a dwelling unit in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- (5) [Is not found by the corporation to be within one of the following classes:
 - (A) A person who oneself or whose husband or wife or both (unless husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71) owns or own in fee simple or leasehold any lands suitable for dwelling purposes; or
 - (B) A person who oneself or whose husband or wife (unless husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71) has pending another unrefused application to purchase a dwelling unit under this chapter from the corporation;]

Either oneself or together with spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, and whose spouse does not own a majority interest in fee simple or

leasehold lands suitable for dwelling purposes, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71;

provided that for purchasers of market-priced units in an economically integrated housing project, the term "qualified resident" means a person who is a citizen of the United States or a resident alien; is domiciled in the State; is at least eighteen years of age; and meets other qualifications as determined by the developer."

SECTION 2. Section 201E-220, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Subsections (a), (b), (c), (d), and (e) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units."

SECTION 3. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

"§201E-221 Dwelling units; restrictions on transfer, waiver or restrictions. (a) The following restrictions shall apply to the transfer of dwelling units [purchased from the corporation,] developed and sold under this chapter, 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 corporation 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, as defined in rules adopted by the corporation;
 - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
 - (C) Simple interest on the [purchaser's cash equity at the rate of seven per cent a year.] original cost and capital improvements to the purchaser at the rate of one per cent a year.

The corporation 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 corporation shall ensure that all existing mortgages, liens, and encumbrances are fully paid.

In any purchase by transfer subject to an existing mortgage, the corporation shall agree to assume and to pay the seller's obligation 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 corporation. In such cases, the amount to be paid to the seller by the corporation 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 corporation.

- (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 qualified resident free from any price restrictions; provided that the purchaser shall be required to pay to

the corporation the sum of:

- (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
- (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the unit, and any other amount expended by the corporation not counted as cost under section 201E-220 but charged to the dwelling unit by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs; [and]
- (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, 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 the computed interest shall not extend beyond thirty years from the date of purchase, or execution of the agreement of sale, of the unit; and provided that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the dwelling unit at a price which shall not exceed the sum as computed under paragraph (1)[.]; and
- (D) The corporation's share of appreciation in the dwelling unit as determined under rules adopted pursuant to chapter 91.

- (3) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in subsection (a)(2)(B) and any interest accrued pursuant to subsection (a)(2)(C) may be paid, in part or in full, at any time.

(b) The corporation may waive the restrictions prescribed in subsection (a)

if:

- (1) The purchaser wishes to transfer title to the dwelling unit and the property or lease by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or
- [(2) The dwelling unit is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner; or
- (3)] (2) The corporation determines, in accordance with rules adopted by the corporation, that the sale or transfer of a dwelling unit would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the unit; provided that, in this case, the purchaser shall sell the unit and sell or assign the property to a person who is a "qualified resident" as defined in section 201E-2[.]; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91.

(c) The corporation may release the restrictions prescribed in subsection (a) if the dwelling unit is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.

[(c)] (d) The restrictions prescribed in subsection (a) shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the dwelling unit and the land or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering a dwelling unit and land or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

[(d)] (e) The provisions of this section shall be incorporated in any deed, lease, mortgage, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of a dwelling unit for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(2)(B), a description of the cost items which constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.

[(e)] (f) Any subsequent sale or transfer of dwelling units and sale, lease, or assignment of the property by the corporation or purchaser pursuant to this chapter shall be made to qualified residents.

[(f)] (g) Subsections (a), (b), (c), (d), [and] (e), and (f) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.”

SECTION 4. Section 201E-222, Hawaii Revised Statutes, is amended to read as follows:

“**§201E-222 Dwelling units; restrictions on use.** (a) A dwelling unit purchased under this chapter shall be occupied by the purchaser at all times.

(b) From time to time the corporation 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 corporation, at its option, to purchase the unit as provided in section 201E-221(a)(1) or (2), as applicable.

(c) Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.

(d) The restrictions prescribed in subsection (a) shall be automatically extinguished and shall not attach in subsequent transfers of title as prescribed in section [201E-221(b).] 201E-221(c).

(e) Subsections (a), (b), and (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.”

SECTION 5. Section 201E-2, Hawaii Revised Statutes, is amended by deleting the definition of "cash equity".

[“Cash equity” means the actual amount of payments of principal which the owner has made for the purpose of purchasing or improving a dwelling unit, including the cash down payment made, payments of principal on mortgage loans incurred to purchase the dwelling unit, and payments of principal for improvements which add value to the dwelling unit. The term “cash equity” does not include interest or the appreciated value of the dwelling unit caused by market fluctuation.”]

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 April 29, 1991.)

ACT 67

S.B. NO. 1307

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

- (1) Motor scooters;
- (2) Motorcycles and motor scooters;
- (3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants[;], and trucks and vans having a gross vehicle weight rating of ten thousand pounds or less;
- (4) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of ten thousand one through twenty-six thousand pounds.

A school bus or van operator shall be properly licensed to operate the category of vehicles that the operator operates as a school bus or van and shall comply with the standards of the department of transportation as provided by rules adopted pursuant to section 286-181.”

SECTION 2. Act 342, Session Laws of Hawaii 1990, is amended by amending section 23, to read as follows:

“SECTION 23. This Act shall take effect on April 1, 1991; provided [section] sections 18 and 21 shall take effect on July 1, 1990.”

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

ACT 68

SECTION 4. This Act, upon its approval, shall take effect retroactive to January 1, 1991.

(Approved April 29, 1991.)

ACT 68

S.B. NO. 1706

A Bill for an Act Relating to Employment Security.

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

SECTION 1. The legislature finds that significant international, national, and local economic, technological, and demographic changes can only have a profound impact on the work force in Hawaii. For example, we have already witnessed worker and skill shortages resulting in a reduction of government services.

The legislature further finds that innovative programs must be adopted presently to ensure that local residents and Hawaii will not be adversely affected by these significant changes. Cooperation between business and government is required to diversify job opportunities and to enable local residents to compete for the new skilled positions. Workers must be prepared for the impact of these economic, technological, and demographic changes.

The legislature further finds that significant changes in the international, national, and local economic situations call for other action related to the employment security law.

The purpose of this Act is to establish an employment and training fund to assist employers and workers through innovative programs to include, but not be limited to, business-specific training, upgrade training, new occupational skills, management skills, and support services to improve the long-term employability of Hawaii's people. Such programs must be flexible, timely, and adaptable, to meet the rapid changes of our economy.

The other purpose of this Act is to amend the employment security law to provide a more equitable contribution system designed to create an adequate reserve fund to meet benefit costs but prevent an over accumulation of moneys, and benefit adjustments for unemployed workers to restore lost purchasing power.

SECTION 2. Chapter 383, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§383- Employment and training fund established. (a) Effective January 1, 1992, there is established in the state treasury, apart from all other funds in this State, a special fund to be known as the employment and training fund. All assessments collected pursuant to section 383- and all other moneys received by the fund from any other source shall be deposited into the employment and training fund.

(b) The moneys in the employment and training fund may be used for funding:

- (1) The operation of the state employment service for which no federal funds have been allocated;
- (2) Business-specific training programs to create a more diversified job base and to carry out the purposes of the new industry training program pursuant to section 394-8;

- (3) Industry or employer-specific training programs where there are critical skill shortages in high growth occupational or industry areas;
- (4) Training and retraining programs to assist workers who have become recently unemployed or likely to be unemployed;
- (5) Programs to assist residents who do not otherwise qualify for federal or state job training programs to overcome employment barriers; and
- (6) Training programs to provide job-specific skills for individuals in need of such assistance to improve career employment prospects.

(c) The director may require employers assisted by any of these programs to contribute up to fifty per cent of the cost of such assistance in cash or in-kind contributions.

(d) The department is authorized to contract for employment, education, and training services from public and private agencies and nonprofit corporations. These services shall be exempt from chapter 42 so funds for these services may be expended in a timely manner to effectuate the purposes of this section.

(e) The director shall submit a report to the legislature on the status of the employment and training fund, including expenditures and program results, at least twenty days prior to the convening of each regular legislative session.

(f) The director of finance shall act as the treasurer and custodian of the employment and training fund, invest those moneys in accordance with applicable laws and rules, and disburse the moneys in the employment and training fund in accordance with directions by the director of labor and industrial relations. All interest earned from investment of moneys in the employment and training fund shall be deposited in the fund. The director of finance shall be liable on the director's official bond for the faithful performance of all duties in connection with the employment and training fund. All sums recovered on the surety bond for losses sustained by the employment and training fund shall be deposited in the fund.

(g) Administrative costs for the collection of employment and training fund contributions and for costs related to the establishment and maintenance of the employment and training fund shall be borne by the fund beginning with fiscal year 1992-1993 and thereafter.

(h) The director may establish positions and hire necessary personnel to establish and administer the employment and training fund without regard to chapters 76 and 77.

§383- Employment and training assessment. (a) Effective January 1, 1992, through December 31, 1996, in addition to contributions determined by section 383-68, every employer, except an employer who has selected an alternative method of financing liability for unemployment compensation benefits pursuant to section 383-62 or an employer who has been assigned a minimum rate of zero per cent or the maximum rate of five and four-tenths per cent in accordance with section 383-68, shall be subject to an employment and training fund assessment at a rate of .05 per cent of taxable wages as specified in section 383-61.

(b) Collections from the employment and training assessment shall be made in the same manner and at the same time as any contributions required under section 383-61, and shall not be deducted, in whole or in part, from the wages of individuals in an employer's employ.

(c) Any assessments collected pursuant to this section shall remain separate and shall not be included in any manner in computing unemployment contribution rates assigned to employers in accordance with sections 383-63 to 383-68.

(d) The director may impose penalty and interest on delinquent employment and training assessments in the same manner as provided for contributions

to the unemployment compensation fund in section 383-73. For purposes of computation of penalty and interest under this subsection, employment and training assessments shall be considered part of the employer's contributions to the unemployment compensation fund.

(e) Collection of money from an employer delinquent in paying employment and training assessments or contributions to the unemployment compensation fund pursuant to this chapter shall first be applied to interest and penalty, then applied to delinquent unemployment compensation contributions, and finally to delinquent employment and training assessments."

SECTION 3. Section 383-22, Hawaii Revised Statutes, is amended to read as follows:

“§383-22 Weekly benefit amount; computation, minimum and maximum. (a) In the case of an individual who has established a benefit year prior to January 2, 1966, the individual's weekly benefit amount shall be the amount appearing in column B in the table in this section on the line on which, in column A of the table, there appears the total wages paid to the individual for insured work in that quarter of the individual's base period in which the total wages were highest.

(b) In the case of an individual whose benefit year begins [on or after January 2, 1966,] prior to January 5, 1992, the individual's weekly benefit amount shall be, except as otherwise provided [herein,] in this section, an amount equal to one twenty-fifth of the individual's total wages for insured work paid during the calendar quarter of the individual's base period in which such total wages were highest. In the case of an individual whose benefit year begins after January 4, 1992, the individual's weekly benefit amount shall be, except as otherwise provided in this section, an amount equal to one twenty-first of the individual's total wages for insured work paid during the calendar quarter of the individual's base period in which such total wages were highest. The weekly benefit amount, if not a multiple of \$1, shall be computed to the next higher multiple of \$1. If an individual's weekly benefit amount is less than [five dollars,] \$5, it shall be [five dollars.] \$5. The maximum weekly benefit amount shall be determined annually as follows: On or before November 30 of each year the total remuneration paid by employers, as reported on contribution reports submitted on or before such date, with respect to all employment during the four consecutive calendar quarters ending on June 30 of the year shall be divided by the average monthly number of individuals performing services in the employment during the same four calendar quarters as reported on the contribution reports. The amount thus obtained shall be divided by fifty-two and the average weekly wage (rounded to the nearest cent) thus determined. [Two-thirds] For benefit years beginning prior to January 1, 1992, two-thirds of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. For benefit years beginning January 1, 1992, and thereafter, seventy per cent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. The maximum weekly benefit amount, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

[With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services:

- (1) Which were not employment, as defined in section 383-2 or pursuant to an election under section 383-77 prior to January 1, 1978, at any time during the one-year period ending December 31, 1975; and
- (2) Which are agricultural labor as defined in section 383-9 except such service excluded under section 383-7(1), or are domestic service except such service excluded under section 383-7(2); except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.]

(Column A) High Quarter Wages	(Column B) Basic Weekly Benefit	(Column C) Minimum Qualifying Wages	(Column D) Maximum Total Benefits in Benefit Year
\$ 37.50 - 125.00	\$ 5.00	\$ 150.00	\$ 130.00
125.01 - 150.00	6.00	180.00	156.00
150.01 - 175.00	7.00	210.00	182.00
175.01 - 200.00	8.00	240.00	208.00
200.01 - 225.00	9.00	270.00	234.00
225.01 - 250.00	10.00	300.00	260.00
250.01 - 275.00	11.00	330.00	286.00
275.01 - 300.00	12.00	360.00	312.00
300.01 - 325.00	13.00	390.00	338.00
325.01 - 350.00	14.00	420.00	364.00
350.01 - 375.00	15.00	450.00	390.00
375.01 - 400.00	16.00	480.00	416.00
400.01 - 425.00	17.00	510.00	442.00
425.01 - 450.00	18.00	540.00	468.00
450.01 - 475.00	19.00	570.00	494.00
475.01 - 500.00	20.00	600.00	520.00
500.01 - 525.00	21.00	630.00	546.00
525.01 - 550.00	22.00	660.00	572.00
550.01 - 575.00	23.00	690.00	598.00
575.01 - 600.00	24.00	720.00	624.00
600.01 - 625.00	25.00	750.00	650.00
625.01 - 650.00	26.00	780.00	676.00
650.01 - 675.00	27.00	810.00	702.00
675.01 - 700.00	28.00	840.00	728.00
700.01 - 725.00	29.00	870.00	754.00
725.01 - 750.00	30.00	900.00	780.00
750.01 - 775.00	31.00	930.00	806.00
775.01 - 800.00	32.00	960.00	832.00
800.01 - 825.00	33.00	990.00	858.00
825.01 - 850.00	34.00	1020.00	884.00
850.01 - 875.00	35.00	1050.00	910.00
875.01 - 900.00	36.00	1080.00	936.00
900.01 - 925.00	37.00	1110.00	962.00
925.01 - 950.00	38.00	1140.00	988.00

(Column A)	(Column B)	(Column C)	(Column D)
High Quarter Wages	Basic Weekly Benefit	Minimum Qualifying Wages	Maximum Total Benefits in Benefit Year
950.01 - 975.00	39.00	1170.00	1014.00
975.01 - 1000.00	40.00	1200.00	1040.00
1000.01 - 1025.00	41.00	1230.00	1066.00
1025.01 - 1050.00	42.00	1260.00	1092.00
1050.01 - 1075.00	43.00	1290.00	1118.00
1075.01 - 1100.00	44.00	1320.00	1144.00
1100.01 - 1125.00	45.00	1350.00	1170.00
1125.01 - 1150.00	46.00	1380.00	1196.00
1150.01 - 1175.00	47.00	1410.00	1222.00
1175.01 - 1200.00	48.00	1440.00	1248.00
1200.01 - 1225.00	49.00	1470.00	1274.00
1225.01 - 1250.00	50.00	1500.00	1300.00
1250.01 - 1275.00	51.00	1530.00	1326.00
1275.01 - 1300.00	52.00	1560.00	1352.00
1300.01 - 1325.00	53.00	1590.00	1378.00
1325.01 - 1350.00	54.00	1620.00	1404.00
1350.01 and over	55.00	1650.00	1430.00"

SECTION 4. Section 383-23, Hawaii Revised Statutes, is amended to read as follows:

“§383-23 Weekly benefit for unemployment. [Each] For weeks beginning prior to January 5, 1992, each eligible individual who is unemployed, as defined in section 383-1, in any week shall be paid with respect to [such] that week a benefit in an amount equal to the individual’s weekly benefit amount less that part of the wages (if any) payable to the individual with respect to [such] that week which is in excess of \$2. Effective for weeks beginning January 5, 1992, and thereafter, each eligible individual who is unemployed, as defined in section 383-1, in any week shall be paid with respect to that week a benefit in an amount equal to the individual’s weekly benefit amount less that part of the wages (if any) payable to the individual with respect to that week which is in excess of \$50. The benefit, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.”

SECTION 5. Section 383-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

- (1) Claim. The individual has made a claim for benefits with respect to that week in accordance with rules the department may prescribe.
- (2) Registration. The individual has registered for work at, and thereafter continued to report at, an employment office in accordance with rules the department may prescribe, except that the department, by rule, may waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to other types of cases or situations with respect to which it finds that compliance with those requirements would be oppressive, or would be

inconsistent with the purpose of this chapter; provided that no such rule shall conflict with section 383-21.

- (3) Availability. The individual is able to work and is available for work; provided that no claimant shall be considered ineligible with respect to any week of unemployment for failure to comply with this paragraph if the failure is due to an illness or disability, as evidenced by a physician's certificate, which occurs during an uninterrupted period of unemployment with respect to which benefits are claimed and no work which would have been suitable prior to the beginning of the illness and disability has been offered the claimant.
- (4) Waiting period. The individual has been unemployed for a waiting period of one week within the individual's benefit year. No week shall be counted as a waiting period:
 - (A) If benefits have been paid with respect thereto;
 - (B) Unless the individual was eligible for benefits with respect thereto as provided in this section and section 383-30, except for the requirements of this paragraph.
- (5) Wages for insured work; weeks of employment.
 - [(A) In the case of an individual who has established a benefit year prior to January 3, 1965, the individual has been paid wages for insured work during the individual's base period in an amount equal to at least the amount appearing in column C of the schedule in section 383-22 on the line on which, in column B of the schedule, appears the individual's weekly benefit amount.
 - (B) In the case of an individual who has established a benefit year after January 2, 1965, but prior to January 2, 1966, the individual has had during the individual's base period a total of fourteen or more weeks of employment as defined in section 383-1 and has been paid wages for insured work during the individual's base period in an amount equal to at least the amount appearing in column C of the schedule in section 383-22 on the line on which, in column B of the schedule, appears the individual's weekly benefit amount.
 - (C) (A) In the case of an individual whose benefit year begins on or after January 2, 1966, but prior to October 1, 1989, the individual has had during the individual's base period a total of fourteen or more weeks of employment as defined in section 383-1 and has been paid wages for insured work during the individual's base period in an amount equal to at least thirty times the individual's weekly benefit amount as determined under section 383-22(b). For the purposes of this subparagraph, wages for insured work shall include wages paid for services:
 - (i) Which were not employment, as defined in section 383-2 or pursuant to an election under section 383-77 prior to January 1, 1978, at any time during the one-year period ending December 31, 1975; and
 - (ii) Which are agricultural labor as defined in section 383-9 except service excluded under section 383-7(1), or are domestic service except service excluded under section 383-7(2); except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of those services.

- [(D)] (B) In the case of an individual whose benefit year begins on and after October 1, 1989[,] to January 4, 1992, the individual has been employed as defined in section 383-2 and has been paid wages for insured work during the individual's base period in an amount equal to not less than thirty times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year.
- (C) In the case of an individual whose benefit year begins after January 4, 1992, the individual has been employed as defined in section 383-2 and has been paid wages for such insured work during the individual's base period in an amount equal to not less than twenty-six times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year.
- [(E)] (D) For the purposes of this paragraph, wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if the benefit year begins subsequent to the dates on which the employing unit by which the wages or other remuneration as provided in the definition of weeks of employment in section 383-1 were paid has satisfied the conditions of section 383-1 with respect to becoming an employer."

SECTION 6. Section 383-63, Hawaii Revised Statutes, is amended by amending the definition of "adequate reserve fund" to read as follows:

"Adequate reserve fund" means an amount [which] that is equal to the amount derived by multiplying the benefit cost rate [which] that is the highest during the ten-year period ending on November 30 of each year by the total remuneration paid by all employers, with respect to all employment for which contributions are payable during the last four calendar quarters ending on June 30 of the same year, as reported on contribution reports filed on or before October 31 of the same year. "Remuneration", as used in this [paragraph,] definition, means wages as defined in section 383-10. For the purpose of determining the highest benefit cost rate, the benefit cost rate for the first twelve-consecutive-

calendar-month period beginning with the first day of the first month of the ten-year period and for each succeeding twelve-consecutive-calendar-month period beginning with the first day of each subsequent month shall be computed.

Effective for the calendar year 1992 and thereafter, "adequate reserve fund" means an amount that is equal to one and one-half times the amount derived by multiplying the benefit cost rate that is the highest during the ten-year period ending on November 30 of each year by the total remuneration paid by all employers, with respect to all employment for which contributions are payable during the last four calendar quarters ending on June 30 of the same year, as reported on contribution reports filed on or before October 31 of the same year. "Remuneration", as used in this definition, means wages as defined in section 383-10. For the purpose of determining the highest benefit cost rate, the benefit cost rate for the first twelve-consecutive-calendar-month period beginning with the first day of the first month of the ten-year period and for each succeeding twelve-consecutive-calendar-month period beginning with the first day of each subsequent month shall be computed."

SECTION 7. Section 383-66, Hawaii Revised Statutes, is amended to read as follows:

"§383-66 Contribution rates, how determined. The department, for the nine-month period April 1, 1941, to December 31, 1941, and for each calendar year thereafter, except as otherwise provided in this part, shall classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts with a view to fixing the contribution rates to reflect this experience. The department shall determine the contribution rate of each employer in accordance with the following requirements:

- (1) The standard rate of contributions payable by each employer for any calendar year through 1984 shall be three per cent. For the calendar year 1985 and thereafter the standard rate of contributions payable by each employer shall be five and four-tenths per cent.
- (2) No employer's rate for the calendar year 1942 and for any calendar year thereafter shall be other than the maximum rate unless and until the employer's account has been chargeable with benefits throughout the thirty-six consecutive calendar month period ending on December 31 of the preceding calendar year, except that, for the calendar year 1956 and for each calendar year thereafter, an employer who has not been subject to the law for a sufficient period to meet this requirement may qualify for a rate other than the maximum rate if the employer's account has been chargeable throughout a lesser period but in no event less than the twelve consecutive calendar month period ending on December 31 of the preceding calendar year. For the calendar [year] years 1985 [and for each calendar year thereafter,] through 1991, the contribution rate for a new or newly covered employer shall be the sum of the employer's basic contribution rate of three and six-tenths per cent and the fund solvency contribution rate determined for that year pursuant to section [383-68(c)(2),] 383-68(a), until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year; except that no employer's contribution rate shall be greater than five and four-tenths per cent and no employer with a negative reserve

ratio shall have a contribution rate less than the employer's basic contribution rate. For calendar years 1992 and thereafter, the contribution rate for a new or newly covered employer shall be the contribution rate assigned to any employer with .0000 reserve ratio, until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year.

- (3) [No employer's rate for the calendar year 1965 and for any calendar year thereafter, or remaining calendar quarter thereof, as the case may be, through December 31, 1976, shall be less than the standard rate unless the total assets of the fund as of the end of the previous calendar year, or calendar quarter, were at least \$15,000,000; provided that each employer's rate for any calendar year or any portion thereof, as determined by other applicable provisions of this part, shall be increased by one-half per cent, if the total assets of the fund as of the end of the previous calendar year or calendar quarter were at least \$15,000,000 but less than \$20,000,000, but in no event shall an employer's rate exceed the standard rate.] Any amount credited to this State under section 903 of the Social Security Act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the fund for the purposes of this paragraph. Any advance that may be made to this State under section 1201 of the Social Security Act, whether or not withdrawn from this trust fund, shall be excluded from the fund for the purposes of this paragraph. No employer's rate shall be reduced in any amount which is not allowable as an additional credit, against the tax levied by the federal Unemployment Tax Act pursuant to section 3302(b) of the federal Internal Revenue Code or pursuant to any other federal statute, successor to section 3302(b), which provides for the additional credit now provided for in section 3302(b).
- (4) If, when any classification of employers is to be made (which may be after the commencement of the period for which the classification is to be made), the department finds that any employer has failed to file any report required in connection therewith or has filed a report [which] that the department finds incorrect or insufficient, the department shall notify the employer thereof by mail addressed to the employer's last known address. Unless the employer files the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of the notice, the maximum rate of contributions shall be payable by the employer for the period for which the contribution rate is to be fixed. Effective January 1, 1987, the director, for excusable failure, may redetermine the assignment of the maximum contribution rate in accordance with this section, provided the employer files all reports as required by the department and submits a written request for redetermination before December 31 of the year for which the contribution rate is to be fixed.
- (5) For the purpose of sections 383-63 to 383-69, if after December 31, 1939, any employing unit in any manner succeeds to or acquires the organization, trade, or business, or substantially all the assets thereof (whether or not the successor or acquiring unit was an "employing unit", as that term is defined in section 383-1 prior to the acquisition), or after December 31, 1988 and prior to December 31, 1992

acquires a clearly identifiable and segregable portion of the organization, trade, or business of another which at the time of the acquisition was an employer subject to this chapter, and the successor continues or resumes the organization, trade, or business and continues to employ all or nearly all of the predecessor's employees, or the successor continues or resumes the clearly identifiable and segregable portion of the organization, trade, or business and continues to employ all or nearly all of the employees of the clearly identifiable and segregable portion, an application may be made for transfer of the predecessor's experience record. If the predecessor employer has submitted all information and reports required by the department including amended quarterly wage reports identifying the employees transferred or retained and executed and filed with the department before December 31 of the calendar year following the calendar year in which the acquisition occurred on a form approved by the department a waiver relinquishing the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record with respect to its separate account, actual contribution payment, and benefit chargeability experience, annual payrolls and other data for the purpose of obtaining a reduced rate, and requesting the department to permit the experience record to inure to the benefit of the successor employing unit upon request of the successor employing unit, the experience record for rate computation purposes of the predecessor shall thereupon be deemed the experience record of the successor and the experience record shall be transferred by the department to the successor employing unit and shall become the separate account of the employing unit as of the date of the acquisition. Benefits chargeable to the predecessor employer or successor employer in case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, after the date of acquisition on account of employment prior to the date of the acquisition shall be charged to the separate account of the successor employing unit. In case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, the experience record that inures to the benefit of the successor employer shall be determined as follows:

- (A) Wages, as used in section 383-61, attributable to the clearly identifiable and segregable portion shall be for the period beginning with the most recent three consecutive calendar years immediately preceding the determination of rates under section 383-63 to 383-69 and through the date of acquisition; and
- (B) Reserve balance attributable to the clearly identifiable and segregable portion shall be the amount determined by dividing the wages, as used in section 383-61, of the clearly identifiable and segregable portion in the three calendar years (or that lesser period as the clearly identifiable and segregable portion may have been in operation) immediately preceding the computation date of the rating period prior to which the acquisition occurred by the total taxable payrolls of the predecessor for the three-year period (or that lesser period as the clearly identifiable and segregable portion may have been in operation) and multiplying the quotient by the reserve balance of the predecessor employer calculated as of the acquisition date.

Provided the waiver or waivers required herein are filed with the department within sixty days after the date of acquisition, the successor employing unit, unless already an employer subject to this chapter, shall be subject from the date of acquisition to the rate of contribution of the predecessor or of two or more predecessors if they have the same contribution rate. If there are two or more predecessors having different contribution rates, the successor shall be subject to the rate prescribed for new or newly covered employers under paragraph (2) until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessors and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of the combined experience. If the successor at the time of the transfer is an employer subject to this chapter, the rate of contribution to which the successor is then subject shall remain the same until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessor and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of the combined experience. For the purpose of determination of rates under sections 383-63 to 383-69 of all successor employing units, waivers as required herein, if not previously filed as hereinabove provided, shall be filed with the department not later than March 1 of the year for which the rate is determined; provided that no waiver shall be accepted by the department for filing unless the employing unit executing the waiver has filed all reports and paid all contributions required by this chapter.

- (6) The department may prescribe rules for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and, in accordance with the rules and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, shall maintain the joint account as if it constituted a single employer's account. The rules shall be consistent with the federal requirements for additional credit allowance in section 3303 of the federal Internal Revenue Code and consistent with this chapter.
- (7) Whenever there is an amendment to this chapter which, if immediately effective, would change an employer's rate of contributions, the rate of the employer shall be changed in accordance with the amendment and the new rate shall apply for the remainder of the calendar year beginning with the calendar quarter immediately following the effective date of the amendment providing for the change, unless otherwise provided by the amendment.
- (8) For the purposes of this section "contribution rate" shall mean the basic contribution rate as defined in section 383-68 when applied to calendar year 1978 or any calendar year thereafter.
- (9) For the purposes of this section, the terms "employing unit," "employer," "predecessor," and "successor" shall include both the singular and the plural of each term. Nothing in this section shall prevent two or more successor employing units, which each succeed to

or acquire a clearly identifiable and segregable portion of a predecessor employing unit, from gaining the benefit of the clearly identifiable and segregable portion of the predecessor's experience record.

Provided that the terms of this section are complied with, nothing herein shall bar a predecessor employer from waiving the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record in favor of a successor employer where the successor acquired a clearly identifiable and segregable portion of the predecessor's organization, trade, or business after December 31, 1988 and prior to December 31, 1992."

SECTION 8. Section 383-68, Hawaii Revised Statutes, is amended to read as follows:

"§383-68 Contribution rate schedules; fund solvency rate schedule; rates based on experience. [(a) Before December 31 of each year through calendar year 1975 the contribution rate schedule applicable for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund, in accordance with the provisions of this subsection and subsection (b). If the current reserve fund is less than the adequate reserve fund, contribution rate schedule I in subsection (b) shall apply; if the current reserve fund equals or exceeds the adequate reserve fund but is less than 1.5 times the adequate reserve fund, contribution rate schedule II in subsection (b) shall apply; and if the current reserve fund equals or exceeds 1.5 times the adequate reserve fund, contribution rate schedule III in subsection (b) shall apply. If, however, the total assets of the fund available for the payment of benefits at the end of a calendar year, or calendar quarter, are \$15,000,000 or more but less than \$20,000,000, the applicable contribution rate schedule for the following calendar year, or remaining calendar quarters in the calendar year, as the case may be, shall be contribution rate schedule I, and if the assets are less than \$15,000,000 at the end of a calendar year, or calendar quarter, this subsection and subsection (b) shall not apply during the following calendar year, or remaining calendar quarters in the calendar year, as the case may be.

(b) Subject to the requirements of sections 383-63 to 383-67 and 383-69, an employer's contribution rate for any calendar year through December 31, 1976, shall be that rate which appears on the same line as the employer's reserve ratio for the year in the contribution rate schedule applicable for the year as specified in subsection (a).

CONTRIBUTION RATE SCHEDULE

Employer Reserve Ratio	Contribution Rate		
	Schedule I	Schedule II	Schedule III
.1000 or more	.8 per cent	.4 per cent	.2 per cent
.0950 - .0999	1.0 per cent	.6 per cent	.4 per cent
.0900 - .0949	1.2 per cent	.8 per cent	.6 per cent
.0850 - .0899	1.4 per cent	1.0 per cent	.8 per cent
.0800 - .0849	1.6 per cent	1.2 per cent	1.0 per cent
.0750 - .0799	1.8 per cent	1.4 per cent	1.2 per cent
.0700 - .0749	2.0 per cent	1.6 per cent	1.4 per cent
.0650 - .0699	2.2 per cent	1.8 per cent	1.6 per cent
.0600 - .0649	2.4 per cent	2.0 per cent	1.8 per cent
.0550 - .0599	2.6 per cent	2.2 per cent	2.0 per cent

CONTRIBUTION RATE SCHEDULE

Employer Reserve Ratio	Contribution Rate		
	Schedule I	Schedule II	Schedule III
.0500 - .0549	2.8 per cent	2.4 per cent	2.2 per cent
.0450 - .0499	2.8 per cent	2.6 per cent	2.4 per cent
.0400 - .0449	2.8 per cent	2.8 per cent	2.6 per cent
.0350 - .0399	2.8 per cent	2.8 per cent	2.8 per cent
Less than .0350	3.0 per cent	3.0 per cent	3.0 per cent

(c) For calendar years 1979 through 1984 the contribution rate of any employer eligible for a reduced rate in accordance with section 383-66(2) shall be the sum of the employer's basic contribution rate for such year determined pursuant to paragraph (1) of this subsection and the fund solvency contribution rate determined for such year pursuant to paragraph (2) of this subsection; except that no employer's contribution rate shall be less than zero, no employer's contribution rate shall be greater than four and one-half per cent for calendar years 1979 through 1984, and no employer with a negative reserve ratio shall have a contribution rate less than such employer's basic contribution rate.

- (1) Subject to the requirements of sections 383-63 through 383-67 and section 383-69, an employer's basic contribution rate for a calendar year shall be that rate which appears on the same line as the employer's reserve ratio for the year in the basic contribution rate schedule set forth in this paragraph.

BASIC CONTRIBUTION RATE SCHEDULE

Reserve Ratio	Contribution Rate
.1500 and over	.2 per cent
.1400 - .1499	.4 per cent
.1300 - .1399	.6 per cent
.1200 - .1299	.8 per cent
.1100 - .1199	1.0 per cent
.1000 - .1099	1.2 per cent
.0900 - .0999	1.4 per cent
.0800 - .0899	1.6 per cent
.0700 - .0799	1.8 per cent
.0600 - .0699	2.2 per cent
.0500 - .0599	2.6 per cent
0 - .0499	3.0 per cent
Less than 0	4.5 per cent

(2)] (a) Before December 31 of each year the fund solvency contribution rate applicable for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund. The fund solvency contribution rate shall apply for [a calendar year] calendar years 1985 through 1991 and shall be that rate [which] that appears on the same line as the ratio (rounded to the nearest hundredth) of the current reserve fund to the adequate reserve fund in the fund solvency contribution rate schedule set forth in this paragraph.

FUND SOLVENCY CONTRIBUTION RATE SCHEDULE

Ratio of Current Reserve Fund to Adequate Reserve Fund	Fund Solvency Contribution Rate
2.00 or more	- .5 per cent
1.50 to 1.99	-.2 per cent
1.00 to 1.49	0
.90 to .99	+ .4 per cent
.80 to .89	+ .8 per cent
.60 to .79	+1.2 per cent
.40 to .59	+1.6 per cent
.20 to .39	+2.0 per cent
Less than .20	+2.4 per cent

[(d)] (b) For calendar [year] years 1985 [and for each calendar year thereafter] through 1991 the contribution rate of any employer eligible for a reduced rate in accordance with section 383-66(2) shall be the sum of the employer's basic contribution rate for such year determined pursuant to this subsection and the fund solvency contribution rate determined for such year pursuant to subsection [(c)(2);] (a); except that no employer's contribution rate shall be less than zero, no employer's contribution rate shall be greater than five and four-tenths per cent, and no employer with a negative reserve ratio shall have a contribution rate less than such¹ that employer's basic contribution rate.

Subject to the requirements of sections 383-63 to 383-67 and 383-69, an employer's basic contribution rate for a calendar year shall be that rate which appears on the same line as the employer's reserve ratio for the year in the basic contribution rate schedule set forth in this subsection.

BASIC CONTRIBUTION RATE SCHEDULE

Reserve Ratio	Contribution Rate
.1500 and over	.2 per cent
.1400 to .1499	.4 per cent
.1300 to .1399	.6 per cent
.1200 to .1299	.8 per cent
.1100 to .1199	1.0 per cent
.1000 to .1099	1.2 per cent
.0900 to .0999	1.4 per cent
.0800 to .0899	1.6 per cent
.0700 to .0799	1.8 per cent
.0600 to .0699	2.2 per cent
.0500 to .0599	2.6 per cent
.0300 to .0499	3.0 per cent
.0000 to .0299	3.6 per cent
-.0000 to -.0499	4.2 per cent
-.0500 to -.0999	4.8 per cent
-.1000 and less	5.4 per cent

(c) Effective with calendar year 1992 and thereafter, before December 31 of the previous year the contribution rate schedule for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund, in accordance with this subsection and subsection (d).

(1) Whenever the ratio of the current reserve fund to the adequate reserve fund is greater than 1.69, contribution rate schedule A shall apply.

- (2) Whenever the ratio of the current reserve fund to the adequate reserve fund is 1.3 to 1.69, contribution rate schedule B shall apply.
 - (3) Whenever the ratio of the current reserve fund to the adequate reserve fund is 1.0 to 1.29, contribution rate schedule C shall apply.
 - (4) Whenever the ratio of the current reserve fund to the adequate reserve fund is .80 to .99, contribution rate schedule D shall apply.
 - (5) Whenever the ratio of the current reserve fund to the adequate reserve fund is .60 to .79, contribution rate schedule E shall apply.
 - (6) Whenever the ratio of the current reserve fund to the adequate reserve fund is .40 to .59, contribution rate schedule F shall apply.
 - (7) Whenever the ratio of the current reserve fund to the adequate reserve fund is .20 to .39, contribution rate schedule G shall apply.
 - (8) Whenever the ratio of the current reserve fund to the adequate reserve fund is less than .20, contribution rate schedule H shall apply.
- (d) Subject to the requirements of section 383-63 to 383- 69, an employer's contribution rate for calendar year 1992 and for each calendar year thereafter shall be that rate which appears on the same line as the employer's reserve ratio for that year in the contribution rate schedule applicable for the year as specified in subsection (c).

CONTRIBUTION RATE SCHEDULES (rates in percentages)

<u>Reserve Ratio</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
<u>.1500 and over</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.2</u>	<u>0.6</u>	<u>1.2</u>	<u>1.8</u>	<u>2.4</u>
<u>.1400 to .1499</u>	<u>0.0</u>	<u>0.0</u>	<u>0.1</u>	<u>0.4</u>	<u>0.8</u>	<u>1.4</u>	<u>2.0</u>	<u>2.6</u>
<u>.1300 to .1399</u>	<u>0.0</u>	<u>0.0</u>	<u>0.2</u>	<u>0.6</u>	<u>1.0</u>	<u>1.6</u>	<u>2.2</u>	<u>2.8</u>
<u>.1200 to .1299</u>	<u>0.0</u>	<u>0.1</u>	<u>0.4</u>	<u>0.8</u>	<u>1.2</u>	<u>1.8</u>	<u>2.4</u>	<u>3.0</u>
<u>.1100 to .1199</u>	<u>0.0</u>	<u>0.2</u>	<u>0.6</u>	<u>1.0</u>	<u>1.4</u>	<u>2.0</u>	<u>2.6</u>	<u>3.2</u>
<u>.1000 to .1099</u>	<u>0.1</u>	<u>0.3</u>	<u>0.8</u>	<u>1.2</u>	<u>1.6</u>	<u>2.2</u>	<u>2.8</u>	<u>3.4</u>
<u>.0900 to .0999</u>	<u>0.3</u>	<u>0.5</u>	<u>1.0</u>	<u>1.4</u>	<u>1.8</u>	<u>2.4</u>	<u>3.0</u>	<u>3.6</u>
<u>.0800 to .0899</u>	<u>0.5</u>	<u>0.7</u>	<u>1.2</u>	<u>1.6</u>	<u>2.0</u>	<u>2.6</u>	<u>3.2</u>	<u>3.8</u>
<u>.0700 to .0799</u>	<u>0.7</u>	<u>0.9</u>	<u>1.4</u>	<u>1.8</u>	<u>2.2</u>	<u>2.8</u>	<u>3.4</u>	<u>4.0</u>
<u>.0600 to .0699</u>	<u>0.9</u>	<u>1.1</u>	<u>1.6</u>	<u>2.0</u>	<u>2.4</u>	<u>3.0</u>	<u>3.6</u>	<u>4.2</u>
<u>.0500 to .0599</u>	<u>1.1</u>	<u>1.3</u>	<u>1.8</u>	<u>2.2</u>	<u>2.6</u>	<u>3.2</u>	<u>3.8</u>	<u>4.4</u>
<u>.0300 to .0499</u>	<u>1.3</u>	<u>1.5</u>	<u>2.0</u>	<u>2.6</u>	<u>3.0</u>	<u>3.6</u>	<u>4.2</u>	<u>4.8</u>
<u>.0000 to .0299</u>	<u>1.7</u>	<u>1.9</u>	<u>2.4</u>	<u>3.0</u>	<u>3.4</u>	<u>4.0</u>	<u>4.6</u>	<u>5.2</u>
<u>-.0000 to -.0499</u>	<u>2.1</u>	<u>2.3</u>	<u>2.8</u>	<u>3.4</u>	<u>3.8</u>	<u>4.4</u>	<u>5.0</u>	<u>5.4</u>
<u>-.0500 to -.0999</u>	<u>2.5</u>	<u>2.7</u>	<u>3.2</u>	<u>4.0</u>	<u>4.4</u>	<u>5.0</u>	<u>5.4</u>	<u>5.4</u>
<u>-.1000 to -.4999</u>	<u>2.9</u>	<u>3.1</u>	<u>3.6</u>	<u>4.6</u>	<u>5.0</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>
<u>-.5000 to -.9999</u>	<u>3.4</u>	<u>3.6</u>	<u>4.2</u>	<u>5.2</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>
<u>-1.0000 to -1.4999</u>	<u>4.1</u>	<u>4.2</u>	<u>4.8</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>
<u>-1.5000 to -1.9999</u>	<u>4.7</u>	<u>4.8</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>
<u>-2.0000 and less</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>	<u>5.4</u>

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 10. This Act shall take effect upon its approval.

(Approved April 29, 1991.)

Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 69

S.B. NO. 1819

A Bill for an Act Relating to Agricultural Leases.

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

SECTION 1. Act 237, Session Laws of Hawaii 1988, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 1988, and shall be repealed on July 1, [1991] 1993.”

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 29, 1991.)

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S.B. NO. 1351

A Bill for an Act Relating to the Creation of the Randolph-Sheppard Revolving Account.

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

SECTION 1. Chapter 347, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§347- **Randolph-Sheppard revolving account.** (a) There is established within the state treasury the Randolph-Sheppard revolving account. The revolving account shall be used by the department of human services for:

- (1) The provision of the following benefits for blind vendors:
 - (A) A retirement or pension plan;
 - (B) Health insurance; and
 - (C) Sick and vacation leave;
- (2) The maintenance and replacement of equipment used in the blind vending program;
- (3) The purchase of new equipment to be used in the blind vending program; and
- (4) The provision of management services, which shall include, but not be limited to:
 - (A) The hiring of consultants;
 - (B) The sponsoring of training seminars;
 - (C) Transportation;
 - (D) Per diem for vendors to attend meetings of the state committee of blind vendors;
 - (E) Services for the state committee of blind vendors; and
 - (F) Other costs related to the blind vending program.

(b) Income from vending machines on federal, state, and county properties that are within reasonable proximity to, and in direct competition with, a blind vendor may be deposited into the account and then disbursed to the blind vendor.

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- (c) The revolving account shall consist of funds derived from:
 - (1) Vending machine income generated by federal, state, and county operations;
 - (2) Any other legally accepted source of income; and
 - (3) Donations.”

SECTION 2. New statutory material is underscored.¹

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

(Approved April 30, 1991.)

Note

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

ACT 71

H.B. NO. 45

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-35, Hawaii Revised Statutes, is amended to read as follows:

“§386-35 Benefit adjustment. (a) Effective [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter, any employee whose date of work injury is [on or] before [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter, and who is at any time after [said] the work injury determined to be permanently and totally disabled shall be paid, without application, a supplemental allowance by the responsible employer calculated in accordance with the following provisions:

- (1) In any case where [that] the employee is entitled to receive the maximum weekly income benefit applicable on the date of the [employee's] work injury, the supplemental allowance shall be an amount which when added to [such] the benefit will equal the maximum weekly benefit as of [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter; or
- (2) In any case where [that] the employee is entitled to receive less than the maximum weekly income benefit applicable on the date of the [employee's] work injury, the supplemental allowance shall be an amount equal to the maximum weekly income benefit as of [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter, multiplied by the ratio of [that] the employee's weekly income benefit to the maximum weekly income benefit applicable on the date of the [employee's] work injury, minus [that] the employee's current weekly income benefit.

(b) The employer shall be entitled to reimbursement from the special compensation fund for the additional amount paid under subsection (a). Requests for reimbursements shall be filed annually with the department by January 31 of the subsequent calendar year. The director shall disapprove requests that are not filed properly or not filed in a timely manner, except for good cause shown.

(c) Effective [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter, any employee whose date of work injury is [on or] before

[June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter, and who is at any time after [said] the work injury determined to be permanently and totally disabled, and who is further being paid weekly income benefits for permanent total disability by the special compensation fund shall be paid, without application, a supplemental allowance in accordance with the following provisions:

- (1) In any case where [that] the employee is entitled to receive the maximum weekly income benefit applicable on the date of the work injury, the supplemental allowance shall be an amount which when added to [such] the benefit will equal the maximum weekly benefit as of [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter;
- (2) In any case where [that] the employee is entitled to receive less than the maximum weekly income benefit applicable on the date of the work injury, the supplemental allowance shall be an amount equal to the maximum weekly income benefit as of [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter, multiplied by the ratio of [that] the employee's current weekly income benefit to the maximum weekly income benefit applicable on the date of the work injury, minus [that] the employee's current weekly income benefit[.];
- (3) In any case where [that] the employee is entitled to receive weekly benefits at a fifty per cent rate, the supplemental allowance shall be an amount equal to the maximum weekly income benefit as of [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter, multiplied by twice the ratio of [that] the employee's current weekly income benefit to the maximum weekly income benefit applicable on the date of the work injury minus [that] the employee's current weekly income benefit[.]; or
- (4) In any case where [that] the employee is no longer receiving weekly benefits, the supplemental allowance shall be an amount equal to the maximum weekly income benefit as of [June 18, 1980,] January 1, 1992, and January 1 of every tenth year thereafter, multiplied by the ratio of [that] the employee's last weekly income benefit to the maximum weekly income benefit applicable on the date of the work injury."

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

SECTION 3. This Act shall not be construed to eliminate the right to supplemental adjustment benefits preceding the effective date of this Act.

SECTION 4. This Act shall take effect on January 1, 1992.

(Approved April 30, 1991.)

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Weekly benefits for dependents. In addition, the employer shall pay weekly benefits to the deceased’s dependents at the percentages of the deceased’s average weekly wages specified below, taking into account not more than the maximum weekly benefit rate prescribed in section 386-31 divided by [.667] .6667 and not less than the minimum prescribed in [said] the section divided by [.667.] .6667.

To the dependent widow or widower, if there [be] are no dependent children, fifty per cent.

To the dependent widow or widower, if there [be] are one or more dependent children of the deceased, sixty-six and two-thirds per cent. The compensation to the widow or widower shall be for the use and benefit of the widow or widower and of the dependent children, and the director of labor and industrial relations [may] from time to time may apportion the compensation between them in such way as the director deems best.

If there [be] is no dependent widow or widower, but a dependent child, then to the child forty per cent, and if there [be] are more than one dependent child, then to the children in equal parts sixty-six and two-thirds per cent.

If there [be] is no dependent widow, widower, or child, but there [be] is a dependent parent, then to the parent, if wholly dependent fifty per cent, or if partially dependent twenty-five per cent; if both parents [be] are dependent, then one-half of the foregoing compensation to each of them; if there [be] is no dependent parent, but one or more dependent grandparents, then to each of them the same compensation as to a parent.

If there [be] is no dependent widow, widower, child, parent or grandparent, but there [be] is a dependent grandchild, brother, or sister, or two or more of them, then to [such] those dependents thirty-five per cent for one dependent, increased by fifteen per cent for each additional dependent, to be divided equally among the dependents if more than one.”

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, 1991.)

A Bill for an Act Relating to the Sale of Vegetable and Agricultural Seed.

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

SECTION 1. Section 150-21, Hawaii Revised Statutes, is amended to read as follows:

“§150-21 Definitions. As used in this chapter:

[The terms shall conform insofar as possible with those of the Federal Seed Act and regulations issued thereunder.]

“Advertisement” means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

“Agricultural [seeds]” seed” includes the [seeds] seed of grass, forage, cereal, and fiber crops and other kinds of [seeds] seed commonly recognized within the State as agricultural [seeds] seed and mixtures of these [seeds] seed[, and may include noxious weed seeds when the department determines that they are being used as agricultural seeds].

“Blend” means agricultural seed consisting of more than one variety of a kind, each in excess of five per cent by weight of the whole.

[“Board” means the board of agriculture.]

“Certifying agency” means (1) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or (2) an agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under (1).

[“Chairperson” means the chairperson of the board of agriculture.]

“Department” means the Hawaii department of agriculture.

“Kind” means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, barley, lettuce, and alfalfa.

[“Labeling”] “Label” or “labeling” includes all [labels and other] written, printed, or graphic representations in any form whatsoever, [including invoices,] accompanying [and] or pertaining to any seed, whether in bulk or in containers[.], and includes representations on invoices.

“Lot” means a definite quantity of seed identified by a [lot] number[,] or other identification, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.

“Mixture” or “mixed” means agricultural seed consisting of more than one kind, each in excess of five per cent of the whole.

“Noxious weed [seeds]” seed” means the [seeds] seed [or bulblets] of [any] plant species [that not only reproduces by seed but also spreads by underground roots, stems, and other reproductive parts and which, when well established, is] designated by the department by rule as being highly destructive and difficult to control or eradicate in the State by ordinary, good cultural practices[.], herbicides, and other control measures, or is, or which may be likely to become injurious, harmful, or deleterious to the agricultural, horticultural, aquacultural, or livestock industry of the State and to forest and recreational areas and conservation districts of the State.

“Person” includes any individual, partnership, corporation, company, society, or association.

The terms “pure seed,” “germination,” and other seed labeling and testing terms in common usage shall be defined as in the Rules for Seed Testing published by the Association of Official Seed Analysts.

“Record” means all label information such as analysis and test results, and other information relating to the shipment and sale of seed, such as invoices, vouchers, and freight bills.

“State” means the State of Hawaii.

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“Stop sale order” means any written or printed notice or order given or issued by the department restraining the sale of agricultural and vegetable seed.

[“Type” means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.]

“Variety” means a subdivision of a kind characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other plants of the same kind.

“Vegetable [seeds] seed” includes the [seeds] seed of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable [seeds] seed in the State.

“Vendor” means any person engaged in selling or offering for sale agricultural or vegetable seed for planting purposes.

“Weed [seeds]” seed” includes noxious [weeds seeds] weed seed and the [seeds or bulblets] seed of all plants generally recognized as weeds within the State.”

SECTION 2. Section 150-22, Hawaii Revised Statutes, is amended to read as follows:

“§150-22 Rules. Subject to chapter 91, the department may adopt rules with respect to:

- (1) Designation of noxious weed [seeds] seed for the purpose of this chapter;
- (2) Maximum amount of noxious weed [seeds] seed which may be found in agricultural or vegetable [seeds] seed sold [or found] in the State;
- (3) Germination standards for agricultural and vegetable [seeds;] seed;
- (4) Inspection, sampling, and testing of [seeds] seed at the request of interested persons, and charges to be made for these services;
- (5) Minimum standards pertaining to the process of certifying [seeds;] seed;
- (6) Other requirements regarding the sale and labeling of [seeds and licensing of seed importers,] seed and seed licenses, including the license fee, as it deems necessary to effectuate this chapter.

In adopting rules with respect to standards for agricultural and vegetable [seeds] seed and tolerances of noxious weed [seeds,] seed, the department shall follow as closely as practicable the standards and tolerances [established under] of the Federal Seed Act[.], or as adopted by the Association of Official Seed Analysts.”

SECTION 3. Section 150-23, Hawaii Revised Statutes, is amended to read as follows:

“§150-23 Prohibiting sales; germination tests. A person may [bring into the State and] sell, offer, or expose for sale within the State any agricultural or vegetable seed for [sowing] planting purposes, provided:

- (1) The seed has been labeled in accordance with sections 150-24 and 150-25;
- (2) No false or misleading advertisement has been made with respect to the seed;
- (3) The amount of noxious weed [seeds] seed is not in excess of tolerances established by rules of the department;
- (4) A testing of the seed has been completed within nine months, exclu-

sive of the calendar month in which the test was completed, to determine the percentage of germination. The department, by rule, may extend the nine-month limitation for [seeds] seed that [have] has been packaged or processed under conditions that would greatly extend the viability of the [seeds.] seed;

- (5) Descriptive words or phrases on labels are clearly distinguishable from the kind and variety names.”

SECTION 4. Section 150-24, Hawaii Revised Statutes, is amended to read as follows:

“§150-24 **Agricultural [seeds;] seed; labels.** Each container of agricultural seed that is [brought into the State and] sold or offered for sale within the State for [sowing] planting purposes shall bear or have attached, in a conspicuous place, a plainly written or printed label or tag in the English language, giving the following information:

- (1) Commonly accepted name of[:
 - (A) Kind; or
 - (B) Kind and variety; or
 - (C) Kind] The kind and [type] variety, or kind and the phrase “variety not stated” of each agricultural seed component in excess of five per cent of the whole, and the percentage by weight of each in the order of its predominance.
- (2) Where more than one component is required to be named, the [word] words “mixture” or “mixed” for seed consisting of more than one kind, or “blend” for seed consisting of more than one variety of the same kind [shall be shown conspicuously on the label].
- [(2)] (3) Lot number or other lot identification [assigned by the department].
- [(3)] (4) Percentage by weight of all weed [seeds.] seed.
- [(4)] (5) Name and approximate number of each kind of noxious weed [seeds] seed to the extent required by rules of the department.
- [(5)] (6) Percentage by weight of agricultural [seeds] seed other than those required to be named on the label.
- [(6)] (7) Percentage by weight of inert matter.
- [(7)] (8) For each named agricultural seed:

 - (A) The percentage of germination, exclusive of hard seed;
 - (B) The percentage of hard seed, if present; and
 - (C) The calendar month and year the test was completed to determine the percentages.
 Following (A) and (B), the additional statement, “total germination and hard [seed”.] seed.” may be stated if desired.
- [(8)] (9) Name and address of the person who labeled the seed [if it was labeled in the State. If not labeled within the State, the name and address of the person who imported the seed or caused the seed to be imported into the State.] or who sells, offers, or exposes the seed for sale within the State.

The department, by rule, may require additional information on the label or tag for agricultural [seeds] seed that [are] is packaged or processed, such as pelleted or coated [seeds,] seed, and sold in specialized containers such as packets, hermetically sealed containers, tapes, or any other innovative method or container.”

SECTION 5. Section 150-25, Hawaii Revised Statutes, is amended to read as follows:

“**§150-25 Vegetable [seeds;] seed: labels.** Each container of vegetable seed that is [brought into the State and] sold or offered for sale within the State for [sowing] planting purposes shall bear or have attached, in a conspicuous place, a plainly written or printed label or tag in the English language, giving the following information:

- (1) Name of kind and variety of seed.
- (2) For [seeds] seed which [germinate] germinates less than the standard [last] established by rules of the department:
 - (A) Percentage of germination, exclusive of hard seed.
 - (B) Percentage of hard seed, if present.
 - (C) The calendar month and year the test was completed to determine the percentages.
 - (D) The words “below standard” in not less than eight-point type.
- (3) Name and address of the person who labeled the seed [if it was labeled in the State. If not labeled within the State, the name and address of the person who imported the seed or caused the seed to be imported into the State.] or who sells, offers, or exposes the seed for sale within the State.

The department, by rule, may require additional information on the label or tag for vegetable [seeds] seed that [are] is packaged or processed, such as pelleted or coated [seeds,] seed, and sold in specialized containers such as packets, hermetically sealed containers, tapes, or any other innovative method or container.”

SECTION 6. Section 150-26, Hawaii Revised Statutes, is amended to read as follows:

“**§150-26 Removal from sale.** Any seed offered for sale in violation of this chapter or any rule adopted thereunder, shall be removed from sale by the [vender] vendor upon receiving [notice] a stop sale order from the department [of the violation]. The [vender] vendor shall withhold the [seeds] seed from sale until the violation has been corrected[.] and a written release has been issued by the department.”

SECTION 7. Section 150-27, Hawaii Revised Statutes, is amended to read as follows:

“**§150-27 [Seed sampling and testing.] Duties and authority of the department.** [The department, through its authorized agents and inspectors, may enter any premises and procure a sample of seed offered for sale or found in the State in bulk, lot, sack, or package. The sample shall be divided into two approximately equal parts. Each part shall then be sealed and one part promptly delivered to the person possessing, selling, or offering for sale the seed, and the other to the laboratory maintained by the department. A label shall be placed on each sample stating the name of the contents, the name of the person from whose stock the samples was taken, and the time and place the sample was taken. Each label shall be signed by an authorized agent of the department and by the owner, custodian,

or representative of the lot, sack, or package from which the sample was taken or by the owner, custodian, or representative of the seed found in bulk from which the sample was taken. The signature shall be affixed at the time of the sealing of the sample. If the signature of the owner, custodian, or representative cannot be obtained, or is refused, that fact shall be noted on the label by the department. Upon completion of the test of the sample, the department shall promptly forward a copy of the test results to the person to whom a portion of the sample was delivered pursuant to this section.] (a) The department may, through its authorized agents and inspectors:

- (1) Enter any premises during regular business hours in order to have access to seed and records related to seed subject to this chapter.
- (2) Cooperate with the United States Department of Agriculture and other agencies or associations in seed law enforcement.
- (3) Enforce a stop-sale order issued to the vendor for any agricultural or vegetable seed in violation of this chapter.
- (b) It is the duty of the department to:
 - (1) Inspect, sample, make analysis of, and test seed to determine whether the seed is in compliance with this chapter.
 - (2) Inspect records to determine whether the seed is in compliance with this chapter.
 - (3) Forward to the appropriate party, a report of the analysis and test result, and a stop sale order if necessary, upon completion of the analysis and test of the seed.
 - (4) Provide on request, seed testing and analyzing service to any person."

SECTION 8. Section 150-29, Hawaii Revised Statutes, is amended to read as follows:

"§150-29 [Importers;] Seed licenses. [No person shall import or cause to be imported into the State for purposes of sale or resale, any agricultural or vegetable seed for sowing purposes unless the person has a license to do so from the department.] A seed license from the department is required of:

- (1) Every person whose name and address are required on the label or who imports into the State for sale or resale, agricultural or vegetable seed for planting purposes.
- (2) Every person who opens any bag or container of agricultural or vegetable seed and sells the contents for planting purposes within the State.

Application for the license shall be made to the department in accordance with rules adopted by the department. All licenses shall expire on June 30 of each year."

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 April 30, 1991.)

ACT 74

H.B. NO. 793

A Bill for an Act Relating to Exports of Flowers and Foliage.

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

SECTION 1. Section 147-36, 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 30, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 75

H.B. NO. 831

A Bill for an Act Relating to the Medical Claims Conciliation Panel.

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

SECTION 1. Section 671-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each medical claim conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one physician or surgeon licensed to practice under chapter 453 or chapter 460. The chairperson shall be appointed by the director of the department of commerce and consumer affairs from a list of eligible persons approved 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 physician or surgeon shall be appointed by the chairperson [from a list of not less than thirty-five physicians or surgeons licensed under chapter 453 submitted annually by the board of medical examiners or from a list of not less than eight physicians and surgeons licensed under chapter 460 submitted annually by the board of osteopathic examiners.] and shall be currently licensed and in good standing under chapter 453 or under chapter 460.

The chairperson shall preside at the meetings of the panel. The chairperson, [and] all panel members, and any consultant called by the panel to appear before the panel shall be compensated at the rate of \$300 per claim [handled] which will become payable when the decision of the panel is submitted. At the discretion of the director, the chairperson, panel members, and any consultant called by the panel to appear before the panel, may be compensated at one-half the amount of compensation specified in this section, if the claim is disposed of by any means prior to the hearing by the panel. The chairperson, all panel members, and any consultant called by the panel to appear before the panel also [and]

shall be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties on or for the panel. These costs shall be paid by the department of commerce and consumer affairs.

The office and meeting space, secretarial and clerical assistance, office equipment, and office supplies for the panel shall be furnished by the department. The chairperson may designate any alternative meeting place or site for the hearing.

The board of medical examiners and board of osteopathic examiners shall each prepare a list of physicians, surgeons, or physicians and surgeons, as the case may be, along with their respective specialties. These physicians and surgeons shall be eligible to serve as [who shall then be considered] consultants to the panel in their respective fields. Panel members may consult with other legal, medical, 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 the person's appearance before the panel. These costs shall be paid by 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 April 30, 1991.)

ACT 76

H.B. NO. 894

A Bill for an Act Relating to State Planning.

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

SECTION 1. Chapter 226, Hawaii Revised Statutes, is amended by amending Part II to read as follows:

“PART II. PLANNING COORDINATION AND IMPLEMENTATION

§226-51 Purpose. The purpose of this part is to establish a statewide planning system to coordinate and guide all major state and county activities and to implement the overall theme, goals, objectives, policies, and priority guidelines.

§226-52 Statewide planning system. (a) The statewide planning system shall consist of the following policies, plans, and programs:

- (1) The overall theme, goals, objectives, and policies established in this chapter that shall provide the broad guidelines for the State[.];
- (2) The priority guidelines established in this chapter that shall provide guidelines for decisionmaking by the State and the counties for the immediate future and set priorities for the allocation of resources. The formulation and revision of state functional plans shall be in conformance with the priority guidelines[.];
- (3) State functional plans that shall be prepared to address, but not be limited to, the areas of agriculture, conservation lands, education, energy, higher education, health, historic preservation, housing, recreation, tourism, and transportation[, and water resources development]. The preparing agency for each state functional plan shall

also consider applicable federal laws, policies, or programs that impact upon the functional plan area. State functional plans shall define, implement, and be in conformance with the overall theme, goals, objectives, policies, and priority guidelines contained within this chapter. County general plans and development plans shall be taken into consideration in the formulation and revision of state functional plans[.];

- (4) County general plans that shall indicate desired population and physical development patterns for each county and regions within each county. In addition, county general plans or development plans shall address the unique problems and needs of each county and regions within each county. County general plans or development plans shall further define the overall theme, goals, objectives, policies, and priority guidelines contained within this chapter. State functional plans shall be taken into consideration in amending the county general plans[.]; and
- (5) State programs that shall include[,] but not be limited to[, those] programs involving coordination and review; research and support; design, construction, and maintenance; services; and regulatory powers. State programs that exercise coordination and review functions shall include[,] but not be limited to[,] the state clearinghouse process, the capital improvements program, and the coastal zone management program. State programs that exercise regulatory powers in resource allocation shall include[,] but not be limited to[,] the land use and management programs administered by the land use commission and the board of land and natural resources. State programs shall further define, implement, and 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 approved pursuant to this chapter.

(b) The statewide planning system shall also consist of several implementation mechanisms[.]; including:

- (1) [The overall] Overall plan review, coordination, and evaluation [process]. [The overall] Overall plan review, coordination, and evaluation shall be conducted by [the policy council, with the assistance of] the office[.];
- (2) The state budgetary, land use, and other decisionmaking processes. The state budgetary, land use, and other decisionmaking processes shall consist of:
 - (A) [Program] The 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 approved pursuant to this chapter[.];
 - (B) [Capital] The 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 approved pursuant to this chapter[.];

- (C) [Budgetary] The 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 approved pursuant to this chapter[.];
- (D) Land use decisionmaking 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 approved pursuant to this chapter. The rules adopted by appropriate state agencies to govern land use decisionmaking shall be in conformance with the overall theme, goals, objectives, and policies contained within this chapter[.]; and
- (E) All other regulatory and administrative decisionmaking processes of state agencies, which 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 approved pursuant to this chapter. Rules adopted by state agencies to govern decisionmaking shall be in conformance with the overall theme, goals, objectives, and policies contained within this chapter[.];
- (3) The strategic planning processes. The office and other state agencies shall conduct strategic planning activities to identify and analyze significant issues, problems, and opportunities confronting the State, including the examination and evaluation of state programs in implementing state policies and the formulation of strategies and alternative courses of action in response to identified problems and opportunities. Strategic planning processes may include the conduct of surveys and other monitoring instruments such as environmental scanning to assess current social, economic, and physical conditions and trends. In conducting strategic planning activities, the office and other state agencies shall ensure that general public and agency concerns are solicited and taken into consideration. The formation of task forces, ad hoc committees, or other advisory bodies comprised of interested parties may serve to facilitate public involvement in specific planning projects; and
- [(3)] (4) Other coordination processes which include the use of the state clearinghouse process. The state clearinghouse shall coordinate the review of all 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 approved under this chapter].

§226-53 [Policy council; composition; voting rights. (a) There is established a policy council whose membership shall include the following:

- (1) The planning director from each county.
- (2) Nine public members, being four from the city and county of Honolulu, one from the county of Kauai, and two from each of the

counties of Maui and Hawaii; provided that in the case of the county of Maui, one such public member shall be from Molokai or Lanai and, in the case of the county of Hawaii, one public member shall be from west Hawaii and one from east Hawaii, appointed by the governor from a list of public persons from each county which shall through its mayor or council, submit no less than three names for each appointive public member to which the county is entitled. The governor shall request lists of public persons from the respective mayors for appointment to the policy council. Within thirty days following the date of the governor's request, the mayor of the respective county shall submit the list to the council of the respective county for advice and consent. Within sixty days of the date of the governor's request, the mayor shall submit the list of public persons, with the advice and consent of the council of the respective county, to the governor for appointment to the policy council. If the mayor fails to submit a list to the council within thirty days of the date of the governor's request, the council shall submit a list to the governor within sixty days of the governor's request. If a list of public persons is not submitted by either the mayor or the council to the governor within sixty days following the date of the request for such a list, the governor shall appoint the public members from that county in accordance with the applicable geographic representation set forth above without nominations from that mayor.

- (3) The directors or chairpersons from the departments of agriculture, budget and finance, land and natural resources, health, human services, transportation, and labor and industrial relations; the director of business and economic development or a designated representative; the director of environmental quality control; the superintendent of education; the president of the University of Hawaii; the executive director of the housing finance and development corporation; the executive officer of the land use commission; and the director of the office of state planning.

In order to obtain the participation of the federal government in the overall state planning process, the governor shall invite the chairperson of or designated person from the Federal Executive Board located in the state, and the Commander in Chief of the Pacific (CINCPAC) or a designated person from the United States Department of Defense located in the state, to sit as nonvoting ex officio members of the policy council.

The director of the office of state planning shall serve as chairperson of the council.

The terms of the nine members from the public 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. Each such term shall commence on January 1 and expire on December 31; provided that the governor may establish the commencing and expiration dates of the terms of those initially appointed. No member from the public shall be appointed consecutively to more than two terms; provided that membership shall not exceed eight consecutive years. No member from the public shall serve on any other public board or commission. The governor may remove or suspend for cause any member of the council after due notice and public hearing.

Expenses incurred by a state or federal governmental member participating in policy council deliberations shall be borne by the member's respective

governmental agency. Travel expenses incurred by county planning directors participating in policy council deliberations shall be reimbursed by the office of state planning. A public member shall receive no compensation for the member's services, but each shall be reimbursed by the office of state planning for necessary expenses incurred in the performance of the member's duties.

(b) There shall be a total of eighteen voting members on the policy council. The voting rights shall be apportioned as follows:

- (1) The planning director from each county shall each be entitled to one vote;
- (2) The nine members from the public shall each be entitled to one vote; and
- (3) The chairman of the council and four of the state agency heads herein described shall each be entitled to one vote.

The governor, in consultation with the director of the office of state planning, shall determine which of the other state agency heads described herein shall have voting rights on the basis of the subject matter or functional area before the policy council. The governor may also rotate the voting rights among those state agency heads deemed most affected by the nature of the subject matter or functional area before the policy council; provided that the state agency heads shall not cast more than five votes on any one issue before the policy council. State agency heads who are not entitled to vote upon a given subject or functional area shall serve as ex-officio members of the policy council.

(c) All recommendations made to the legislature by the policy council shall be approved by two-thirds of its voting members, which shall not preclude minority reports.

§226-54 Policy council; duties. The policy council shall:

- (1) Provide a forum for the discussion of conflicts between and among this chapter, functional plans, county general plans and development plans, and state programs;
- (2) Transmit to the governor, legislature, and the mayors and legislative bodies of the respective counties its findings and recommendations on all conflicts as described above, and on the resolution of conflicts;
- (3) Review and evaluate state functional plans for conformance with the provisions of this chapter, seek to resolve any identified conflicts, and transmit its findings and recommendations to the legislature;
- (4) Advise the legislature on the administration, amendment, and review of this chapter, including the overall theme, goals, objectives, policies, and priority guidelines contained within this chapter;
- (5) Adopt rules in accordance with section 226-56 to provide procedures for public input into the amendment processes and for submittal of proposed amendments;
- (6) Maintain a record of its activities;
- (7) Conduct a comprehensive review of part I of this chapter at least every four years following enactment by the legislature, and part III of this chapter at least every odd-numbered year to coincide with the state budget process; and
- (8) Prepare a biennial report to the legislature in accordance with section 226-62.

§226-55] Office of state planning; duties. The office shall provide technical assistance [and staff services to the policy council] in administering this

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chapter. To further the intent and purpose of this chapter, the office shall:

- (1) Provide recommendations to the governor and [the policy council] state and county agencies on conflicts between and among this chapter, state functional plans approved by the governor, county general plans and development plans, and state programs;
- (2) Review and evaluate this chapter and recommend amendments as needed to the [policy council;] legislature;
- (3) Review, as necessary, major plans, programs, projects, and regulatory activities proposed by state and county agencies, and provide advisory opinions and reports to the [policy council] governor as needed;
- (4) Analyze existing state policies, planning and program operations, laws, rules, and practices relative to formulation, implementation, and coordination of the state plan;
- (5) Review state capital improvement projects for consistency with this chapter and as necessary report findings and recommendations to the governor prior to allocation of funds;
- (6) Conduct strategic planning by identifying and analyzing significant issues, problems, and opportunities confronting the State, and formulating strategies and alternative courses of action in response to identified problems and opportunities;
- [(6)] (7) Conduct special studies and prepare reports that address major policy issues relating to statewide growth and development;
- [(7)] (8) Cooperate with all public agencies to ensure an ongoing, uniform, and reliable base of data and projections;
- [(8)] (9) Assist the [policy council] legislature in conducting [a comprehensive review] reviews of [part I at least every four years following enactment by the legislature, and part III at least every odd-numbered year;] parts I, II, and III as necessary;
- [(9)] (9) Assist the policy council in preparing and submitting its biennial review and report to the legislature in accordance with section 226-62;
- [(10)] (10) Prepare and adopt in consultation with the policy council, administrative guidelines in accordance with this chapter and chapter 91;
- [(11)] (10) Provide other technical assistance [and staff services] to the [policy council] governor and state and county agencies as needed; and
- [(12)] (11) Prepare guidelines for the development and implementation of the state functional plans in accordance with sections 226-57 and 226-58.]
- (11) Prepare a report identifying emerging issues for use in the revision of parts I and III, including the updating of state functional plans. The report may include a scan of conditions and trends in population, the economy, and the environment, linking the findings of the state scanning project with policy and program activities.

The office may contract with public and private agencies and persons for special research and planning assistance.

[§226-56] §226-54 [Amendments to the overall theme, goals, objectives, policies, and priority guidelines.] Amendments to this chapter. [The policy council shall adopt rules for amendments to the goals, objectives, policies, and priority guidelines,] Amendments to this chapter shall be adopted in accordance with the legislative review process. Proposals from the general public to initiate amendments to any provision of this chapter, shall be subject to the

following provisions:

- (1) Any person may submit [to the office] proposals [for the revision of the overall theme, goals, objectives, policies, and priority guidelines;] to amend this chapter to the office and the legislature; and
- (2) The office shall review [the] proposed amendments [to the overall theme, goals, objectives, policies, and priority guidelines] and [shall] submit its findings and recommendations to the [policy council;] legislature thirty days prior to the convening of the next legislative session.
- [(3) The policy council shall submit its final recommendations on the amendments to the overall theme, goals, objectives, policies, and priority guidelines to the legislature thirty days prior to the convening of the next legislative session following its review of the proposed amendments, along with minority reports, if any; and
- (4) The policy council, in reviewing the proposed amendments of the office, shall make public its findings and recommendations and shall hold public hearings in each county of the state in accordance with chapter 91. There shall be not less than two public hearings in each county on the recommended revisions to the overall theme, goals, objectives, and policies of the state plan; provided that there shall be not less than three public hearings in the city and county of Honolulu and there shall be not less than one public hearing on each of the islands of Maui, Molokai, and Lanai in the county of Maui.]

[§226-57] §226-55 Functional plans; preparation. (a) The state agency head primarily responsible for a given functional area shall prepare the functional plan for the area. In the preparation of the functional plan, the state agency head shall work in close cooperation with the advisory committee, respective officials, and people of each county. In the formulation of the functional plan, the preparing agency shall solicit public views and concerns. The formulation and revision of a state functional plan shall conform to the provisions of this chapter and shall take into consideration the county general plans. Functional plans and any revisions thereto shall be approved by the governor to serve as guidelines [to] for funding and implementation by state and county agencies.

(b) The functional plan shall identify priority issues in the functional area and shall contain objectives [to be achieved and], policies, and implementing actions to [be pursued in the primary field of activity and shall address major programs and the location of major facilities.] address those priority issues. Actions may include organizational or management initiatives, facility or physical infrastructure development initiatives, initiatives for programs and services, or legislative proposals.

(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 from 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], implementing, monitoring, and updating the functional plan to be in conformance with the overall theme, goals, objectives, policies, and priority guidelines contained within this chapter. The [approved] draft functional plan[.] shall be submitted to [the policy council] relevant federal, state, and county agencies for review and [evaluation. The committee shall also advise the state agency in the implementation, monitoring, and future updating of the plan.] input. 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 sections 26-34(a) and 78-4(a) regarding the appointment to boards and commissions.

[§226-58] §226-56 Functional plans; form and submittal. (a) Functional plans shall be prepared to further define and implement statewide [guidelines with respect to] goals, objectives, policies, and priority guidelines[.] contained in this chapter.

(b) Functional plans shall be prepared and revised in accordance with guidelines developed by the department of budget and finance.

(b) (c) The governor shall transmit approved state functional plans to the legislature for its information.

(c) An approved functional plan shall be submitted to the policy council for its review and evaluation prior to its transmittal to the legislature. The policy council shall submit findings and recommendations to the legislature on each functional plan reviewed, in terms of its conformance with this chapter.]

[§226-59] §226-57 Functional plans; implementation. (a) Functional plans shall be used [as guidelines to implement] to guide the allocation of resources for the implementation of state policies adopted by the legislature.

(b) The legislature, upon a finding of overriding statewide concern, may determine in any given instance that the site for a specific project may be other than that designated [on] in the county general plan; provided that any proposed facility or project contained in a county general plan shall not require the actual development or implementation of that facility or project or [the] its inclusion [of the same] in any state functional plan by any state agency. The implementation of functional plans shall conform to existing laws, rules, [and] standards, and this chapter.

[§226-60] §225-58 County general plans. (a) The county general plans and development plans shall be formulated with input from the state and county agencies as well as the general public.

County general plans or development plans shall indicate desired population and physical development patterns for each county and regions within each county. In addition, county general plans or development plans shall address the unique problems and needs of each county and regions within each county. The county general plans or development plans shall further define applicable provisions of this chapter[.]; provided that any amendment to the county general plan of each county shall not be contrary to the county charter. The formulation, amendment, and implementation of county general plans or development plans shall take into consideration statewide objectives, policies, and programs stipulated in state functional plans approved in consonance with this chapter.

(b) County general plans shall be formulated on the basis of sound rationale, data, analyses, and input from state and county agencies and the general public, and contain objectives and policies as required by the charter of each county. Further, the county general plans should:

- (1) Contain objectives to be achieved and policies to be pursued with respect to population density, land use, transportation system location, public and community facility locations, water and sewage system locations, visitor destinations, urban design, and all other matters necessary for the coordinated development of the county and regions within the county[.]; and
- (2) Contain implementation priorities and actions to carry out policies to include but not be limited to[,] land use maps, programs, projects, regulatory measures, standards and principles, and interagency coordination provisions.

[§226-61] §226-59 State programs. (a) The formulation, administration, and implementation of state programs 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 approved pursuant to this chapter.

(b) The director of the office of state planning shall assist the governor in assuring that state programs are in conformance with this chapter.

[§226-62 Biennial review and report. (a) The policy council, with the assistance of the office, shall prepare a biennial report for submittal to the legislature, mayors, and county councils. The biennial report shall contain recommendations for legislative consideration and action. Major components of the review and report shall include the following:

- (1) An assessment of progress being made in attaining the overall theme, goals, objectives, policies, and priority guidelines contained within this chapter and the state functional plans;
- (2) Recommendations to improve coordination between and among the overall theme, goals, objectives, policies, and priority guidelines contained within this chapter, county general plans and development plans, state functional plans, and state programs; and
- (3) An assessment of legislation and programs of the preceding two years that have major statewide or countywide impact in terms of their consistency with this chapter.

(b) The biennial review and report shall be submitted to the legislature, mayors, and the county councils no later than February 1 of each odd numbered year.]”

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, 1991.)

A Bill for an Act Relating to Shortage Category Classes for Public Employment.

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

SECTION 1. Section 77-9, Hawaii Revised Statutes, is amended to read as follows:

“§77-9 Initial appointments[;] and shortage categories [and differentials]. (a) All initial appointments shall be made at the first step of the appropriate salary range.

(b) In the event that recruitment of an employee is not practicable at the first step, the director, after appropriate notice and advertising, may recruit at any step within the appropriate salary range at which a suitable employee can be recruited.

(c) Whenever a labor shortage exists in a class or group of positions in a class, the director, with the prior approval of the chief executive, may declare the class or group of positions to be a shortage category. The director may review the impact of making such a declaration on other classes or groups of positions in classes within the same series. If the director finds that it is necessary to preserve internal relationships within the series, the director may declare those other classes or groups of positions as related shortage categories. The director shall review each shortage category periodically, but at least once each year, to determine whether the [labor shortage exists to the same degree as previously determined.] shortage category should be continued. In making this determination, the following procedure shall be followed:

- (1) The director shall set the new entry salary of a shortage category at an amount [which] that is fair and reasonable and at which employees can be recruited from the labor market[.];
- (2) The director shall set the new entry salary of a related shortage category in consideration of appropriate internal pay relationships[. The new entry salary of the related shortage category shall not exceed the minimum step of the applicable salary range by a per cent greater than that between the new entry salary and the minimum step of the highest level shortage category.
- (3) An adjustment to an entry salary under paragraphs (1) and (2) shall be made by adding to the first step of the appropriate salary range a temporary shortage differential, which shall not be considered an adjustment to base pay. The amount of the differential shall be the dollar difference between the new entry salary and the first step of the appropriate salary range, which shall be recomputed whenever there is a change in the respective pay schedule[.];

- [(4)] (3) Whenever a new entry salary is determined for a class or group of positions in a class under paragraphs (1) and (2), incumbents thereof who are being paid less than the new entry salary shall have their pay adjusted [by adding to their respective steps, a temporary shortage differential, which is not to be considered as an adjustment to base pay. The amount of the differential shall be the dollar difference between the new entry salary and their respective steps, which shall be recomputed whenever there is a change in the respective pay schedule.] to an amount that is not less than the new entry salary in a manner determined by the director;

- [(5)] (4) In addition to establishing a new entry rate, the director, if necessary to promote retention of existing incumbents, may provide alternative adjustments to the salaries of incumbents in a shortage category and related shortage category. [The adjustments shall maintain pay relationships within a class or group of positions within a class and shall apply to all employees including those who are paid the same as or more than the new entry salary. Any adjustment under this subsection shall replace the adjustments provided under paragraph (4) and no] No adjustment under this [subsection] paragraph shall result in a salary [which] that exceeds the maximum step of the pay range[.];
- [(6)] An adjustment to a salary under paragraph (5) shall be made by adding to the appropriate step of the appropriate salary range a temporary shortage retention differential, which shall not be considered an adjustment to base pay. The amount of the differential shall replace any shortage differential provided under paragraph (4) and shall be a diminishing amount, to be computed as follows:
- (A) The differential for incumbents at the first step shall be the dollar difference between the new entry salary and the first step;
- (B) For the next step above the first step, the differential shall be equal to the first step differential less the quotient of the first step differential divided by the number of remaining steps in the salary range; and
- (C) The differential for each succeeding step shall be determined in the same manner, by using the differential for the preceding step minus the quotient, until the differential nets out to zero at the maximum step. All differentials shall be recomputed whenever there is a change in the respective pay schedule.
- [(7)] (5) The director is authorized to provide similar [differentials] adjustments for positions and employees in the excluded managerial compensation plan[.]
- [(8)] (6) As a result of the periodic review of each shortage category, the director may adjust salaries [in accordance with subsection (b) and paragraphs (1) and (2).] established under this subsection. If the director determines that a shortage no longer exists, the director shall reestablish the first step of the appropriate salary range as the entry salary rate for the class or group of positions[.]
- [(9)] (7) In the event that the new entry salary for a shortage category or related shortage category is subsequently lowered, incumbents [who are receiving a temporary shortage or retention differential shall continue to receive so much of the differential as is necessary to maintain their then existing pay until the rates for their respective steps equal or exceed those amounts.] shall not have their pay reduced so long as they remain in the same shortage class or group of positions; and
- [(10)] (8) If employees move from their respective [positions in which they were granted a temporary shortage or retention differential, the differential shall terminate and their pay shall be adjusted without the differential.] shortage or related shortage positions, the director shall adjust their pay appropriately.

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(d) The director shall maintain a list of all recruitment above the first step and shortage category determinations under this section and the justifications therefor.”

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, 1991.)

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H.B. NO. 999

A Bill for an Act Relating to Workers' Compensation Insurance.

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

SECTION 1. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§386- Insurer’s requirements; failure to maintain claims service office; penalty; injunction. (a) By January 1, 1992, each insurer shall establish and maintain a complete claims service office or engage an independent claims adjusting service as its claims agent in this State with draft authority for the processing and payment of compensation.

(b) Failure to comply with subsection (a) shall subject the insurer to a civil penalty of not less than \$2,500, or \$100 for every day during which the failure continues, whichever sum is greater, to be recovered in an action brought by the director in the name of the State in a court of competent jurisdiction. Any amounts so collected shall be paid into the special compensation fund provided by section 386-151. The director shall have discretion, for good cause shown, to remit all or any part of the penalty in excess of \$2,500, if the insurer in default forthwith complies with subsection (a).

(c) If any insurer violates subsection (a) for a period of thirty days, the insurer may be enjoined by the circuit court from carrying on the insurer’s business in any place in the State so long as the violation continues.

(d) The attorney general shall enforce this section if so requested by the director.”

SECTION 2. New statutory material is underscored.¹

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

(Approved April 30, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

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H.B. NO. 1001

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Section 386-121, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Employers, except the State, any county or political subdivision of the State, or other public entity within the State, shall secure compensation to their employees in one of the following ways:

- (1) By insuring and keeping insured the payment of compensation with any stock, mutual, reciprocal, or other insurer authorized to transact the business of workers’ compensation insurance in the State;
- (2) By depositing and maintaining with the state director of finance security satisfactory to the director of labor and industrial relations securing the payment by the employer of compensation according to the terms of this chapter;
- (3) Upon furnishing satisfactory proof to the director of the employer’s solvency and financial ability to pay the compensation and benefits herein provided, no insurance or security shall be required, and the employer shall make payments directly to the employer’s employees, as they may become entitled to receive the same under the terms and conditions of this chapter; [or]
- (4) By membership in a workers’ compensation self-insurance group with a valid certificate of approval under section 386-194[.]; or
- (5) By membership in a workers’ compensation group insured by a captive insurer under chapter 431, article 19.

Any person who wilfully misrepresents any fact in order to obtain the benefits of paragraph (3) shall be guilty of a misdemeanor.”

SECTION 2. Section 431:19-113, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-113 Exemption from compulsory associations.** No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, except as provided under chapter 386, nor shall any captive insurance company, its insured, or its parent or any affiliated company, or any member organization of its association, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.”

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 30, 1991.)

A Bill for an Act Relating to Personnel of the Hawaii Civil Rights Commission.

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

SECTION 1. Section 368-3 is amended to read as follows:

“~~[[§368-3]]~~ **Powers and functions of commission.** The commission shall have the following powers and functions:

- (1) To receive, investigate, and conciliate complaints alleging any unlawful discriminatory practice under chapters 489 and 515 and part I of chapter 378 and conduct proceedings on complaints alleging unlawful practices where conciliatory efforts are inappropriate or unsuccessful[.];
- (2) To hold hearings and make inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of these hearings and inquiries, to administer oaths and affirmations, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, examine witnesses under oath, require answers to interrogatories [issued], and delegate these powers to any member of the commission or any person appointed by the commission for the performance of its functions[.];
- (3) To commence civil action in circuit court to seek appropriate relief, including the enforcement of any commission order[.];
- (4) To issue the right to sue to a complainant[.];
- (5) To order appropriate legal and equitable relief or affirmative action when a violation is found[.];
- (6) To issue publications and results of investigations and research that, in its judgement, will tend to promote goodwill and minimize or eliminate discrimination in employment, housing, and public accommodations[.];
- (7) To submit annually to the governor and the legislature a written report of its activities and [of its] recommendations for administrative or statutory changes required to further the purposes of this chapter[.];
- (8) To appoint an executive director, deputy executive director, attorneys, and hearings examiners who shall be exempt from chapters 76 and 77, and investigators and other necessary support personnel who shall be subject to chapters 76 and 77. Section 103-3 notwithstanding, an attorney employed by the commission as a full-time staff member may represent the commission in litigation, draft legal documents for the commission, provide other necessary legal services to the commission, and shall not be deemed to be a deputy attorney general[.]; and
- (9) To adopt rules under 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 April 30, 1991.)

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H.B. NO. 1044

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 87-4.5, Hawaii Revised Statutes, is amended to read as follows:

“§87-4.5 State and county contributions to fund; retired employees with fewer than ten years of service. (a) This section shall apply to state and county contributions to the fund for employees specified in section 87-1(5)(A)(v) who retire after June 30, 1984, with fewer than ten years of credited service, excluding sick leave.

(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[:] equal to one-half of the retired employee's monthly medicare or nonmedicare premium:

- (1) For hospital, medical, and surgical benefits of a health benefits plan[, of \$35.52 for the period July 1, 1989, to June 30, 1990, and \$39.06 for the period July 1, 1990, to June 30, 1991,] for each of their respective employee-beneficiaries[, and \$109.30 for the period July 1, 1989, to June 30, 1990, and \$120.22 for the period July 1, 1990, to June 30, 1991, for each respective employee-beneficiary with a dependent-beneficiary] or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section[.];
- (2) For prescription drug benefits of a health benefits plan[, of \$2.26 for the period July 1, 1990, to June 30, 1991,] for each of their respective employee-beneficiaries[, and \$6.66 for the period July 1, 1990, to June 30, 1991, for each respective employee-beneficiary with a dependent-beneficiary] or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section[.];
- (3) For vision care benefits of a health benefits plan[, of \$1.72 for the period July 1, 1990, to June 30, 1991,] for each of their respective employee-beneficiaries[, and \$3.40 for the period July 1, 1990, to June 30, 1991, for each respective employee-beneficiary with a dependent-beneficiary] or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section[.]; and
- (4) For adult dental benefits of a health benefits plan[, of \$5.66 for the period July 1, 1990, to June 30, 1991,] for each of their respective employee-beneficiaries[, and \$11.32 for the period July 1, 1990, to June 30, 1991, for each respective employee-beneficiary with a spouse] or their respective employee-beneficiaries and their spouses enrolled under this section.

[The above contributions shall be used for the payment of the respective component costs of a health benefits plan; provided that the respective monthly contribution shall not exceed the actual cost of each respective component 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.

(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

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monthly contribution [of \$6.24 for the period July 1, 1989, to June 30, 1990, and \$6.88 for the period July 1, 1990, to June 30, 1991,] equal to the total monthly premium for each child who has not attained the age of nineteen of all employee-beneficiaries who are enrolled [for dental benefits] in the fund's dental plan for children 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.]

(d) 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] equal to the total monthly premium for each [of their respective employees] retired employee [to be used towards the payment of] enrolled in the fund's group life insurance benefits plan [for each employee enrolled] under this section.

(e) For the purpose of this section, the retired employee's monthly medicare and nonmedicare premiums for the hospital, medical, and surgical plan, the prescription drug plan, the vision care plan, and the adult dental plan shall be established annually by the board and shall be equal to the retired employee's medicare and nonmedicare premiums for the hospital, medical, and surgical plan, the prescription drug plan, the vision care plan, and the adult dental plan contracted by the fund with the largest enrollments.

[(e)] (f) 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.

[(f)] (g) 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. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved April 30, 1991.)

ACT 82

H.B. NO. 1053

A Bill for an Act Relating to Residential Leaseholds.

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

SECTION 1. Section 516-9, Hawaii Revised Statutes, is amended to read as follows:

"[§516-9] Quitclaim deeds. Unless otherwise provided by law, the corporation shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed, or sponsored under this chapter. In no instance shall the corporation be considered a guarantor or warrantor of the condition and quality of the property upon the issuance of any such

quitclaim deed or lease.”

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, 1991.)

ACT 83

H.B. NO. 1538

A Bill for an Act Relating to the Temporary Disability Insurance Law.

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

SECTION 1. Section 392-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It is the policy of this chapter that the computation and distribution of benefit payments shall correspond to the greatest extent feasible, to the employee’s wage loss due to the employee’s disability; that an employee shall not be entitled to temporary disability benefits for periods of disability during which the employee would not have earned wages from employment according to the schedule of operations of the employee’s employer, and that an employee is entitled to benefits only for periods of disability during which, but for the disability, the employee would have earned wages from employment. This policy, however, shall not be applied to terminate the benefits of an employee who is receiving benefits under this chapter for a disability that commenced while the employee was in current employment, nor shall it be applied to deny benefits under this chapter if a disability that commenced while the employee was in current employment continues into a period during which the employee would earn wages but for the disability.”

SECTION 2. New statutory material is underscored.

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

(Approved April 30, 1991.)

ACT 84

S.B. NO. 193

A Bill for an Act Relating to Notification of Victims of Crimes.

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

SECTION 1. Section 801D-4, Hawaii Revised Statutes, is amended to read as follows:

“**§801D-4 Basic bill of rights for victims and witnesses.** Upon written request, victims and surviving immediate family members of crime shall have the following rights:

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- (1) To be informed by the police and the prosecuting attorney of the final disposition of the case. If the crime charged is a felony, the victim or a surviving immediate family member shall be notified of major developments in the case and whenever the defendant or perpetrator is released from custody. The victim or a surviving immediate family member shall also be consulted and advised about plea bargaining by the prosecuting attorney.
- (2) To be notified by the prosecuting attorney if a court proceeding to which they have been subpoenaed will not proceed as scheduled.
- (3) To receive protection from threats or harm [in accordance with the Hawaii Witness and Security Protection Act program guidelines].
- (4) To be informed by the police, victim/witness counselor, or other criminal justice personnel, of financial assistance and other social services available as a result of being a witness or a victim of crime, including information on how to apply for the assistance and services.
- (5) To be provided by the court, whenever possible, with a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants.
- (6) To have any stolen or other personal property expeditiously returned by law enforcement agencies when such property is no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property, the ownership of which is disputed, shall be returned to the person within ten days of being taken.
- (7) To be informed by the department of public safety of changes planned by the department in the custodial status of the offender that allows or results in the release of the offender into the community, including escape, furlough, work release, placement on supervised release, release on parole, release on bail bond, release on appeal bond, and final discharge at the end of the prison term."

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, 1991.)

ACT 85

S.B. NO. 864

A Bill for an Act Relating to Small Business Innovation Research.

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

SECTION 1. Section 206M-15, Hawaii Revised Statutes, is amended to read as follows:

"§206M-15 High technology research and development revolving fund.

(a) There is established the high technology research and development revolving fund into which shall be deposited all moneys as may be appropriated by the

legislature or as may be contributed, transferred, or accrued to the development corporation to fund high technology research and development projects, and from which the development corporation may fund high technology research and development projects under agreements with any state or county agency or other organizations, including high technology companies. In making any expenditure under this section, the development corporation shall analyze each funding request to determine whether the project to be undertaken will be economically viable and beneficial to the State.

(b) The development corporation may provide grants of fifty per cent of the federal grant up to \$25,000 to each business in Hawaii that receives a federal small business innovation research phase I grant or contract from any participating federal agency during calendar year 1989 or subsequent years subject to the availability of funds.

(c) The development corporation shall adopt rules pursuant to chapter 91 that [will]:

- (1) Specify the qualifications for eligibility of grant applicants;
- (2) Establish priorities in determining eligibility in the event that insufficient funds are available to fund otherwise qualified applicants; and
- (3) Give preference to all qualified businesses that received a single award in one calendar year over multiple award grantees.

The development corporation may adopt any other rules pursuant to chapter 91 necessary for the purposes of this section.

(d) If funds appropriated for the purpose of making grants under this section are inadequate to satisfy all qualified requests, the development corporation shall apply for funds to be transferred from the Hawaii capital loan revolving fund to provide the grants in accordance with subsection (b). The amount of any single transfer of funds shall not exceed \$100,000, and the development corporation shall transfer the entire amount back to the Hawaii capital loan revolving fund within twelve months of receiving the funds. No more than one fund transfer shall be outstanding at any one time. The director of business, economic development, and tourism may transfer funds from the Hawaii capital loan revolving fund to the high technology research and development revolving fund upon request to carry out the purposes of this section. Transfers of funds shall be made without any charges or fees."

SECTION 2. Section 210-7, Hawaii Revised Statutes, is amended to read as follows:

"§210-7 Loans to development companies. (a) The department of business, economic development, and tourism may make loans to development companies incorporated in the State for the purpose of supplementing the funds required to be forthcoming to qualify development companies to receive financial assistance under Title V of SBIA. The loans shall be subject to terms and conditions established by the department as similar as possible to applicable terms and conditions prescribed by [rules and] regulations [promulgated] adopted by SBA.

(b) Subject to the availability of funds, a request from the high technology development corporation for a transfer of funds to supplement appropriations for small business innovation research grants shall be granted expeditiously. If available funds are inadequate for a transfer to the development corporation, the director shall advise the development corporation that a transfer will be made when sufficient funds are available in the Hawaii capital loan revolving fund."

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SECTION 3. The director of business, economic development, and tourism is authorized to transfer funds appropriated by Act 299, Section 13A, Session Laws of Hawaii 1990, to the high technology development corporation to satisfy qualified fiscal year 1990-1991 requests for small business innovative research grants that have been deferred due to a lack of available funding.

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, 1991.)

ACT 86

H.B. NO. 340

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Act 362, Session Laws of Hawaii 1987, as amended by Act 68, Session Laws of Hawaii 1989, is amended by amending section 1 to read as follows:

“SECTION 1. The legislature finds the authority granted to the department of land and natural resources to negotiate and enter into long-term residential leases with persons who were displaced by, or who are the descendants of, the refugees of the 1926 Hoopuloa lava flow has expired. The legislature further finds that all parcels meeting the criteria enumerated in Act 62, Session Laws of Hawaii 1982, have not been awarded.

The purpose of this Act is to re-authorize the negotiation of long-term residential leases between the department of land and natural resources and the displaced Milolii-Hoopuloa residents. Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984 and Act 362, Session Laws of Hawaii 1987, as amended by Act 68, Session Laws of Hawaii 1989, having expired on January 1, [1989,] 1991, it is necessary to reenact its provisions and apply them retroactively to January 1, [1989,] 1991, before an extension is possible.”

SECTION 2. Act 362, Session Laws of Hawaii 1987, as amended by Act 68, Session Laws of Hawaii 1989, is amended by amending Section 5 to read as follows:

“SECTION 5. Any other law to the contrary notwithstanding, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into lease agreements, upon consideration of the Milolii-Hoopuloa Community Development Plan, in accordance with the provisions and limitations of this Act; provided that the authority granted by this Act shall expire (1) when leases have been negotiated and recorded in the bureau of conveyances for all parcels meeting the criteria in Section 2 and Section 3, or (2) on January 1, [1991,] 1993, whichever occurs first.”

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

SECTION 4. This Act shall take effect upon its approval; provided that the provisions of this Act shall apply retroactively to January 1, 1991.

(Approved April 30, 1991.)

ACT 87

H.B. NO. 382

A Bill for an Act Relating to Cable Television Systems.

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

SECTION 1. Section 440G-15, Hawaii Revised Statutes, is amended to read as follows:

“**§440G-15 Annual fees.** Each cable operator shall pay an annual fee to be determined by the director. [The] A portion of the fees so collected under this section shall be used to offset the costs of administering this chapter.”

SECTION 2. Chapter 440G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§440G- Franchise fees.** An amount equal to one-half of one per cent of the gross revenues of each cable operator in the preceding calendar year shall be deposited into the public broadcasting revolving fund established under section 314-13 for use in program production by the Hawaii public broadcasting authority. In no event shall the franchise fees collected from cable operators exceed the maximum amount allowed by federal law.”

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; provided that section 2 shall be repealed on June 30, 1992.

(Approved April 30, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 88

H.B. NO. 795

A Bill for an Act Relating to Meat Inspection.

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

SECTION 1. Act 139, Session Laws of Hawaii 1990, is amended by amending section 18 to read as follows:

“SECTION 18. This Act shall take effect upon its approval [and shall be repealed on June 30, 1991].”

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SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved April 30, 1991.)

ACT 89

H.B. NO. 976

A Bill for an Act Relating to Public Lands.

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] chairperson 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 (A) be fined not less than \$500 nor more than \$2,000 per day[, shall,]; (B) if required by the board, restore the land to its original condition if altered and assume the costs thereof[,]; and [shall] (C) assume such costs as may result from adverse effects from such restoration;
- (13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged; [and]
- (14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (13); and
- [(14)] (15) 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 payment for 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 30, 1991.)

ACT 90

H.B. NO. 256

A Bill for an Act Relating to Mental Health, Alcohol, and Drug Abuse Treatment.

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

SECTION 1. Section 431M-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “mental health outpatient facility” to read:
- ““Mental health outpatient facility” means a mental health establishment,

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clinic, institution, center, or community mental health center, that provides for the diagnosis, treatment, care, or rehabilitation of mentally ill persons, that has been accredited by the Joint Commission on Accreditation of Health Care Organizations or the Commission on Accreditation of Rehabilitation Facilities[.] or certified by the department of health.”

2. By amending the definition of “nonhospital facility” to read:

““Nonhospital facility” means a facility for the care or treatment of alcohol dependent, drug dependent, or mentally ill persons, which has been accredited by the Joint Commission on Accreditation of Health Care Organizations or the Commission on Accreditation of Rehabilitation Facilities or certified by the department of health and, if residential, has been licensed as a special treatment facility by the department of health.”

SECTION 2. Section 431M-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431M-6]]~~ **Rules.** The insurance commissioner, after consultation with all interested parties including the director of health, the board of medical examiners, the board of psychology, and representatives of insurance carriers, nonprofit mutual benefit associations, health maintenance organizations, public and private providers, consumers, employers, and labor organizations shall adopt rules pursuant to chapter 91 as are deemed necessary for the effective implementation and operation of this chapter. The rules shall include criteria and guidelines to be used in determining the appropriateness and medical or psychological necessity of services covered under this chapter, including the appropriate level of care or place of treatment and the number or quantity of services, and the objective and quantifiable criteria for determining when a health maintenance organization meets the conditions and requirements of section 431M-5, and shall include an appeals process.

The director of health shall also adopt rules pursuant to chapter 91 as are deemed necessary for the implementation and operation of this chapter. Said rules shall provide certification standards which:

- (1) Reflect quality of care; and
- (2) Do not compromise the quality of care.”

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

SECTION 4. This Act shall take effect on January 1, 1992.

(Approved May 2, 1991.)

ACT 91

H.B. NO. 825

A Bill for an Act Relating to Licensing of Psychologists.

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

SECTION 1. 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] paragraph (1) and paragraph (2)[,] or (3), and paragraph (4):

- (1) Is professionally competent and has demonstrated knowledge in the practice of psychology.
- (2) Holds a doctoral degree from 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.] requirement of two years of supervised experience (equivalent to three thousand eight hundred hours) in health service in psychology, of which at least one year (equivalent to one thousand nine hundred hours) is an internship in an organized health service training program, and one year (equivalent to one thousand nine hundred hours) is post doctoral.
- (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 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 2, 1991.)

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H.B. NO. 1768

A Bill for an Act Relating to Wages and Hours of Employees on Public Works.

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

SECTION 1. Section 104-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The governmental contracting agency shall:

- (1) [pay] Pay or cause to be paid, directly to laborers and mechanics[,]
or to the director, from any accrued payment withheld under the terms of the contract, any wages or overtime compensation found to be due to laborers or mechanics under the terms of the contract subject to this chapter, or any penalty assessed;
- (2) [order] Order any contractor to pay any wages or overtime compensation which the contractor, or any of the contractor’s subcontractors, should have paid to any laborer or mechanic under any contract subject to this chapter, or any penalty assessed which the contractor, or any of the contractor’s subcontractors, should have paid to the director; and
- (3) [report] Report to the director [of labor and industrial relations] any violation of this chapter, the rules adopted thereunder, or [of] the terms of the contract subject to this chapter.

(b) Where the director, either as a result of a report by a contracting agency or as a result of the director's own investigation, finds that a first violation of this chapter or of the terms of the contract subject to this chapter has been committed, the director shall [warn] issue a notification of violation to the contractor or subcontractor involved[,] and [if the contractor or subcontractor promptly makes the contractor's or subcontractor's employees whole for any wages or overtime compensation due, no further action shall be taken.] assess a penalty of not more than \$1,000 for each offense. Enforcement of this subsection shall be subject to the following:

- (1) A notification of violation shall be final and conclusive twenty days after a copy has been mailed to the violator unless within the twenty day period the violator files a written notice of appeal with the director. The director shall notify the labor and industrial relations appeals board of the pendency of the appeal; and
- (2) Any party to the appeal may obtain judicial review of the appeals decision in the manner provided in chapter 91. In any court proceeding, every party to the appeal shall be a respondent, including the director. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases.

Where a second or third violation [subsequently] occurs, whether on the same contract or another, within two years of the first violation, the director shall serve a written complaint on the person or firm involved. If, after proper notice and opportunity for hearing [before the labor and industrial appeal board], the [appeal] appeals board finds that the person or firm has knowingly violated this chapter, the rules adopted thereunder, or the terms of the contract subject to this chapter, the [appeal] appeals board shall order the person or firm, if it be a second violation, to pay a penalty of [no] not more than [five] ten per cent of the total contract amount, or if it be a third violation the [appeal] appeals board shall order the person or firm to be suspended from doing any work on any public work of a governmental contracting agency for a period of three years. If any person or firm, after [warning,] notification of violation, or after assessment of [the above] any penalty[,] under this chapter, fails to make the person's or [its] firm's employees whole for wages or overtime pay due [them] under the contract, or fails to pay any penalty assessed, the [appeal] appeals board may suspend [such] the person or firm as herein provided. However, on application by the suspended person or firm, no less than one year from the date of suspension, the [appeal] appeals board may, after hearing, shorten the term of suspension[.]; provided that the contractor or subcontractor has made the contractor's or subcontractor's employees whole for wages or overtime pay due and has paid to the director all penalties assessed under this chapter. The director shall immediately notify the comptroller [of the State,] and the auditor or director of finance of the county of any suspension order.

Any suspension order [made under this subsection, and any] or order dismissing any complaint under this subsection[,] shall be subject to appeal under chapter 91 and rule 72 of the Hawaii Rules of Civil Procedure by the party aggrieved, whether the person or firm or the director, to the circuit court for trial de novo on the facts and the law. On complaint by the director as in a civil action, the circuit court shall enforce any suspension order made by the [appeal] appeals board by injunction against any contractor, subcontractor, or officer or employee of the State, or any county. Any other judicial review with respect to a second or third violation shall be conducted in the manner provided in subsection (b)(2)."

SECTION 2. Section 104-6, Hawaii Revised Statutes, is amended to read as follows:

“**§104-6 [Regulations.] Rules.** Subject to chapter 91, the director [of labor and industrial relations] shall [make] adopt reasonable [regulations] rules for determining the prevailing wages [under this chapter], [for the] enforcement and administration [of this chapter], and [for the] general purposes of this chapter. These [regulations] rules shall have the force and effect of law.”

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

SECTION 4. This Act shall take effect on January 1, 1992.

(Approved May 2, 1991.)

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H.B. NO. 2052

A Bill for an Act Relating to Agricultural Parks.

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

SECTION 1. The legislature finds that the lands of Hawaii's agricultural parks should be utilized to their fullest and highest potential. Unfortunately, many lessees lack the resources or methods to reliably determine the agricultural uses or commodities that would prove to be the most beneficial. The legislature finds that the department of agriculture should take a more active role in assisting agricultural park lessees in cultivating the crops which are the most profitable, marketable, and beneficial. The purpose of this Act is to require the department of agriculture to sponsor a pilot program wherein lessees participating in the project would cultivate the crops or uses identified in cultivation guidelines developed by the department.

SECTION 2. The department of agriculture shall conduct an agricultural park demonstration project within one of the three agricultural parks located at Waianae, Kahuku, and Waimanalo to ascertain the feasibility of establishing cultivation guidelines for agricultural park lessees. The department shall determine the crops or uses most beneficial for lessees to cultivate, and shall award agricultural park leases on the basis of the lessee's agreement to follow, without deviation, the cultivation guidelines of the department. The guidelines, pursuant to the findings of the department, may require single or multiple crop cultivation. Conceptually, the overall intent of the pilot project shall be to determine the feasibility of establishing agricultural parks wherein lessees are dedicated to the cultivation of a crop or crops considered beneficial by the department of agriculture. The pilot demonstration shall be terminated on June 30, 1995. The department shall submit an annual report to the legislature twenty days prior to the convening of each regular session.

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

(Approved May 2, 1991.)

A Bill for an Act Relating to Soil and Water Conservation Districts.

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

SECTION 1. The purpose of this Act is to enhance the ability of soil and water conservation districts to control soil erosion and pollution of Hawaii's water resources.

SECTION 2. Section 180-1, Hawaii Revised Statutes, is amended by amending the definition of "land occupier" to read as follows:

"'Land occupier' or 'occupier of land' includes [both the] any person, firm, or corporation who [shall hold] leases or holds title to lands for agricultural designation or use [and, in the case of leased land, the person, firm, or corporation who shall be in possession of any lands lying] within a district organized, or to be organized, under this chapter. [Each occupier of land lying within a district organized, or to be organized, under this chapter shall have one vote, provided each land occupier of more than one hundred acres of land lying within a district organized, or to be organized, under this chapter shall be entitled to one vote for each one hundred acres.]"

SECTION 3. Section 180-12, Hawaii Revised Statutes, is amended to read as follows:

"§180-12 Appointment, election, qualifications, and tenure of directors. The [term] terms of office of the two district directors appointed pursuant to section 180-7 shall be three years, except that those first appointed shall be [designated to serve] for [terms of] one and two years, respectively. [Vacancies shall be filled for the unexpired term.] The terms of the three elected directors shall be three years. Unexpired terms shall be filled by a majority vote of the district's remaining directors. [The selection of successors] Successors to [fill an unexpired term, or for a full term, shall be made in the same manner in which the retiring directors shall have been selected.] full terms shall be appointed or elected, as originally selected. The directors shall either live or work in the districts they represent. The districts shall conduct their own elections and submit the results to the department for certification. Land occupiers representing individual farms, ranches, or plantations are eligible to have one vote for each one hundred acres or less lying within a district. Each acreage can be accounted for only once, with priority voting in order of land occupier, and land owner, respectively; provided that to be eligible to vote, a land occupier shall first provide the district with its name, address, and information clearly identifying the acreage. The directors shall designate a [chairman] chairperson and may, from time to time, change the designation. A majority of the directors shall constitute a quorum and the concurrence of a majority upon any official matter shall be necessary. Directors shall receive no compensation for their services, but shall be entitled to necessary expenses. They may employ and fix the compensation of such officers and employees as they may require, [and fix their compensation,] and shall provide for surety bonds for employees or officers who are entrusted with funds. [They] Directors shall keep a record of proceedings, resolutions, [regulations,] rules, and orders issued or adopted, and accounts of receipts and disbursements[;], and shall furnish to the department [of land and natural resources] copies of such documents,

instruments, or information concerning their activities as the department may request.”

SECTION 4. Section 180-13, Hawaii Revised Statutes, is amended to read as follows:

“§180-13 Powers of districts and directors. A district organized under this chapter, and the directors thereof, shall have, in addition to other powers granted in [other sections of] this chapter, the [following powers:] power to:

- (1) [To provide] Provide for and encourage surveys, investigations, and research relating to soil and water conservation, and [to] publish and disseminate information concerning such subjects;
- (2) [To provide] Provide for and encourage demonstrations relative to [the] control and prevention of erosion and [the] conservation of soil and water resources, and carry out preventive and control measures, on publicly owned lands within the district with the consent of the agency having jurisdiction thereof, and on other lands with the consent of the occupier of the lands;
- (3) [To cooperate,] Cooperate or enter into agreements with, and [to] furnish financial or other aid, including machinery, equipment, fertilizer, seeds, and other material, to any agency or any occupier of lands within the district, for carrying on soil and water control conservation and operations, subject to such conditions as the directors may deem necessary;
- (4) [To acquire] Acquire property, real or personal, or rights or interest therein; [to] maintain, administer, and improve the property, receive income from it, and expend the income in carrying out the purposes of this chapter; and [to] sell, lease, or otherwise dispose of any of such property;
- (5) [To construct,] Construct, improve, and maintain any structures necessary for carrying out the purposes of this chapter;
- (6) [To develop] Develop plans for [the] conservation of soil and water resources and [the] control and prevention of erosion within the district, and [to] publish or otherwise bring them to the attention of district land occupiers;
- (7) [To accept] Accept contributions in money, services, materials or otherwise from any source, and [to] use or expend them in carrying [on] out its operations;
- (8) [To sue] Sue and be sued; [to] have a seal, which seal shall be judicially noticed; [to] and make and execute any necessary contracts or other instruments;
- (9) As a condition to the extending of benefits, or the performance of work upon lands under this chapter, [the directors may] require land occupiers to contribute money, services, materials, or otherwise to any operations conferring such benefits, and [may] impose any other reasonable conditions therefor[.];
- (10) Form associations to coordinate their policies, objectives, and actions, with power to create staffs, set policies, obtain and administer soil and water conservation district program funds, provide surety bonds, coordinate soil and water conservation district projects, and conduct director training. Other powers shall require the approval of the districts; and

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- (11) Appoint associate directors to aid districts, but without director voting powers.

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 2, 1991.)

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H.B. NO. 2157

A Bill for an Act Relating to Health.

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
UTILIZATION REVIEW AND MANAGED CARE OF MENTAL
HEALTH, ALCOHOL, OR DRUG ABUSE TREATMENT**

§ **-1 Purpose.** The legislature finds and declares that the purposes of this chapter are to:

- (1) Promote the delivery of quality health care in a cost-effective manner;
- (2) Foster greater coordination between health care providers, third-party payors, and others who conduct utilization review and managed care activities;
- (3) Protect patients, employers, and health care providers by ensuring that review agents are qualified to perform utilization review and managed care activities and to make informed decisions on the appropriateness of care;
- (4) Protect patients’ health care interests through public access to the criteria and standards used in utilization review and managed care activities;
- (5) Ensure the confidentiality of patients’ medical or psychological records in the utilization review and managed care activities in accordance with applicable state and local laws; and
- (6) Provide for nondiscriminatory utilization review of treatments for all mental health, alcohol, or drug abuse problems.

§ **-2 Definitions.** As used in this chapter:

“Director” means the director of health.

“Health care provider” means any person, corporation, facility, or institution licensed by this State to provide health care services, including but not limited to a physician, hospital or other health care facility, nurse, psychologist, or substance abuse counselor, and officer, employee, or agent of such provider acting in the course and scope of employment or agency related to health care services.

“Health care services” means diagnosis, treatment, medical or psychologi-

cal evaluation or advice, or other acts as permissible under the health care licensing statutes of this State.

“Physician” means a person licensed to practice medicine under chapter 453.

“Psychologist” means a person licensed to practice psychology under chapter 465.

“Review agent” means a hospital or nonhospital-affiliated person or entity performing utilization review or managed care that is either affiliated with, under contract with, or acting on behalf of:

- (1) A business entity in this State; or
- (2) A third party that provides or administers hospital, medical, psychological, or other health care benefits to citizens of this State, including a health insurer, nonprofit health service plan, health insurance service organization, health maintenance organization, or preferred provider organization authorized to offer health insurance policies or contracts in this State.

“Utilization review” or “managed care” means a system for reviewing the appropriate and efficient allocation of mental health, alcohol, or drug abuse treatment services given or proposed to be given to a patient or group of patients for the purpose of recommending or determining whether such services should be reimbursed, covered, or provided by an insurer, plan or other entity or person.

“Utilization review plan” means a description of the criteria and standards governing utilization review or managed care activities performed by a review agent.

§ -3 Standards for review agents. (a) A review agent who approves or denies payment, or who recommends approval or denial of payment for mental health, alcohol, or drug abuse treatment services, or whose review results in approval or denial of payment for these services on a case by case basis, shall conduct utilization review or managed care in this State subject to administrative rules developed by the director.

(b) The director shall establish a complaint resolution panel which shall review any complaints about review agents to determine the facts and establish whether the standards are being followed. If the panel finds consistent violation of the standards, a fiscal penalty may be imposed on the review agent.

(c) The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. No later than one year after the effective date of this chapter the director shall adopt rules establishing:

- (1) A requirement that the review agent provide patients and providers with its utilization review or managed care plan including the specific review criteria and standards, procedures and methods to be used in evaluating proposed or delivered mental health, alcohol, or drug abuse treatment services;
- (2) A requirement that no determination adverse to a patient or to any affected health care provider shall be made on any question relating to the necessity or justification for any form of mental health, alcohol, or drug abuse treatment services without prior evaluation and concurrence in the adverse determination by another professional with comparable qualifications in a timely manner;
- (3) A requirement that a denial of third-party reimbursement or a denial of prior authorization for that service shall include the written evaluation, findings, and concurrence of a professional with comparable qualifications in the relevant specialty or sub-specialty to make a

final determination that care rendered or to be rendered was, is, or may be inappropriate;

- (4) Provisions by which patients, mental health, alcohol, or drug abuse treatment providers may seek prompt reconsideration by or appeal to the complaint resolution panel of adverse decisions by the review agent;
- (5) A requirement that a review agent obtain permission from both the patient and the attending professional prior to attending a treatment session;
- (6) A requirement that a representative of the review agent is reasonably accessible to patients, the patient's family, and providers at least five days a week during normal business hours and that payment may not be denied solely because the review agent is not available;
- (7) Policies and procedures to ensure that all applicable state and federal laws protecting the confidentiality of individual medical records are followed;
- (8) Policies and procedures to ensure that the amount or type of information requested by any system of managed care or utilization review be minimal, be pertinent to the needs of providing appropriate utilization review or managed care services, and shall not violate patient rights and confidentiality;
- (9) A requirement that the referring professional be informed prior to the decision for a denial of treatment benefits; provided that, once the adverse determination has been made, this decision shall be communicated in a timely matter to all affected parties;
- (10) A prohibition of a contract provision between or among any combination of the review agent, the provider, a business entity, or third-party payor that may constitute a conflict of interest;
- (11) A requirement that an orderly process be established for the timely and impartial internal resolution of problems prior to the use of the complaint process; and
- (12) The process by which complaints shall be handled by the complaint resolution panel.

(d) Nothing in this process shall be deemed to deprive a patient or mental health, alcohol, or drug abuse treatment provider of any other cause of action available under state law.

§ -4 **Waiver.** This chapter shall not apply to a review agent that operates under contract with the federal government for utilization review activities relating to recipients and health care providers under Title XVIII of the Social Security Act, Title XIX of the Social Security Act, and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

§ -5 **Confidentiality.** A review agent may not disclose or publish individual medical or psychological records or any other confidential medical or psychological information obtained in the performance of utilization review or managed care activities.

§ -6 **Penalty for violation.** Any person or agency who violates any provision of this chapter or any rule adopted pursuant to this chapter or who submits any false information shall be guilty of a misdemeanor and upon conviction shall be subject to a penalty of not more than \$1,000.

§ -7 **Appeal by aggrieved party.** Any person aggrieved by a final decision of the complaint resolution panel in a contested case under this chapter may appeal to the director.

§ -8 **Annual report.** The director shall submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session concerning the conduct of review agents that have been reported to the complaint resolution panel. The report shall include an analysis of complaints filed against agents by patients or their representatives, or providers.”

SECTION 2. This Act shall take effect January 1, 1992.

(Approved May 2, 1991.)

ACT 96

H.B. NO. 699

A Bill for an Act Relating to the Employees' Retirement System.

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

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read as follows:

“§88- **Prior service credit.** (a) Any member who on July 1, 1991, was serving or previously served as an assistant clerk or assistant sergeant at arms of either house of the legislature and becomes eligible for retirement benefits as a class A member as provided under sections 88-73(1), 88-74(3), and 88-76 shall be entitled to full service credit as a class A member for any eligible service prior to July 1, 1991; provided that:

- (1) The member claims those years as prior service credit and purchases that prior service credit in accordance with section 88-59; and
- (2) Notwithstanding any other law to the contrary:
 - (A) If the member was a class A member of the system and elected to become a class C member pursuant to section 88-271, the member repurchases all the years of service as a class C member in accordance with the procedures under section 88-59 to regain standing as a contributory member; and
 - (B) A class C member shall be credited for service as an assistant clerk or assistant sergeant at arms under section 88-59 in a lump sum nonrefundable payment and receive retirement benefits as provided in this section.

(b) Any retirant who returns to employment and is enrolled as a member of the system will have previous service as an assistant clerk or assistant sergeant at arms recognized as provided in this section.”

2. By amending section 88-73 to read:

“§88-73 **Service retirement.** Retirement of a member on a service retirement allowance shall be made by the board of trustees as follows:

- (1) Any member who has at least five years of credited service and who

has attained age fifty-five or any member who has at least twenty-five years of credited service or any member who has at least ten years of credited service, including service as a judge, an elective officer, or the chief clerk [or the], assistant clerk, sergeant at arms, or assistant sergeant at arms of either house of the legislature, may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired. In the event of the death of a member after the date of the filing of the member's written application to retire, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance under the option selected by the member which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement.

- (2) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position.
- (3) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge elected to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of average final compensation, shall be used as the effective date of retirement; provided that the elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service; however, upon leaving active service the elective officer or judge shall receive the retirement allowance provided for in section 88-74, together with the post retirement allowances provided for in section 88-90, which post retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day.
- (4) In the case of a class A or B member who also has prior credited service under part VII [of this chapter], total credited service as a class A, class B, and class C member shall be used to determine the eligibility for retirement allowance."

3. By amending section 88-74 to read:

"§88-74 Allowance on service retirement. Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained the age of fifty-five, a retirement allowance of two per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and B member, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member; provided that [after]:
 - (A) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney], and provided that after];

- (B) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer[, and provided that after];
- (C) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited as an investigator of the department of the attorney general[, and provided that after]; and
- (D) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited as a narcotics enforcement investigator[.];

then for each year of service as a firefighter, a police officer, a corrections officer, an investigator of the department of the prosecuting attorney, an investigator of the department of the attorney general, or a narcotics enforcement investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation[; provided further that the]. The maximum retirement allowance for such a member shall not exceed eighty per cent of the member's average final compensation. If the member has not attained the age of fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no such reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, or sewer worker, of which the last five or more years prior to retirement is credited service in such capacities.

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for the refund thereof as permitted by section 88-72, the member may accept such refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity which is the actuarial equivalent of such additional contributions with regular interest.
- (3) If the member has credited service as a judge, an elective officer, or the chief clerk [or the], assistant clerk, sergeant at arms, or assistant sergeant at arms of either house of the legislature, the member's retirement allowance shall be computed on the following basis:
 - (A) Irrespective of age, for each year of credited service as a judge, an elective officer, or the chief clerk [or the], assistant clerk, sergeant at arms, or assistant sergeant at arms of either house of the legislature, three and one-half per cent of the member's average final compensation in addition to an annuity which is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
 - (B) For all other credited service as provided in paragraphs (1) and (2). No allowance shall exceed seventy-five per cent of such member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraph (A), and the portion of the accumulated contributions specified in that subparagraph as may be in

excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this section, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of such member's average final compensation."

4. By amending section 88-76 to read:

"§88-76 Allowance on ordinary disability retirement. Upon retirement for ordinary disability, a member shall receive a service retirement allowance if the member has attained the age of fifty-five years, otherwise, the member shall receive a retirement allowance of one and three-fourths per cent of the member's average final compensation for each full year of credited service except that for each year of credited service as a judge, an elective officer, or the chief clerk [and the], assistant clerk, sergeant at arms, or assistant sergeant at arms of both houses of the legislature, the member shall receive a retirement allowance computed as provided in section 88-74(3)(A). The minimum retirement allowance payable under this section shall be an allowance of thirty per cent of the member's average final compensation."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved May 2, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 97

S.B. NO. 1209

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. Section 401-1, Hawaii Revised Statutes, is amended to read as follows:

"§401-1 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 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 may be removed by the director with the approval of the governor; provided that while there is any vacancy in the office of the commissioner, the [director] deputy commissioner shall serve as ex officio commissioner. The commissioner shall not be subject to chapters 76 and 77. The commissioner may appoint one or more examiners who may make examinations and audits, and, with the approval of the commissioner, sign reports of examination or audit. The commissioner may also appoint an examiner knowledgeable in international banking who shall have the same powers and authority as other examiners, but who shall not be subject to chapters 76 and 77.

(b) The salary of the 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 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 7, 1991.)

ACT 98

S.B. NO. 1704

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-41, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Liability [to special compensation fund] in the absence of dependents. If there be no dependents who are entitled to benefits under this section, the employer shall pay [the sum of \$8,775 for any one death] an amount equal to twenty-five per cent of three hundred and twelve times the effective maximum weekly benefit rate provided in section 386-31, to the nondependent parent or parents. If there be no such parent or parents, the employer shall pay the sum into the special compensation fund, pursuant to an order made by the director. The employer, pursuant to an order made by the director, shall pay any remaining balance into the special compensation fund, if the weekly benefits to which dependents are entitled terminate without totalling the [sum of \$8,775.] amount as calculated 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 May 7, 1991.)

ACT 99

S.B. NO. 1998

A Bill for an Act Relating to the Taxation of Financial Institutions.

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

SECTION 1. The legislature recognizes the need to promote and support energy conservation and renewable energy resources in the State of Hawaii. Section 235-12, Hawaii Revised Statutes, provides income tax credits to encourage energy conservation by providing tax incentives for the purchase and installation of energy conserving devices and systems.

The legislature also finds that the taxpayer interested in utilizing a qualified energy conservation device may choose to finance the equipment under a

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leasing arrangement and that a majority of equipment lessors in Hawaii are subject to the franchise tax under chapter 241 rather than the corporate income tax. The franchise tax currently does not provide for an energy credit similar to the credit under section 235-12.

The purpose of this Act is to make operative the energy conservation income tax credit as provided under section 235-12 for chapter 241 effective for taxable years beginning after December 31, 1990.

SECTION 2. Chapter 241, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§241- Energy conservation; income tax credit. The energy conservation income tax credit provided under section 235-12 shall be operative for this chapter for all taxable years beginning after December 31, 1990.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act, upon its approval, shall apply to all taxable years beginning after December 31, 1990.

(Approved May 7, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 100

S.B. NO. 2053

A Bill for an Act Relating to Agricultural Products.

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

SECTION 1. Section 421-1, Hawaii Revised Statutes, is amended by amending the definitions of “agricultural products” and “association” to read as follows:

“Agricultural products” includes floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee, farm or plantation products, and fish and aquacultural commodities.

“Association” means any corporation organized under this chapter for the mutual benefit of its members, as agricultural producers, and which confines its operations to purposes authorized by this chapter and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by this chapter for associations organized hereunder[.]; provided that any fish marketing association organized pursuant to chapter 422 and in existence on the effective date of this Act shall be considered an association for purposes of this chapter. Association shall be classified as and deemed to be nonprofit corporations, inasmuch as their primary object is not to pay dividends on invested capital, but to render service and provide means and facilities by or through which the producers of agricultural products may receive a reasonable and fair return for their products.”

SECTION 2. Chapter 422, Hawaii Revised Statutes, is repealed.

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 7, 1991.)

ACT 101

H.B. NO. 804

A Bill for an Act Relating to Tax Certificate for Liquor Licenses.

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

SECTION 1. 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:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned (except that the commission may grant a license under this chapter to a corporation that has been convicted of a felony where the commission finds that the organization’s officers and shareholders of twenty-five per cent or more of outstanding stock are fit and proper persons to have a license), 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] that paragraph [(1)] from obtaining the license individually;
- (3) Unless the applicant for a license[,] or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, [presents] present to the issuing agency[,] a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee [does] do not owe the state or federal governments any delinquent taxes, penalties, or interest; or
- (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 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 7, 1991.)

A Bill for an Act Relating to Procurement, Control, Distribution and Sale of Petroleum Products.

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

SECTION 1. The purpose of this Act is to amend Section 125C-2, Hawaii Revised Statutes, to provide a qualitative instead of a quantitative "triggering mechanism" by which an energy shortage may be declared by the governor.

SECTION 2. Section 125C-2, Hawaii Revised Statutes, is amended to read as follows:

"§125C-2 "Shortage" defined. As used in this chapter, unless otherwise indicated by the context, a "shortage" exists whenever the governor determines that there is an increase in the demand for any petroleum product [which is five per cent or greater during a current or forthcoming month than the average demand for that petroleum product during that month in the immediately preceding two years, and this increase has not been met by an increase of equal magnitude in the available supply of the petroleum product in question; or there is a decrease in the available supply of any petroleum product which is five per cent or greater during a current or forthcoming month than the average supply available during that same month in the immediately preceding two years, and this decrease has not been accompanied by a decline in demand of equal magnitude] or there is a decrease in the available supply for the petroleum product in question[;], or both; and such [increase or] decrease in the available supply of or increase in the demand for the petroleum product in question, or both, may cause a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii and may not be responsibly managed within the free market distribution system. Further, the governor may require importers of any petroleum product or other fuel to monitor and report to the department of business, economic development, and tourism relevant supply and demand data. The governor shall review the status of a shortage within one hundred twenty days after the governor's initial determination of a shortage as defined under this chapter; thenceforth, the governor shall conduct a review of the shortage to make a new determination every thirty days until a shortage no longer exists."

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 7, 1991.)

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 a new section to article 3 to read as follows:

“§431:3- Annual audit. (a) Annually on or before June 1, or such later date as the commissioner upon request or for cause may specify, each domestic insurer shall file an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and the results of operations of the insurer. The insurer shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit within sixty days after the effective date of the Act. The commissioner may disapprove the insurer’s designation within fifteen days of receipt of the insurer’s notice, and the insurer shall be required to designate another independent certified public accountant or accounting firm.

(b) An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred per cent reinsurance agreement that affects the solvency and integrity of the insurer’s reserves and such insurer cedes all of its direct and assumed business to the pool.

(c) The commissioner may suspend or revoke the certificate of authority of any insurer who fails to file any of the documents required in subsection (a).”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 7, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 104

H.B. NO. 794

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-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Microorganism” means any unicellular microscopic organism including but not limited to algae, bacteria, fungi, protozoa, and viruses.”

SECTION 2. Section 150A-14, Hawaii Revised Statutes, is amended to read as follows:

“**§150A-14 Penalty.** (a) Any person who violates any provision of this chapter other than [section] sections 150A-5(2)(B), 150A-6(a)(3) and 150A-6(a)(4) or who violates any rule adopted under this chapter [or any person or organization who owns or intentionally transports, possesses, harbors, propagates, sells, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b)] other than those rules involving a plant, animal, or microorganism on the prohibited list or the restricted list without a permit shall be guilty of a [misdemeanor.] violation and fined not less than \$100 nor more than \$1,000.

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(b) Any transportation company that violates section 150A-5(2)(B) shall be guilty of a petty misdemeanor.

(c) Any person or organization that violates sections 150A-6(a)(3) or 150A-6(a)(4), or who owns or intentionally transports, possesses, harbors, propagates, sells, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), or any person or importer who violates this chapter more than [three times within a five-year period] once or whose violation involves a plant, animal, or microorganism on the prohibited list or the restricted list without a permit shall be guilty of a [class C felony.] violation and fined not less than \$1,000 nor more than \$10,000.

(d) For the purposes of this section:

(1) Convictions under two or more [counts of an indictment or complaint] citations issued in connection with the same course of conduct or episode shall be considered a single conviction [without regard to when the convictions occurred or when the individual offenses were committed]; and

(2) A conviction occurs on the date judgment is entered.

(e) Whenever a court sentences a person, organization, or importer pursuant to subsection (a) or (c) for an offense which has resulted in the escape or establishment of any pest and caused the department to initiate a program to capture, control, or eradicate that pest, the court shall also require that the person or importer pay to the state general fund an amount of money to be determined in the discretion of the court upon advice of the department, based upon the cost of the development and implementation of the program.

(f) In addition to the penalties in subsection (a) or (c) and the payment under subsection (e), the department may, at its discretion, refuse entry, confiscate, or destroy any prohibited articles or restricted articles without a permit issued by the department, brought to the State or order the return of any plant, fruit, vegetable, or any other article infested with pests to its place of origin or otherwise dispose of it or such part thereof as may be necessary to comply with this chapter. Any expense or loss in connection therewith shall be borne by the owner or the owner's agent.

(g) Any person who voluntarily surrenders any prohibited snake, other prohibited animal, or restricted animal without a permit issued by the department, prior to the initiation of any seizure action by the department shall be exempt from the penalties 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 May 10, 1991.)

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H.B. NO. 823

A Bill for an Act Relating to 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 as follows:

“§487-5 General functions, powers and duties. 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 director of 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, amend, or repeal rules pursuant to chapter 91 [interpreting section 480-2;] necessary for the purposes of this chapter, including rules which define with specificity acts or practices which are unfair or deceptive acts or practices in the conduct of any trade or commerce: [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 adopted for the purpose of consumer protection and shall enforce such laws and rules 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 clearinghouse 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) Appear before governmental commissions, departments, and agencies to represent and be heard on behalf of consumers' interest;
- (10) 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 for the purpose of consumer protection under this section, 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; and

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- [(11) Adopt rules pursuant to chapter 91 necessary to implement the provisions of chapter 487; and]
[(12) (11) 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 repealed is bracketed. New statutory material is underscored.

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

(Approved May 10, 1991.)

ACT 106

H.B. NO. 979

A Bill for an Act Relating to Kahana Valley.

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

SECTION 1. Act 5, Session Laws of Hawaii 1987, is amended by amending section 6 to read as follows.

“SECTION 6. Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into lease agreements in accordance with the provisions and limitations of this Act; provided that the authority granted by this Act shall expire (1) when leases have been negotiated and recorded in the bureau of conveyances for all parcels meeting the criteria in this Act, or (2) on [January 1, 1992,] July 1, 1992, whichever occurs first.”

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, 1991.)

ACT 107

H.B. NO. 998

A Bill for an Act Relating to Penalties by the Director of Labor and Industrial Relations.

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

SECTION 1. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“~~§386-~~ **Penalties.** (a) Any person who, after twenty-one days written notice and the opportunity to be heard by the director, is found to have violated

any provision of this chapter or rule adopted thereunder for which no penalty is otherwise provided, shall be fined not more than \$250 for each offense.

(b) All fines collected pursuant to this chapter shall be deposited into the special compensation fund created by section 386-151.”

SECTION 2. Chapter 392, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§392- Penalties. (a) Any person who, after twenty-one days written notice and the opportunity to be heard by the director, is found to have violated any provision of this chapter or rule adopted thereunder for which no penalty is otherwise provided, shall be fined not more than \$250 for each offense.

(b) All fines collected pursuant to this chapter shall be deposited into the special fund for disability benefits created by section 392-61.”

SECTION 3. Chapter 393, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§393- Penalties. (a) Any person who, after twenty-one days written notice and the opportunity to be heard by the director, is found to have violated any provision of this chapter or rule adopted thereunder for which no penalty is otherwise provided, shall be fined not more than \$250 for each offense.

(b) All fines collected pursuant to this chapter shall be deposited into the special premium supplementation fund created by section 393-41.”

SECTION 4. Section 371-9, Hawaii Revised Statutes, is amended to read as follows:

“§371-9 Penalties. (a) Any employer, employee, or other person who wilfully violates any lawful rule [or regulation] of the department [of labor and industrial relations] for which no penalty is otherwise provided shall be fined not more than [\$100,] \$250, or imprisoned not more than six months, or both, for each such offense[; and each day the violation continues may be deemed a separate offense in the discretion of the court].

(b) Any person who, after twenty-one days written notice and the opportunity to be heard by the director, is found to have violated any lawful rule of the department for which no penalty is otherwise provided, shall be fined not more than \$250 for each offense.”

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 10, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. The purpose of this Act is to include the use of the state inventory of sites, in addition to the state register of historic places, as a planning tool for the identification of cultural properties and historic sites.

SECTION 2. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

“§6E-3 Historic preservation program. There is established within the department a division to administer a comprehensive historic preservation program which shall include, but not be limited to the following:

- (1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State’s historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties and burial sites, including all those owned by the State and its political subdivisions;
- (4) Preparation of information for the Hawaii register of historic places and for listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the political subdivisions of the State and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the political subdivisions of the State in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and the legislature detailing the accomplishments of the year and recommendations for changes in the state plan or future programs relating to historic preservation;

- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter without regard to chapters 76 and 77; and
- (15) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter.”

SECTION 3. New statutory material is underscored.

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

(Approved May 10, 1991.)

ACT 109

S.B. NO. 819

A Bill for an Act Relating to the Financial Services Loan Industry.

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

SECTION 1. Section 408-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Thrift account” includes the principal invested in investment or thrift certificates (including thrift passbook) or debentures, whether on installment bases or fully paid and however evidenced, plus unpaid interest accrued thereon.”

SECTION 2. 408-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every financial services loan company, in addition to the powers exercisable by or conferred upon it under or by the general corporation law of the State, or by any other provision of this chapter, shall possess and may exercise the following powers:

- (1) To borrow money upon its own secured or unsecured notes;
- (2) To lend money upon individual credit or upon the security of comakers, personal endorsement, or the pledge or mortgage of real or personal property or choses in action, or upon any combination of such credit and security, and to contract for such interest, discount, or other consideration as is permitted by this chapter, and to sell or broker, loans or contracts, in whole or in part, to other lenders, and charge or retain a fee for the originating, selling, brokering, or servicing of such loans or contracts;
- (3) To discount, purchase, or otherwise acquire notes, installment contracts, warehouse receipts, or other choses in action;
- (4) To establish branches within the State with the prior written approval of the commissioner;
- (5) To finance purchases for others by taking title to merchandise temporarily and only for the purpose of securing loans entered into for the purchases;
- (6) To issue and sell certificates for the payment of money at any time, either fixed or uncertain, including without limitation evidences of thrift accounts [as defined in and subject to chapter 408A], and to receive amounts invested therein in installments or otherwise, with

or without allowance of interest on the investments; provided no company may issue the certificates or receive those amounts [unless] in thrift accounts unless the thrift account obligations are insured by the federal deposit insurance corporation, to the extent provided by law, and the company is a corporation organized and operating in good standing under the laws of this State. A company may, but need not, require an investor to subscribe to a certain amount of investment in such certificates, subject to minimum or maximum investments required by law or rules. Nothing herein shall be construed to authorize any financial services loan company to receive deposits or to create any liability due on demand; and

- (7) To become the legal or beneficial owner of tangible personal property and other tangible property for the purpose of leasing such property, to obtain an assignment of a lessor's interest in a lease of such property, and to incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property."

SECTION 3. Section 408-27, Hawaii Revised Statutes, is amended to read as follows:

"§408-27 Not to divulge information. The commissioner, examiners, and any other person appointed by the 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 4. Chapter 408A, Hawaii Revised Statutes, is repealed.

SECTION 5. This Act does not affect the rights and duties that matured, liabilities that were incurred, privileges and immunities that were conferred and proceedings that were begun, before its effective date. This Act shall not impair or affect the obligation of Thrift Guaranty Corporation of Hawaii on any lawful contract or any other duty or obligation that may have existed prior to the effective date of this Act. Nor shall this Act revive or renew the obligation of members of Thrift Guaranty Corporation of Hawaii to pay annual assessments which was terminated by the commissioner of financial institutions pursuant to Act 187, 1985 Session Laws of Hawaii, prior to the effective date of this Act.

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 10, 1991.)

ACT 110

S.B. NO. 827

A Bill for an Act Relating to Macadamia Nuts.

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

SECTION 1. Chapter 486, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§486- Macadamia nuts; labeling requirements. (a) If a label on a consumer package contains language that all of the raw or processed macadamia nuts contained in the package were grown in Hawaii, the label shall be worded, “100% Hawaii-Grown Macadamia Nuts” and shall appear on the principal display panel of the package.

(b) All non-consumer packages containing macadamia nuts grown in the State and introduced into intrastate or interstate commerce, shall bear on the package a label containing language that the package contains Hawaii-grown macadamia nuts. This label shall be in addition to all other labeling requirements specified in this chapter.

(c) Any person keeping, offering, displaying, exposing for sale, or soliciting for sale, any raw or processed macadamia nut product, which represents or which is branded or labeled that the macadamia nuts were grown in Hawaii, shall make available to the administrator, upon demand, documented proof that one hundred per cent of the macadamia nuts were grown in the State.

(d) It shall be violation of this part to use a label containing the words, “100% Hawaii-Grown Macadamia Nuts” or similar wording if any portion of the macadamia nuts contained in the package are not grown in the State.”

(e) For purposes of subsections (a), (b) and (c), only one hundred per cent Hawaii grown macadamia nuts may be labeled either “100% Hawaii-Grown Macadamia Nuts” or “Hawaii-Grown Macadamia Nuts”.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 10, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 111

S.B. NO. 1168

A Bill for an Act Relating to Professional and Vocational Licensing.

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

SECTION 1. The legislature finds that consumers of services must be protected against dangers such as ignorance, incompetence, and fraud on the part of members of various professions and occupations. Through the licensing process, the State grants permission to a person to engage in a profession or vocation upon finding that the person has attained the degree of competency and integrity necessary to ensure the protection of the health, safety, and welfare of consumers. A uniform licensing process is necessary to ensure consistency and reasonableness in the regulation of the professions and vocations. The legislature declares, on the basis of the foregoing findings, that the consumers of services provided by members of various professions and vocations will be protected by a uniform licensing process.

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

**“CHAPTER
UNIFORM PROFESSIONAL AND VOCATIONAL
LICENSING ACT
PART I. GENERAL PROVISIONS**

§ -1 **Short title.** This chapter shall be known as and may be cited as the Uniform Professional and Vocational Licensing Act.

§ -2 **General definitions.** As used in this chapter:

“Board” means any board or commission which is created and authorized by statute to issue a professional or vocational license, and is established within or transferred to the department for administrative purposes or subject to the administrative control or supervision of the director.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Executive secretary” or equivalent expressions means the individual employed by the department subject to chapters 76 and 77, who shall assist the licensing authority in administering this chapter, its licensing laws, rules, and orders, and who shall perform such other ministerial duties and delegated functions as authorized by law.

“Forfeit” or “forfeiture” means the immediate and automatic termination or cancellation without any prior consultation with the licensee of a license issued by a board, caused by a licensee’s voluntary or involuntary failure to comply with the requirements for maintaining or renewing a license.

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

“Licensee” means the person in whose name the licensing authority grants a license.

“Licensing authority” or “authority” means the director, or any licensing board or commission under the administrative control of the director pursuant to section 26-9(c), authorized by statute to grant or to deny licenses.

“Licensing laws” means the applicable chapter providing for the regulation, licensing, and practice of a profession or vocation by the licensing authority.

“Person” includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entity, or any combination thereof.

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

“Renew” or “Renewal” means the permission to engage in a profession or vocation granted by the applicable licensing authority to a licensee who has applied for an extension of a current and valid license.

“Restore” or “restoration” means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person whose license has been previously forfeited or suspended by the licensing authority.

§ -3 **Applicability; prevailing provisions; construction.** (a) The provisions of this chapter shall only be applicable to the professions and vocations required by law to be regulated by the licensing authority.

(b) Unless otherwise stated in this chapter, the provisions of chapters 26, 26H, 91, 92 and the licensing laws for the respective profession or vocation shall prevail. The provisions of this chapter shall apply whenever the provisions of chapters 26, 26H, 91, 92 and the licensing laws for the respective profession or vocation are silent.

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

§ -4 **Rules.** The licensing authority may adopt rules pursuant to chapter 91 to effectuate this chapter and its licensing laws, and to carry out its purpose of protecting the health, safety, and welfare of consumers of services provided by a profession or vocation regulated by the licensing authority. The enumeration of specific matters which may properly be made the subject of rules shall not be construed to limit the licensing authority's broad general power to make all rules necessary to fully effectuate the purpose of this chapter.

PART II. ORGANIZATION

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

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

§ -6 **Organization of boards.** (a) Immediately upon the qualification and appointment of the original members, and annually thereafter, the board shall elect one member as chair and one member as vice-chair. In the absence of both the chair and the vice-chair to preside at a meeting, the members present shall select a chair pro tem.

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

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

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

- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal non-binding interpretations, and conduct contested case proceedings pursuant to chapter 91;
- (2) Grant, deny, forfeit, renew, or restore licenses, including the issuance of conditional licenses;
- (3) Revoke, suspend or otherwise limit the license of any licensee for any violation of the provisions in this chapter, the licensing laws, any rule or order of the licensing authority;

- (4) Develop requirements for licensure;
- (5) Investigate and conduct hearings regarding any violation of this chapter, the licensing laws, and any rule or order of the licensing authority;
- (6) Monitor the scope of practice of the profession or vocation regulated by the licensing authority;
- (7) Prepare, administer, and grade examinations, provided that the licensing authority may contract with a testing agency to provide such services, and the licensing authority may also reserve the right to modify, amend, change or regrade the examination;
- (8) Create fact-finding committees which may make recommendations to the licensing authority for its deliberations;
- (9) Contract with qualified persons, including investigators, who may be exempt from the provisions of chapters 76 and 77 and who shall assist the licensing authority in exercising its powers and duties; and
- (10) Subpoena witnesses, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the licensing authority's power and duties, including the authority to conduct contested case proceedings under chapter 91.

§ -8 **Delegation of authority.** (a) The board shall delegate to the department the authority to receive, arbitrate, investigate, and prosecute any complaint against a licensee.

(b) A licensing authority may delegate to the executive secretary, or other designee, any of its powers or duties as it deems reasonable and proper. The delegation of powers and duties by the licensing authority shall be made in accordance with the procedures set forth in section -6(c). However, the licensing authority shall not delegate its discretionary functions resulting in a final decision, including but not limited to the following:

- (1) Adopting, amending, or repealing rules;
- (2) Ordering disciplinary action against a licensee, including the revocation, suspension, or imposition of conditions or fines; and
- (3) Granting, denying, or otherwise conditioning license applications, unless the granting, denying, or conditioning of a license does not require the exercise of the licensing authority's expertise and discretion.

PART III. APPLICATION FOR LICENSURE

§ -9 **Action on applications.** Unless otherwise provided by law, each licensing authority shall take the following actions within one year after the filing of a complete application for licensure:

- (1) If it deems appropriate, conduct an investigation of the applicant; and
- (2) Notify the applicant in writing by mail of the decision regarding the application for licensure. If the application has been denied, written notice of the decision shall specifically state the reason for denying the application and shall inform the applicant of the right to a hearing under chapter 91.

§ -10 **Application for licensure.** (a)¹ Application for a license shall be made under oath on a form to be furnished by the licensing authority. The form

may require the applicant to provide the following:

- (1) The applicant's full name;
- (2) A statement that the applicant is beyond the age of majority;
- (3) The applicant's current residence, business, and mailing addresses;
- (4) The applicant's social security number;
- (5) The applicant's employment during the ten years immediately preceding the date of the filing of the application, with names and addresses of each employer;
- (6) The applicant's educational background;
- (7) The date and place of any conviction of a penal crime directly related to the profession or vocation in which the applicant is applying for licensure, unless the conviction has been expunged or annulled, or is otherwise precluded from consideration by section 831-3.1;
- (8) A current photograph of the applicant; and
- (9) Any other information the licensing authority may require to investigate the applicant's qualifications for licensure.

§ -11 **License requirements.** In addition to any other requirements provided by law, the licensing authority may also require the applicant to provide the following:

- (1) A complete application with every applicable fee;
- (2) Attestation that the applicant is beyond the age of majority prior to the date of the application; in the case of a partnership applicant, each general partner shall attest that each partner is beyond the age of majority;
- (3) Proof that the applicant is competent, trustworthy, fair, and has financial integrity;
- (4) Proof that the applicant has satisfied all applicable business registration requirements prior to applying for licensure; and
- (5) Proof that the applicant is a United States citizen or an alien authorized to work in the United States.

§ -12 **Criminal conviction.** When an applicant has been convicted of a penal crime directly related to the profession, vocation, or occupation for which licensure is sought, and it is determined that the conviction may be considered under section 831-3.1, the department, executive secretary, or the licensing authority's designee may request the following documents from the applicant:

- (1) Copies of any court records, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the verdict of the court with regard to that conviction, the sentence imposed, and the actual terms of the sentence; and
- (2) Affidavits from any parole officer, employer, or other persons who can attest to a firm belief that the applicant has been sufficiently rehabilitated to warrant public trust.

§ -13 **Renewal of license.** (a) Each licensee shall be responsible for timely renewing the licensee's license and satisfying the renewal requirements provided by law.

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

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

§ -14 **Restoration of forfeited license.** (a)¹ A license which has been forfeited may be restored by the licensing authority within one year after the date of forfeiture upon compliance with the licensing renewal requirements provided by law and upon written application and payment of all applicable renewal fees, penalty fees, compliance resolution fund fees and, if applicable, recovery fund assessments. Any person who fails to have the person's license restored within one year from the date of forfeiture may be required by the licensing authority to reapply for licensure as a new applicant.

§ -15 **Fees and expenses.** No applicant or licensee shall be granted a license pursuant to the licensing laws unless the appropriate fees have been paid. Unless otherwise provided by law, the director shall establish the amount for all fees and expenses by rules adopted pursuant to chapter 91. The fees to be established by the director may include but not be limited to an application fee, filing fee, license fee, renewal fee, examination fee, and other reasonable and necessary fees related to the department's administrative costs. Unless otherwise provided by law, the fees shall be deposited in the general fund of the State.

PART IV. LICENSEE REPORTING REQUIREMENTS

§ -16 **Notice of judgments, penalties.** (a) Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions.

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

§ -17 **Filing of current addresses.** Each licensee shall file with the licensing authority the licensee's current mailing, business, and residence address. It shall be the licensee's duty to provide written notice to the licensing authority of any change of address. Failure of the licensee to provide such notice shall absolve the licensing authority, executive secretary, or any designee from any duty to provide notice of any matter required by law to be provided the licensee.

PART V. LICENSING SANCTIONS

§ -18 **Disciplinary action.** In addition to the licensing sanctions or remedies provided by section 92-17 against any licensee, the licensing authority may also impose conditions or limitations upon a licensee's license after a hearing conducted in accordance with chapter 91. The violation of any condition or

limitation on a licensee's license may be cause to impose additional sanctions against the licensee. Unless otherwise provided by law, any fine imposed by the licensing authority after a hearing in accordance with chapter 91 shall be no less than \$100 for each violation, and each day's violation may be deemed a separate violation.

§ -19 **Grounds for revocation, suspension, renewal, restoration, denial, or condition of licenses.** In addition to any other acts or conditions provided by law, the licensing authority may deny, revoke, suspend, refuse to renew or restore, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

- (1) Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (3) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (4) Practicing the licensed profession or vocation while impaired by alcohol, drugs, physical disability, or mental instability;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (7) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation;
- (8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- (9) Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation;
- (10) Violating any condition or limitation upon which the conditional license was issued;
- (11) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;
- (12) Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license;
- (13) Revocation, suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws and this section;
- (14) Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation;
- (15) Failure to report in writing to the licensing authority any disciplinary decision issued against the licensee or the applicant in another jurisdiction;
- (16) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required; or
- (17) Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

§ -20 **Restoration of suspended license.** A person whose license has been suspended may apply for restoration of the license to the extent authorized by law and upon complete compliance with any term or condition imposed by the order of suspension. The application for restoration shall be accompanied by all applicable fees, including but not limited to restoration fees, any compliance resolution fund fees, and any recovery fund assessments.

§ -21 **Revoked license.** A person may apply for a new license after two years from the effective date of the revocation of the license by filing an application and complying with all current requirements for new applicants. The licensing authority may waive any applicable education or examination requirements upon being satisfied that the applicant whose license has been previously revoked, has submitted documentation that the applicant has maintained equivalent knowledge, competence and qualifications through work experience, training, or education.

§ -22 **Relinquishment no bar to jurisdiction.** The forfeiture, nonrenewal, surrender, or voluntary relinquishment of a license by a licensee shall not bar jurisdiction by the licensing authority to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the licensee's license.

§ -23 **Summary suspension.** Notwithstanding any law to the contrary, the licensing authority may cause the immediate suspension or restriction of a license, subject to subsequent notice and hearing or other adequate procedures, upon a specific determination by the licensing authority that the failure to take such an action may result in (1) an immediate and unreasonable threat to personal safety or (2) fraud or misrepresentation upon consumers, and that, for the protection of the public from the possible consequences of practices, the licensee's license should be immediately suspended or restricted.

The licensing authority may order the summary suspension of the license for a period not to exceed twenty days. The order of suspension shall be served upon the licensee at the same time as the notice of hearing for disciplinary action, and the hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing shall not be extended except upon request of the licensee for a reasonable continuance to adequately prepare the licensee's defense. Any attempt by the licensee to continue the licensed activity while the license has been summarily suspended shall of itself be sufficient to warrant a permanent revocation of the license and shall subject the licensee to all penalties prescribed by this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

§ -24 **Hearings.** Unless otherwise provided by law, any proceeding before the licensing authority to take disciplinary action or other licensing sanctions against a licensee shall be conducted in accordance with chapter 91.

§ -25 **Judicial review by circuit court.** Any person aggrieved by a final decision and order of the board in a "contested case", as defined in chapter 91, is entitled to judicial review thereof by the circuit court of the circuit in which the board making the final decision and order has jurisdiction. The review shall be as provided by chapter 91.

VI. CIVIL AND CRIMINAL SANCTION

§ -26 **No compensation for unlicensed activity; civil action.** The failure of any person to maintain a current and a valid license prior to engaging in any activity requiring licensure by the licensing authority shall prevent such person from recovering in a civil action for work or services performed or materials or supplies furnished, or both, on a contract or on any legal basis to recover the reasonable value thereof.

§ -27 **Civil and criminal sanctions for unlicensed activity; fines; injunctive relief; damages; forfeiture.** (a) Any licensee aiding or abetting an unlicensed person to directly or indirectly evade this chapter or the applicable licensing laws, or combining or conspiring with an unlicensed person, or permitting one's license to be used by an unlicensed person, or acting as agent, partner, associate, or otherwise, of an unlicensed person with the intent to evade this chapter or the applicable licensing laws may be fined up to \$1,000 for the first offense; up to \$2,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for the second offense; and up to \$5,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for any subsequent offense. For purposes of this section, "contract price" means the total monetary consideration offered by the consumer for the provision of goods and services.

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

(c) The department, licensing authority, or any person may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a license where a license is required by law, and if injured thereby, for the recovery of damages. The department may also seek the imposition of fines provided by subsection (a) except where the recovery of damages is requested, the plaintiff or petitioner in a suit for an injunction need not allege or prove actual damages to prevail. Reasonable attorney fees and costs shall be allowed by the court to the plaintiff or petitioner as the prevailing party.

(d) All tools, implements, armamentariums, documents, materials, or any other property used by any person to provide professional or vocational services without a license required by law shall be subject to forfeiture under the provisions of chapter 712A.

§ -28 **Remedies or penalties cumulative.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§ -29 **Severability.** If any provision 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."

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SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. (a) The following sections are hereby repealed effective December 31, 1990:

(1) Sections 321-13 to 321-15 (laboratory directors, laboratory technologists, laboratory supervisors, and laboratory technicians)

(b) The following chapters are hereby repealed effective December 31, 1991:

(1) Chapter 458 (Board of Dispensing Opticians)

(2) Chapter 460J (Pest Control Board)

(3) Chapter 462A (Pilotage)

(4) Chapter 468K (Travel Agencies)

(c) The following chapters and sections are hereby repealed effective December 31, 1992:

(1) Chapter 446 (Debt Adjusters)

(2) Chapter 467D (Social Workers)

(3) Sections 321-13 to 321-15 only as they relate to sanitarians

(4) Sections 445-21 to 38 (Auctions)

(5) Sections 445-131 to 136 (Pawnbrokers)

(6) Sections 445-171 to 172 (Secondhand Dealers)

(7) Sections 445-231 to 235 (Scrap Dealers)

(d) The following chapters are hereby repealed effective December 31, 1993:

(1) Chapter 452 (Board of Massage)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 460 (Board of Osteopathic Examiners)

(4) Chapter 461J (Board of Physical Therapy)

(5) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective December 31, 1994:

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 457 (Board of Nursing)

(3) Chapter 457A (Nurse Aides)

(4) Chapter 457B (Board of Examiners of Nursing Home Administrators)

(5) Chapter 461 (Board of Pharmacy)

(f) The following chapters are hereby repealed effective December 31, 1995:

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

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

(3) Chapter 440 (Boxing Commission)

(4) Chapter 448H (Elevator Mechanics Licensing Board)

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

(g) The following chapters [and sections] are hereby repealed effective December 31, 1996:

(1) Chapter 321, Part XXX (Tattoo Artists)

(2) Chapter 321, Part XXXI, (Midwives)

(3) Chapter 448F (Electrologists)

(4) Chapter 466J (Board of Radiologic Technology)

(5) Sections 321-13 to 321-15 (laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, and sanitarians)

- (g) Sections 431:10A-116(4) and 432:1-605 (Mammogram Screening)
- (h) The following chapters are hereby repealed effective December 31, 1997:
 - (1) Chapter 438 (Board of Barbers)
 - (2) Chapter 448 (Board of Dental Examiners)
 - (3) Chapter 455 (Board of Examiners in Naturopathy)
 - (4) Chapter 459 (Board of Examiners in Optometry)
 - (5) Chapter 471 (Board of Veterinary Examiners)
- (i) The following chapters are hereby repealed effective December 31, 1998:
 - (1) Chapter 373 (Commercial Employment Agencies)
 - (2) Chapter 441 (Cemetery and Funeral Trusts)
 - (3) Chapter 443B (Collection Agencies)
 - (4) Chapter 463 (Board of Private Detectives and Guards)
 - (5) Chapter 468 (Solicitors; Business of Taking Orders)
- (j) The following chapters are hereby repealed effective December 31, 1999:
 - (1) Chapter 436E (Board of Acupuncture)
 - (2) Chapter 442 (Board of Chiropractic Examiners)
 - (3) Chapter 444 (Contractors License Board)
 - (4) Chapter 448E (Board of Electricians and Plumbers)
 - (5) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
 - (6) Chapter 465 (Board of Psychology)
 - (7) Chapter 468E (Speech Pathology and Audiology)
- (k) The following chapters are hereby repealed effective December 31, 2000:
 - (1) Chapter 439 (Board of Cosmetology)
 - (2) Chapter 448F (Electrologists)
 - (3) Chapter 454 (Mortgage Brokers and Solicitors)
 - (4) Chapter 454D (Real Estate Collection Servicing Agents)
 - (5) Chapter 466 (Board of Public Accountancy)
 - (6) [Chapter 466K (Real Estate Appraisers)
 - (7)] Chapter 467 (Real Estate Commission)

SECTION 4. Statutory material to be repealed is bracketed.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved May 10, 1991.)

Note

- 1. So in original.

ACT 112

S.B. NO. 1221

A Bill for an Act Relating to Income Tax Checkoffs.

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

SECTION 1. Section 235-102.5, Hawaii Revised Statutes, is amended to read as follows:

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“§235-102.5 **Income check-off authorized.** Any individual whose state income tax liability for any taxable year is \$2 or more may designate \$2 of [such] the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having state income tax liability of \$4 or more, each spouse may designate that \$2 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked.”

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, 1991.)

ACT 113

S.B. NO. 1317

A Bill for an Act Relating to Temporary Disability Insurance.

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

SECTION 1. Chapter 392, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§392- Insurer’s requirements; failure to maintain a claims service office; penalty; injunction. (a) Each insurer shall maintain a complete claims service office or engage an independent claims adjusting service as its claims agent in this State with draft authority for the processing of temporary disability insurance payments.

(b) If an insurer fails to comply with subsection (a), the insurer shall be subject to a civil penalty of not less than \$2,500 or \$100 for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the director in the name of the State, and the amount so collected shall be paid into the special fund created by section 392-61. The director, in the director’s discretion, for good cause shown, may remit all or any part of the penalty in excess of \$2,500, if the insurer in default forthwith complies with subsection (a). With respect to such actions, the attorney general shall enforce this subsection if so requested by the director.

(c) If any insurer violates subsection (a) for a period of thirty days, the insurer may be enjoined by the circuit court from carrying on the insurer’s business any place in the State so long as the violation continues. The action for injunction shall be commenced by the attorney general if so requested by the director.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on January 1, 1992.

(Approved May 10, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 114

S.B. NO. 1346

A Bill for an Act Relating to Youth.

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

SECTION 1. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Effective July 1, 1990, the functions and authority heretofore exercised by the department of corrections relating to adult [and juvenile] corrections and the intake service centers; the functions and authority heretofore exercised by the judiciary relating to the sheriff’s office and judiciary security personnel; and the functions and authority heretofore exercised by the department of the attorney general relating to state law enforcement officers and narcotics enforcement investigators with the narcotics enforcement division shall be transferred to the department of public safety.”

SECTION 2. Section 352-1, Hawaii Revised Statutes, is amended by amending the definitions of “department”, “director”, and “discharge” to read as follows:

““Department” means the department of [public safety.] human services; provided that the powers, duties, and functions relating to the Hawaii youth correctional facilities shall be administered by the office of youth services.

“Director” means the [director of public safety.] executive director of the office of youth services.

“Discharge” means the ending of the [director of public safety’s] executive director of the office of youth 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.”

SECTION 3. Section 352-2.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter creates within the department of [public safety,] human services, and to be placed within the office of youth services 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.”

SECTION 4. Section 352-14, Hawaii Revised Statutes, is amended to read as follows:

“§352-14 Educational programs provided by the department of education. The department of education shall provide educational programs for those persons committed to the youth correctional facilities. These educational programs shall be adapted to the needs of the persons committed as prescribed by the department of education in coordination with the director [of the department of public safety].”

SECTION 5. Section 571-48, Hawaii Revised Statutes, is amended to read as follows:

“§571-48 Decree, if [[informal]] adjustment or diversion to a private or community agency or program has not been effected. When a minor is found by the court to come within section 571-11, the court shall so decree and in its decree shall make a finding of the facts upon which the court exercises its jurisdiction over the minor. Upon the decree the court, by order duly entered, shall proceed as follows:

- (1) As to a child adjudicated under 571-11(1):
 - (A) The court may place the child on probation:
 - (i) In the child’s own home; or
 - (ii) In the custody of a suitable person or facility elsewhere, upon conditions determined by the court.

When conditions of probation include incarceration in a youth correctional facility, the incarceration shall be for a term not to exceed one year, after which time the person shall be allowed to reside in the community subject to additional conditions as may be imposed by the court[.];
 - (B) The court may vest legal custody of the child, after prior consultation with the agency or institution, in a Hawaii youth correctional facility, in a local public agency or institution, or in any private institution or agency authorized by the court to care for children; or place the child in a private home. If legal custody of the child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state’s department of social services or other appropriate department[.]; or
 - (C) The court may fine the child for a violation which would be theft in the third degree by shoplifting if committed by an adult. The court may require the child to perform public services in lieu of the fine[.];
- (2) As to a child adjudicated under 571-11(2):
 - (A) The court may place the child under protective supervision, as hereinabove defined, in the child’s own home, or in the custody of a suitable person or agency elsewhere, upon conditions determined by the court[.]; or
 - (B) The court may vest legal custody of the child, after prior consultation with the agency or institution, in a local governmental agency or institution licensed or approved by the State to care for children, with the exception of an institution authorized by the court to care for children. If legal custody of the

child is vested in a private agency or institution in another state, the court shall select one that is approved by the family or juvenile court of the other state or by that state's department of social services or other appropriate department; provided that the child may not be committed to a public or private institution operated solely for the treatment of law violators[.];

- (3) An order vesting legal custody of a minor in an individual[[],[]] agency, or institution under section 571-11(2) shall be for an indeterminate period but shall not remain in force or effect beyond three years from the date entered, except that the individual, institution, or agency may file with the court a petition for renewal of the order and the court may renew the order if it finds such renewal necessary to safeguard the welfare of the child or the public interest. The court, after notice to the parties, may conduct a hearing on the petition. Renewal may be periodic during minority, but no order shall have any force or effect beyond the period authorized by section 571-13. An agency granted legal custody shall be subject to prior approval of the court in any case in which the child is to reside without the territorial jurisdiction of the court and may be subject to prior approval in other cases. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court[.];
- (4) Whenever the court commits a child to the care of the director of human services or [director of public safety,] executive director of the office of youth services, or vests legal custody of a child in an institution or agency it shall transmit with the order copies of the clinical reports, social study, and other information pertinent to the care and treatment of the child, and the institution or agency shall give to the court any information concerning the child that the court may at any time require. An institution or agency receiving a child under this paragraph shall inform the court whenever the status of the child is affected through temporary or permanent release, discharge, or transfer to other custody. An institution to which a child is committed under section 571-11(1) or (2) shall not transfer custody of the child to an institution for the correction of adult offenders, except as authorized in this chapter and under chapter 352[.];
- (5) The court may order, for any child within its jurisdiction, whatever care or treatment is authorized by law[.];
- (6) In placing a child under the guardianship or custody of an individual or of a private agency or private institution, the court shall give primary consideration to the welfare of the child[.];
- (7) In support of any order or decree under section 571-11(1) or (2), the court may require the parents or other persons having [the] custody of the child, or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter and who are parties to the proceeding, to do or to omit doing any acts required or forbidden by law, when the judge deems this requirement necessary for the welfare of the child. The court may also make appropriate orders concerning the parents or other persons having custody of the child and who are parties to the proceeding. If such persons fail to

- comply with the requirement or with the court order, the court may proceed against them for contempt of court[.];
- (8) In support of any order or decree for custody or support, the court may make an order of protection setting forth reasonable conditions of behavior to be observed for a specified time, binding upon both parents or either of them. This order may require either parent to stay away from the home or from the other parent or children, may permit the other to visit the children at stated periods, or may require a parent to abstain from offensive conduct against the children or each other[.];
 - (9) The court may dismiss the petition or otherwise terminate its jurisdiction at any time[.];
 - (10) In any other case of which the court has jurisdiction, the court may make any order or judgment authorized by law[.];
 - (11) The court may order any person adjudicated pursuant to section 571-11(1) to make restitution of money or services to any victim who suffers loss as a result of the child's action, or to render community service[.];
 - (12) The court may order any person adjudicated pursuant to section 571-11(2) to participate in community service[.]; and
 - (13) The court may order the parents of an adjudicated minor to make restitution of money or services to any victim, person, or party who has incurred a loss or damages as a result of the child's action."

SECTION 6. (a) All rights, powers, functions, and duties of the department of public safety relating to the Hawaii youth correctional facilities are transferred to the department of human services to be administered by the office of youth services.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which that officer or employee is transferred or appointed.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

(b) All appropriate records, appropriations, equipment, machines, files, supplies, contracts, books, papers, documents, maps and other personal property heretofore made, used, acquired, or held by the department of public safety relating to the Hawaii youth correctional facilities' functions transferred to the department of human services shall be transferred with the functions to which they relate and be administered by the office of youth services.

SECTION 7. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature for review at its next regular session.

SECTION 8. 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 1991, 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 is being amended.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 1991.

(Approved May 10, 1991.)

ACT 115

S.B. NO. 1359

A Bill for an Act Relating to State Comprehensive Emergency Medical Services System.

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

SECTION 1. Section 321-222, Hawaii Revised Statutes, is amended by amending the definition of "basic life support" to read:

““Basic life support” means initiating non-invasive emergency patient care designed to optimize the patient’s chances of surviving the emergency situation. The care rendered consists of all first aid procedures needed, but does not include invasive procedures which constitute the practice of medicine[.]; provided that state-approved basic life support personnel may use fully automatic external defibrillators, initiate intravenous lines, and perform manual external defibrillation under the direction and personal supervision of a mobile intensive care technician and in accordance with rules adopted by the department.”

SECTION 2. Section 321-225, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The advisory committee shall be composed of [sixteen] twenty members: three non-voting ex-officio members, who shall be the director of transportation, the adjutant general, and the administrator of the state health planning

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and development agency, or the designated representatives thereof, and [thirteen] seventeen members representing all counties of the State and who shall be appointed by the governor subject to section 26-34 as follows:

- (1) Five members who shall be physicians experienced in the conduct and delivery of emergency medical services; provided that at least two shall be engaged in the full time practice of emergency medicine and be board eligible or board certified by the American Board of Emergency Medicine;
- (2) Four members who shall be consumers of health care and who shall have no connection with or relationship to the health care system of the State and who shall be representative of all counties;
- (3) Four members of allied health professions related to emergency medical services[.]; and
- (4) Four members, one from each county, who shall be mobile intensive care technicians or emergency medical technicians engaged in the full time practice of prehospital emergency medical service.

The members of the advisory committee shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties, including travel expenses. The chairperson of the advisory committee shall be elected by the members from among their numbers. A majority of the members of the advisory committee shall constitute a quorum for the conduct of business of the advisory committee. A majority vote of the members present at a meeting at which a quorum is established shall be necessary to validate any action of the committee."

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 10, 1991.)

ACT 116

S.B. NO. 1628

A Bill for an Act Relating to Pest Control Operators.

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

SECTION 1. Section 460J-19, Hawaii Revised Statutes, is amended to read as follows:

"§460J-19 Termite control contracts and written inspection reports; form and contents; filing and delivery; control service; control service contract. (a) This section shall apply [only] to contracts for the control of termites[.] and written inspection reports.

(b) No licensee shall commence work on a contract for the control of termites until an inspection has been made and a written inspection report and a written estimate have been approved by the person requesting the work; provided that no written inspection report shall be required in the event that a live infestation exists. The [following shall be included in the] written inspection report [on

a form prescribed by the board:] shall be on a PC-9 form prescribed by the board and shall include the following:

- (1) The date of the inspection and the name of the person making the inspection;
- (2) The name and address of the person or firm ordering the report;
- (3) The name and address of any person who is a party in interest to whom the licensee is to send certified copies of inspection reports and completion notices;
- (4) The address or location of the property;
- (5) A general description of the building or premises inspected; and
- (6) The location of visible termite infestations apparent to the licensee.

The licensee shall not be responsible for subsequent infestations unless their presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection [reports] report.

(c) Control service is defined as the regular reinspection of a property after a written inspection report has been made in compliance with this section and such corrections as have been agreed upon have been completed. Under a control service agreement, a licensee shall refer to the original written inspection report and contract in such manner as to identify them clearly, and the original written inspection report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A licensee is not required to issue a report as outlined in paragraphs (1) to (6) after each control service inspection. If after control service inspection, no modification of the original written inspection report is made in writing, then it will be assumed that conditions are as originally reported. A control service contract shall identify the particular types of termites and the portions of the buildings or structures covered by the contract.”

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, 1991.)

ACT 117

S.B. NO. 1649

A Bill for an Act Relating to Electricians and Plumbers.

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

SECTION 1. Section 448E-5, Hawaii Revised Statutes, is amended to read as follows:

“**§448E-5 Minimum requirements.** An applicant shall possess the following minimum qualifications:

- (1) Journeyman electrician. Every applicant to be eligible for the journeyman electrician examination shall be at least eighteen years of age and shall provide satisfactory evidence of experience in residential or commercial wiring of at least [four] five years full-time or its

- equivalent, but not less than [8,000] 10,000 hours [as] of experience in the trade under the supervision of a journeyman or supervising [electrician's helper.] electrician.
- (2) Journeyman specialty electrician. Every applicant to be eligible for the journeyman specialty electrician examination shall be at least eighteen years of age and shall have had at least [four] five years' experience in the trade.
 - (3) Supervising electrician. Every applicant to be eligible for the supervising electrician examination shall have been registered with the board as a journeyman electrician for at least a period of [two] four years in the trade or shall have had equivalent experience in the trade.
 - (4) Supervising specialty electrician. Every applicant to be eligible for the supervising specialty electrician examination shall have been registered with the board as a journeyman specialty electrician for at least a period of [two] four years in the trade or shall have had equivalent experience in the trade.
 - (5) Journeyman plumber. Every applicant to be eligible for the journeyman plumber examination shall have had experience of at least five years' full-time or its equivalent but not less than 10,000 hours as a journeyman's or master plumber's helper, and is able to furnish satisfactory evidence of such fact.
 - (6) Master plumber. Every applicant to be eligible for the master plumber examination shall have been registered with the board as a journeyman plumber for at least two years or shall have had equivalent experience in the trade.
 - (7) Maintenance electrician. Every applicant to be eligible for the maintenance electrician examination shall be not less than eighteen years of age and shall have had at least one year of experience in performing electrical maintenance work or proof of two years of schooling in the electrical trade.
 - (8) Journeyman industrial electrician. Every applicant to be eligible for the journeyman industrial electrician examination shall be at least eighteen years of age and shall have had experience in industrial electrical work of at least [four] five years full-time or its equivalent, but not less than [8,000] 10,000 hours.
 - (9) Supervising industrial electrician. Every applicant to be eligible for the supervising industrial electrician examination shall have been registered with the board as a journeyman industrial electrician for a period of at least [two] four years or shall have had equivalent experience in the trade."

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

SECTION 3. This Act shall take effect on January 1, 1992.

(Approved May 10, 1991.)

ACT 118

S.B. NO. 1714

A Bill for an Act Relating to the Uniform Commercial Code.

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

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article to read as follows:

**“ARTICLE 3.
NEGOTIABLE INSTRUMENTS
PART 1. GENERAL PROVISIONS AND DEFINITIONS**

§490:3-101 Short title. This Article may be cited as Uniform Commercial Code — Negotiable Instruments.

§490:3-102 Subject matter. (a) This Article applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.

(b) If there is conflict between this Article and Article 4 or 9, Articles 4 and 9 govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this Article to the extent of the inconsistency.

§490:3-103 Definitions. (a) In this Article:

- (1) “Acceptor” means a drawee that has accepted a draft.
- (2) “Drawee” means a person ordered in a draft to make payment.
- (3) “Drawer” means a person who signs or is identified in a draft as a person ordering payment.
- (4) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (5) “Maker” means a person who signs or is identified in a note as a person undertaking to pay.
- (6) “Order” means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- (7) “Ordinary care” in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank’s prescribed procedures and the bank’s procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.
- (8) “Party” means a party to an instrument.
- (9) “Promise” means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by

the obligor is not a promise unless the obligor also undertakes to pay the obligation.

- (10) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 490:1-201(8)).
- (11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this Article and the sections in which they appear are:

- "Acceptance". Section 490:3-409.
- "Accommodated party". Section 490:3-419.
- "Accommodation party". Section 490:3-419.
- "Alteration". Section 490:3-407.
- "Anomalous indorsement". Section 490:3-205.
- "Blank indorsement". Section 490:3-205.
- "Cashier's check". Section 490:3-104.
- "Certificate of deposit". Section 490:3-104.
- "Certified check". Section 490:3-409.
- "Check". Section 490:3-104.
- "Consideration". Section 490:3-303.
- "Draft". Section 490:3-104.
- "Holder in due course". Section 490:3-302.
- "Incomplete instrument". Section 490:3-115.
- "Indorsement". Section 490:3-204.
- "Indorser". Section 490:3-204.
- "Instrument". Section 490:3-104.
- "Issue". Section 490:3-105.
- "Issuer". Section 490:3-105.
- "Negotiable instrument". Section 490:3-104.
- "Negotiation". Section 490:3-201.
- "Note". Section 490:3-104.
- "Payable at a definite time". Section 490:3-108.
- "Payable on demand". Section 490:3-108.
- "Payable to bearer". Section 490:3-109.
- "Payable to order". Section 490:3-109.
- "Payment". Section 490:3-602.
- "Person entitled to enforce". Section 490:3-301.
- "Presentment". Section 490:3-501.
- "Reacquisition". Section 490:3-207.
- "Special indorsement". Section 490:3-205.
- "Teller's check". Section 490:3-104.
- "Transfer of instrument". Section 490:3-203.
- "Traveler's check". Section 490:3-104.
- "Value". Section 490:3-303.

(c) The following definitions in other Articles apply to this Article:

- "Bank". Section 490:4-105.
- "Banking day". Section 490:4-104.
- "Clearing-house". Section 490:4-104.
- "Collecting bank". Section 490:4-105.
- "Depository bank". Section 490:4-105.
- "Documentary draft". Section 490:4-104.
- "Intermediary bank". Section 490:4-105.
- "Item". Section 490:4-104.

“Payor bank”. Section 490:4-105.

“Suspends payments”. Section 490:4-104.

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§490:3-104 Negotiable instrument. (a) Except as provided in subsections (c) and (d), “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) Is payable on demand or at a definite time; and
- (3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) “Instrument” means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1) and otherwise falls within the definition of “check” in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a “note” if it is a promise and is a “draft” if it is an order. If an instrument falls within the definition of both “note” and “draft”, a person entitled to enforce the instrument may treat it as either.

(f) “Check” means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier’s check or teller’s check. An instrument may be a check even though it is described on its face by another term, such as “money order”.

(g) “Cashier’s check” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) “Teller’s check” means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) “Traveler’s check” means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term “traveler’s check” or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) “Certificate of deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

§490:3-105 Issue of instrument. (a) “Issue” means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An

instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

§490:3-106 Unconditional promise or order. (a) Except as provided in this section, for the purposes of section 490:3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 490:3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 490:3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

§490:3-107 Instrument payable in foreign money. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

§490:3-108 Payable on demand or at definite time. (a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

§490:3-109 Payable to bearer or to order. (a) A promise or order is “payable to bearer” if it:

- (1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;
- (2) Does not state a payee; or
- (3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is “payable to order” if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to section 490:3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to section 490:3-205(b).

§490:3-110 Identification of person to whom instrument is payable. (a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

- (1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.
- (2) If an instrument is payable to:
 - (i) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;
 - (ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;
 - (iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

- (iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

§490:3-111 Place of payment. Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

§490:3-112 Interest. (a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

§490:3-113 Date of instrument. (a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 490:4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

§490:3-114 Contradictory terms of instrument. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

§490:3-115 Incomplete instrument. (a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under section 490:3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 490:3-104, but, after completion, the requirements of section 490:3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 490:3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

§490:3-116 Joint and several liability; contribution. (a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in section 490:3-419(e) or by agreement of the affected parties, a party having joint and several liability that pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged.

§490:3-117 Other agreements affecting instrument. Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

§490:3-118 Statute of limitations. (a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker

is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this Article and not governed by this section must be commenced within three years after the cause of action accrues.

§490:3-119 Notice of right to defend action. In an action for breach of an obligation for which a third person is answerable over pursuant to this Article or Article 4, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend.

PART 2. NEGOTIATION, TRANSFER, AND INDORSEMENT

§490:3-201 Negotiation. (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

§490:3-202 Negotiation subject to rescission. (a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

§490:3-203 Transfer of instrument; rights acquired by transfer. (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.

§490:3-204 Indorsement. (a) “Indorsement” means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser’s liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, the terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) “Indorser” means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder’s name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

§490:3-205 Special indorsement; blank indorsement; anomalous indorsement. (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorser identifies a person to whom it makes the instrument payable, it is a “special indorsement”. When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in section 490:3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a “blank indorsement”. When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) “Anomalous indorsement” means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

§490:3-206 Restrictive indorsement. (a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may dis-

regard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in section 490:4-201(b) or (ii) in blank or to a particular bank using the words "for deposit", "for collection", or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

- (1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.
- (2) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.
- (3) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.
- (4) Except as otherwise provided in paragraph (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

- (1) Unless there is notice of breach of fiduciary duty as provided in section 490:3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.
- (2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

§490:3-207 Reacquisition. Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instru-

ment. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

PART 3. ENFORCEMENT OF INSTRUMENTS

§490:3-301 Person entitled to enforce instrument. “Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 490:3-309 or 490:3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

§490:3-302 Holder in due course. (a) Subject to subsection (c) and section 490:3-106(d), “holder in due course” means the holder of an instrument if:

- (1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and
- (2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in section 490:3-306, and (vi) without notice that any party has a defense or claim in recoupment described in section 490:3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor’s sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under section 490:3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

§490:3-303 Value and consideration. (a) An instrument is issued or transferred for value if:

- (1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;
- (2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;
- (3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;
- (4) The instrument is issued or transferred in exchange for a negotiable instrument; or
- (5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

§490:3-304 Overdue instrument. (a) An instrument payable on demand becomes overdue at the earliest of the following times:

- (1) On the day after the day demand for payment is duly made;
- (2) If the instrument is a check, ninety days after its date; or
- (3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

- (1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.
- (2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.
- (3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

§490:3-305 Defenses and claims in recoupment. (a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay the instrument is subject to the following:

- (1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal

capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

- (2) A defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and
- (3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 490:3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

§490:3-306 Claims to an instrument. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

§490:3-307 Notice of breach of fiduciary duty. (a) In this section:

- (1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.
- (2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on

the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

- (1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.
- (2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.
- (3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.
- (4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

§490:3-308 Proof of signatures and status as holder in due course. (a)

In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 490:3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 490:3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

§490:3-309 Enforcement of lost, destroyed, or stolen instrument. (a) A

person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in rightful possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an

unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 490:3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

§490:3-310 Effect of instrument on obligation for which taken. (a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

- (1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.
- (2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.
- (3) Except as provided in paragraph (4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.
- (4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case.

§490:3-311 Accord and satisfaction by use of instrument. (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

- (1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.
- (2) The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

PART 4. LIABILITY OF PARTIES

§490:3-401 Signature. (a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 490:3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

§490:3-402 Signature by representative. (a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

- (1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.
- (2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative

capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

§490:3-403 Unauthorized signature. (a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this Article which makes the unauthorized signature effective for the purposes of this Article.

§490:3-404 Impostors; fictitious payees. (a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (section 490:3-110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

- (1) Any person in possession of the instrument is its holder.
- (2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

§490:3-405 Employer responsibility for fraudulent indorsement by employee. (a) In this section:

- (1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.
- (2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.
- (3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity.

"Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement to the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person, or (ii) the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

§490:3-406 Negligence contributing to forged signature or alteration of instrument. (a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

§490:3-407 Alteration. (a) “Alteration” means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents to or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

§490:3-408 Drawee not liable on unaccepted draft. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

§490:3-409 Acceptance of draft; certified check. (a) “Acceptance” means the drawee’s signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee’s signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) “Certified check” means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

§490:3-410 Acceptance varying draft. (a) If the terms of a drawee’s acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

§490:3-411 Refusal to pay cashier’s checks, teller’s checks, and certified checks. (a) In this section, “obligated bank” means the acceptor of a certified

check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

§490:3-412 Obligation of issuer of note or cashier's check. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 490:3-115 and 490:3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under section 490:3-415.

§490:3-413 Obligation of acceptor. (a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 490:3-115 and 490:3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under section 490:3-414 or 490:3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

§490:3-414 Obligation of drawer. (a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 490:3-115 and 490:3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under section 490:3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same

as the obligation of an indorser under section 490:3-415(a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depository bank for collection within thirty days after its date, (ii) the drawee suspends payments after expiration of the thirty-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

§490:3-415 Obligation of indorser. (a) Subject to subsections (b), (c), and (d) and to section 490:3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 490:3-115 and 490:3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by section 490:3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depository bank for collection, within thirty days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged.

§490:3-416 Transfer warranties. (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

- (1) The warrantor is a person entitled to enforce the instrument;
- (2) All signatures on the instrument are authentic and authorized;
- (3) The instrument has not been altered;
- (4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and
- (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the

warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§490:3-417 Presentment warranties. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

- (1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
- (2) The draft has not been altered; and
- (3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 490:3-404 or 490:3-405 or the drawer is precluded under section 490:3-406 or 490:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

- (1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.
- (2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§490:3-418 Payment or acceptance by mistake. (a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to section 490:4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 490:3-417 or 490:4-407.

(d) Notwithstanding section 490:4-215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

§490:3-419 Instruments signed for accommodation. (a) If an instrument is issued for value given for the benefit of a party to the instrument (“accommodated party”) and another party to the instrument (“accommodation party”) signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party “for accommodation”.

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 490:3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned

unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

§490:3-420 Conversion of instrument. (a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

PART 5. DISHONOR

§490:3-501 Presentment. (a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Article 4, agreement of the parties, and clearing-house rules and the like:

- (1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.
- (2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.
- (3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

- (4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cut-off hour not earlier than 2:00 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cut-off hour.

§490:3-502 Dishonor. (a) Dishonor of a note is governed by the following rules:

- (1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.
- (2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.
- (3) If the note is not payable on demand and paragraph (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

- (1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 490:4-301 or 490:4-302, or becomes accountable for the amount of the check under section 490:4-302.
- (2) If a draft is payable on demand and paragraph (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.
- (3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.
- (4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b)(2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of an accepted draft is governed by the following rules:

- (1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.
- (2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 490:3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

§490:3-503 Notice of dishonor. (a) The obligation of an indorser stated in section 490:3-415(a) and the obligation of a drawer stated in section 490:3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under section 490:3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to section 490:3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within thirty days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty days following the day on which dishonor occurs.

§490:3-504 Excused presentment and notice of dishonor. (a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

§490:3-505 Evidence of dishonor. (a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

- (1) A document regular in form as provided in subsection (b) which purports to be a protest;
- (2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

- (3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

PART 6. DISCHARGE AND PAYMENT

§490:3-601 Discharge and effect of discharge. (a) The obligation of a party to pay the instrument is discharged as stated in this Article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

§490:3-602 Payment. (a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 490:3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

- (1) A claim to the instrument under section 490:3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or
- (2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

§490:3-603 Tender of payment. (a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to the person entitled to enforce the instrument, the obligation of the obligor to pay

interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

§490:3-604 Discharge by cancellation or renunciation. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

§490:3-605 Discharge of indorsers and accommodation parties. (a) In this section, the term "indorser" includes a drawer having the obligation described in section 490:3-414(d).

(b) Discharge, under section 490:3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is

discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Article 9 or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 490:3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral."

SECTION 2. Section 490:1-201, Hawaii Revised Statutes, is amended by amending the definitions of "holder", "money", and "unauthorized" to read:

"(20) "Holder" [means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to the person or to the person's order or to bearer or in blank.] with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government [as a part of its currency.] and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(43) "Unauthorized" signature [or indorsement] means one made without actual, implied, or apparent authority and includes a forgery."

SECTION 3. Section 490:1-207, Hawaii Revised Statutes, is amended to read as follows:

"§490:1-207 Performance or acceptance under reservation of rights.
(1) A party who, with explicit reservation of rights, performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

(2) Subsection (1) does not apply to an accord and satisfaction."

SECTION 4. Article 4 of chapter 490, Hawaii Revised Statutes, is amended to read as follows:

**“ARTICLE 4.
BANK DEPOSITS AND COLLECTIONS
PART 1. GENERAL PROVISIONS AND DEFINITIONS**

§490:4-101 Short title. This Article [shall be known and] may be cited as Uniform Commercial Code - Bank Deposits and Collections.

§490:4-102 Applicability. [(1)] (a) To the extent that items within this Article are also within [the scope of] Articles 3 and 8, they are subject to [the provisions of] those Articles. [In the event of] if there is conflict, [the provisions of] this Article [govern those of] governs Article 3, but [the provisions of] Article 8 [govern those of] governs this Article.

[(2)] (b) The liability of a bank for action or nonaction with respect to [any] an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

§490:4-103 Variation by agreement; measure of damages; [certain] action constituting ordinary care. [(1)] (a) The effect of the provisions of this Article may be varied by agreement [except that no agreement can], but the parties to the agreement cannot disclaim a bank's responsibility for its [own] lack of good faith or failure to exercise ordinary care or [can] limit the measure of damages for [such] the lack or failure; but]. However the parties may determine by agreement [determine] the standards by which [such] the bank's responsibility is to be measured if [such] those standards are not manifestly unreasonable.

[(2)] (b) Federal Reserve regulations and operating [letters,] circulars, clearing-house rules, and the like[,] have the effect of agreements under subsection [(1),] (a), whether or not specifically assented to by all parties interested in items handled.

[(3)] (c) Action or nonaction approved by this Article or pursuant to Federal Reserve regulations or operating [letters constitutes] circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing-house rules and the like or with a general banking usage not disapproved by this Article, is prima facie [constitutes] the exercise of ordinary care.

[(4)] (d) The specification or approval of certain procedures by this Article [does not constitute] is not disapproval of other procedures [which] that may be reasonable under the circumstances.

[(5)] (e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount [which] that could not have been realized by the [use] exercise of ordinary care[, and where]. If there is also bad faith it includes any other damages[, if any, suffered by] the party suffered as a proximate consequence.

§490:4-104 Definitions and index of definitions. [(1)] (a) In this Article, unless the context otherwise requires:

[(a)] (1) "Account" means any deposit or credit account with a bank [and includes], including a [checking, time, interest or savings account;] demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

[(b)] (2) "Afternoon" means the period of a day between noon and midnight;

- [(c)] (3) “Banking day” means [that] the part of [any] a day on which a bank is open to the public for carrying on substantially all of its banking functions;
- [(d)] (4) “Clearing-house” means [any] an association of banks or other payors regularly clearing items;
- [(e)] (5) “Customer” means [any] a person having an account with a bank or for whom a bank has agreed to collect items [and includes], including a bank [carrying] that maintains an account [with] at another bank;
- [(f)] (6) “Documentary draft” means [any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;] a draft to be presented for acceptance or payment if specified documents, certificated securities (section 490:8-102) or instructions for uncertificated securities (section 490:8-308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;
- (7) “Draft” means a draft as defined in section 490:3-104 or an item, other than an instrument, that is an order;
- (8) “Drawee” means a person ordered in a draft to make payment;
- [(g)] (9) “Item” means [any instrument for the payment of money even though it is not negotiable but does not include money;] an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;
- [(h)] (10) “Midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;
- [(i)] “Property payable” includes the availability of funds for payment at the time of decision to pay or dishonor;
- (j) (11) “Settle” means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as [instructed.] agreed. A settlement may be either provisional or final;
- [(k)] (12) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.
- [(2)] (b) Other definitions applying to this Article and the sections in which they appear are:
- “Agreement for electronic presentment”. Section 490:4-110.
- “Bank”. Section 490:4-105.
- “Collecting bank”. Section 490:4-105.
- “Depositary bank”. Section 490:4-105.
- “Intermediary bank”. Section 490:4-105.
- “Payor bank”. Section 490:4-105.
- “Presenting bank”. Section 490:4-105.
- “Presentment notice”. Section 490:4-110.
- [“Remitting bank” Section 490:4-105.]
- [(3)] (c) The following definitions in other Articles apply to this Article:
- “Acceptance”. Section [490:3-410.] 490:3-409.
- “Alteration”. Section 490:3-407.
- “Cashier’s check”. Section 490:3-104.

- “Certificate of deposit”, Section 490:3-104.
- [“Certification” Section 490:3-411.]
- “Certified check”, Section 490:3-409.
- “Check”, Section 490:3-104.
- [“Draft” Section 490:3-104.]
- “Good faith”, Section 490:3-103.
- “Holder in due course”, Section 490:3-302.
- “Instrument”, Section 490:3-104.
- “Notice of dishonor”, Section [490:3-508.] 490:3-503.
- “Order”, Section 490:3-103.
- “Ordinary care”, Section 490:3-103.
- “Person entitled to enforce”, Section 490:3-301.
- “Presentment”, Section [490:3-504] 490:3-501.
- “Promise”, Section 490:3-103.
- [“Protest” Section 490:3-509.]
- “Prove”, Section 490:3-103.
- [“Secondary party” Section 490:3-102.]
- “Teller’s check”, Section 490:3-104.
- “Unauthorized signature”, Section 490:3-403.

[(4)] (d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§490:4-105 [“Depository” “Bank”; “depository bank”; “payor bank”; “intermediary bank”; “collecting bank”; [“payor bank”]; “presenting bank”]; “remitting bank”]. In this Article [unless the context otherwise requires]:

- (1) “Bank” means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.
- [(a)] (2) “Depository bank” means the first bank to [which] take an item [is transferred for collection] even though it is also the payor bank[;], unless the item is presented for immediate payment over the counter;
- [(b)] (3) “Payor bank” means a bank [by which an item is payable as drawn or accepted;] that is the drawee of a draft;
- [(c)] (4) “Intermediary bank” means [any] a bank to which an item is transferred in course of collection except the depository or payor bank;
- [(d)] (5) “Collecting bank” means [any] a bank handling [the] an item for collection, except the payor bank;
- [(e)] (6) “Presenting bank” means [any] a bank presenting an item, except a payor bank[;]
- (f) “Remitting bank” means any payor or intermediary bank remitting for an item].

§490:4-106 Payable through or payable at bank; collecting bank. (a) If an item states that it is “payable through” a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is “payable at” a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize

the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

[§490:4-106] §490:4-107 Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders [shall] must be given under this Article and under Article 3.

[§490:4-107] §490:4-108 Time of receipt of items. [(1)] (a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of [two P.M.] 2:00 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any (b) An item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

[§490:4-108] §490:4-109 Delays. [(1)] (a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment [may, in the case] of a specific [items] item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this chapter for a period not [in excess of an] exceeding two additional banking [day] days without discharge of [secondary parties and without] drawers or indorsers or liability to its transferor or [any] a prior party.

(2) (b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank [provided it], and (ii) the bank exercises such diligence as the circumstances require.

[§490:4-109 Process of posting. The “process of posting” means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

- (a) Verification of any signature;
- (b) Ascertaining that sufficient funds are available;
- (c) Affixing a “paid” or other stamp;
- (d) Entering a charge or entry to a customer’s account;
- (e) Correcting or reversing an entry or erroneous action with respect to the item.]

§490:4-110 Electronic presentment. (a) “Agreement for electronic presentment” means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item (“presentment notice”) rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this Article means the presentment notice unless the context otherwise indicates.

§490:4-111 Statute of limitations. An action to enforce an obligation, duty, or right arising under this Article must be commenced within three years after the cause of action accrues.

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

§490:4-201 [Presumption and duration of agency status] Status of collecting [banks] bank as agent and provisional status of credits; applicability of Article; item indorsed "pay any bank." [(1)] (a) Unless a contrary intent clearly appears and [prior to] before the time that a settlement given by a collecting bank for an item is or becomes final [(subsection (3) of section 490:4-211 and sections 490:4-212 and 490:4-213)], the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and [valid] rights of recoupment or setoff. [When] If an item is handled by banks for purposes of presentment, payment [and], collection, or return, the relevant provisions of this Article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

[(2)] (b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

- [(a) Until the item has been returned] (1) Returned to the customer initiating collection; or
- [(b) Until the item has been specially] (2) Specially indorsed by a bank to a person who is not a bank.

§490:4-202 Responsibility for [collections;] collection or return; when action [seasonable.] timely. [(1)] (a) A collecting bank must [use] exercise ordinary care in:

- [(a)] (1) Presenting an item or sending it for presentment; [and
- [(b)] (2) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor [or directly to the depositary bank under subsection (2) of section 490:4-212] after learning that the item has not been paid or accepted, as the case may be; [and
- [(c)] (3) Settling for an item when the bank receives final settlement; and
- [(d)] Making or providing for any necessary protest; and
- [(e)] (4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

[(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper

action within a reasonably longer time may be reasonable but the bank has the burden of so establishing.]

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

[(3)] (c) Subject to subsection [(1)(a),] (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit [or in the possession of others].

§490:4-203 Effect of instructions. Subject to [the provisions of] Article 3 concerning conversion of instruments (section [490:3-419] 490:3-420) and [the provisions of both Article 3 and this Article concerning] restrictive indorsements (section 490:3-206), only a collecting bank's transferor can give instructions [which] that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to [such] the instructions or in accordance with any agreement with its transferor.

§490:4-204 Methods of sending and presenting; sending [direct] directly to payor bank. [(1)] (a) A collecting bank [must] shall send items by a reasonably prompt method, taking into consideration [any] relevant instructions, the nature of the item, the number of [such] those items on hand, [and] the cost of collection involved, and the method generally used by it or others to present [such] those items.

[(2)] (b) A collecting bank may send:

[(a) Any] (1) An item [direct] directly to the payor bank;

[(b) Any] (2) An item to [any] a nonbank payor if authorized by its transferor; and

[(c) Any] (3) An item other than documentary drafts to [any] a nonbank payor, if authorized by Federal Reserve regulation or operating [letter,] circular, clearing-house rule, or the like.

[(3)] (c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

§490:4-205 [Supplying missing indorsement; no notice from prior indorsement.] (1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.] **Depository bank holder of unindorsed item.** If a customer delivers an item to a depository bank for collection:

(1) The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of section 490:3-302, it is a holder in due course; and

- (2) The depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

§490:4-206 Transfer between banks. Any agreed method [which] that identifies the transferor bank is sufficient for the item's further transfer to another bank.

§490:4-207 [Warranties of customer and collecting bank on transfer or presentment of items; time for claims. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

- (a) He has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and
- (b) He has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith
 - (i) To a maker with respect to the maker's own signature; or
 - (ii) To a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or
 - (iii) To an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and
- (c) The item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith
 - (i) To the maker of a note; or
 - (ii) To the drawer of a draft whether or not the drawer is also the drawee; or
 - (iii) To the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or
 - (iv) To the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

- (a) He has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and
- (b) All signatures are genuine or authorized; and
- (c) The item has not been materially altered; and
- (d) No defense of any party is good against him; and
- (e) He has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer of presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.] Transfer warranties. (a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) The warrantor is a person entitled to enforce the item;
- (2) All signatures on the item are authentic and authorized;
- (3) The item has not been altered;
- (4) The item is not subject to a defense or claim in recoupment (section 490:3-305(a)) of any party that can be asserted against the warrantor; and
- (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 490:3-115 and 490:3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§490:4-208 Presentment warranties. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

- (1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

- (2) The draft has not been altered; and
- (3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 490:3-404 or 490:3-405 or the drawer is precluded under section 490:3-406 or 490:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§490:4-209 Encoding and retention warranties. (a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

[§490:4-208] §490:4-210 Security interest of collecting bank in items, accompanying documents and proceeds. [(1)] (a) A collecting bank has a secu-

rity interest in an item and any accompanying documents or the proceeds of either:

- [(a)] (1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;
 - [(b)] (2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon [and whether] or [not] there is a right of [charge-back;] charge back; or
 - [(c)] (3) If it makes an advance on or against the item.
- [(2) When] (b) If credit [which has been] given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

[(3)] (c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. [To the extent and so] So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to [the provisions of] Article 9 [except that], but:

- [(a)] (1) No security agreement is necessary to make the security interest enforceable ([subsection (1)(b) of] section [490:9-203]; and] 490:9-203(1)(a);
- [(b)] (2) No filing is required to perfect the security interest; and
- [(c)] (3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

[§490:4-209] §490:4-211 When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, [the] a bank has given value to the extent [that] it has a security interest in an item [provided that], if the bank otherwise complies with the requirements of section 490:3-302 on what constitutes a holder in due course.

[§490:4-210] §490:4-212 Presentment by notice of item not payable by, through, or at a bank; liability of [secondary parties.] drawer or indorser. [(1)] (a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section [490:3-505] 490:3-501 by the close of the bank's next banking day after it knows of the requirement.

[(2) Where] (b) If presentment is made by notice and [neither honor nor] payment, acceptance, or request for compliance with a requirement under section [490:3-505] 490:3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any [secondary party] drawer or indorser by sending [him] it notice of the facts.

[§490:4-211 Media of remittance; provisional and final settlement in remittance cases. (1) A collecting bank may take in settlement of an item

- (a) A check of the remitting bank or of another bank on any bank except the remitting bank; or
- (b) A cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing-house or group as the collecting bank; or
- (c) Appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or
- (d) If the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorizations to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

- (a) If the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization, – at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;
- (b) If the person receiving the settlement has authorized remittance by a nonbank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b), – at the time of the receipt of such remittance check or obligation; or
- (c) If in a case not covered by subparagraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline, – at such midnight deadline.]

§490:4-213 Medium and time of settlement by bank. (a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

- (1) The medium of settlement is cash or credit to an account in a Federal Reserve bank or of specified by the person to receive settlement; and
- (2) The time of settlement, is: (i) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered; (ii) with respect to tender of settlement by credit in an account in a Federal Reserve Bank, when the credit is made; (iii) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or (iv) with respect to tender of settlement by a funds transfer, when payment is made pursuant to section 490:4A-406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

[§490:4-212] §490:4-214 Right of [charge-back] charge back or refund[.]; liability of collecting bank; return of item. [(1) (a) If a collecting bank has made provisional settlement with its customer for an item and [itself] fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive [a] settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return [items] the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, [charge-back,] charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final [(subsection (3) of section 490:4-211 and subsections (2) and (3) of section 490:4-213).

(2) Within the time and manner prescribed by this section and section 490:4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final].

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

[(3) (c) A depository bank [which] that is also the payor may [charge-back] charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 490:4-301).

[(4) (d) The right to [charge-back] charge back is not affected by:

[(a) Prior] (1) Previous use of [the] a credit given for the item; or

[(b) (2) Failure by any bank to exercise ordinary care with respect to the item, but [any] a bank so failing remains liable.

[(5) (e) A failure to [charge-back] charge back or claim refund does not affect other rights of the bank against the customer or any other party.

[(6) (f) If credit is given in dollars as the equivalent of the value of an item payable in [a] foreign [currency] money, the dollar amount of any [charge-back] charge back or refund [shall] must be calculated on the basis of the [buying sight] bank-offered spot rate for the foreign [currency] money prevailing on the day

when the person entitled to the [charge-back] charge back or refund learns that it will not receive payment in ordinary course.

[§490:4-213] §490:4-215 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal. [(1) (a) An item is finally paid by a payor bank when the bank has first done any of the following[, whichever happens first]:

- [(a)] (1) Paid the item in cash; or
- (b) (2) Settled for the item without [reserving] having a right to revoke the settlement [and without having such right] under statute, clearing-house rule, or agreement; or
- [(c)] Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
- (d) (3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

[Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.]

(b) If provisional settlement for an item does not become final, the item is not finally paid.

[(2) (c) If provisional settlement for an item between the presenting and payor banks is made through a clearing-house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

[(3) (d) If a collecting bank receives a settlement for an item which is or becomes final [(subsection (3) of section 490:4-211, subsection (2) of section 490:4-213)], the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

[(4) (e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in [an account with its customer] a customer's account becomes available for withdrawal as of right:

- [(a) In any case where] (1) If the bank has received a provisional settlement for the item, [-] when [such] the settlement becomes final and the bank has had a reasonable time to [learn that the settlement is final;] receive return of the item and the item has not been received within that time;
- (b) In any case where] (2) If the bank is both [a] the depositary bank and [a] the payor bank, and the item is finally paid, [-] at the opening of the bank's second banking day following receipt of the item.

Each depositary bank shall provide written notice of its check hold policy and fund availability with respect to local, out-of-state, and foreign checks drawn on United States financial institutions:

- (i) When a checking account is opened; or
- (ii) When there is a change in bank policy.

The commissioner of financial institutions may establish by rules reasonable periods for check hold and fund availability with respect to local, out-of-state, and foreign checks drawn on United States financial institutions.

[(5) A deposit of money in a bank is final when made but, subject] (f) Subject to applicable law stating a time for availability of funds and any right of [the]

a bank to apply [the] a deposit to an obligation of the [customer, the] depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day [following] after receipt of the deposit.

[§490:4-214] **§490:4-216 Insolvency and preference.** [(1) Any] (a) If an item is in or [coming] comes into the possession of a payor or collecting bank [which] that suspends payment and [which] the item [is] has not been finally paid [shall], the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

[(2)] (b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

[(3)] (c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the [settlement] settlement's becoming final if [such] the finality occurs automatically [on] upon the lapse of certain time or the happening of certain events [(subsection (3) of section 490:4-211, subsections (1)(d), (2) and (3) of section 490:4-213)].

[(4)] (d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against [such] the collecting bank.

PART 3. COLLECTION OF ITEMS; PAYOR BANKS

§490:4-301 Deferred posting; recovery of payment by return of items; time of dishonor[.]; return of items by payor bank. [(1) Where an authorized settlement] (a) If a payor bank settles for a demand item [(other than a documentary draft)] received by a payor bank] presented otherwise than for immediate payment over the counter [has been made] before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover [any payment] the settlement if, before it has made final payment [(subsection (1) of section 490:4-213)] and before its midnight deadline, it:

[(a)] (1) Returns the item; or

[(b)] (2) Sends written notice of dishonor or nonpayment if the item is [held for protest or is otherwise] unavailable for return.

[(2)] (b) If a demand item is received by a payor bank for credit on its books, it may return [such] the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in [the preceding] subsection[.] (a).

[(3)] (c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

[(4)] (d) An item is returned:

[(a)] (1) As to an item [received] presented through a clearing-house, when it is delivered to the presenting or last collecting bank or to the clearing-house or is sent or delivered in accordance with [its] clearing-house rules; or

[(b)] (2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to [his] instructions.

§490:4-302 Payor bank's responsibility for late return of item. [In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of section 490:4-207), settlement effected or the like, if] (a) If an item is presented [on] to and received by a payor bank, the bank is accountable for the amount of:

- [(a)] (1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case [where] in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, [regardless of] whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or
- [(b)] (2) Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (section 490:4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

§490:4-303 When items subject to notice, [stop-order,] stop-payment order, legal process, or setoff; order in which items may be charged or certified. [(1)] (a) Any knowledge, notice, or [stop-order] stop-payment order received by, legal process served upon, or setoff exercised by a payor bank[, whether or not effective under other rules of law] comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item[, comes too late to so terminate, suspend or modify such right or duty] if the knowledge, notice, [stop-order] stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the [bank has done any] earliest of the following:

- [(a)] Accepted or certified] (1) The bank accepts or certifies the item;
- [(b)] Paid] (2) The bank pays the item in cash;
- [(c)] Settled] (3) The bank settles for the item without [reserving] having a right to revoke the settlement [and without having such right] under statute, clearing-house rule, or agreement;
- [(d)] Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or
- (e) Become] (4) The bank becomes accountable for the amount of the item under [subsection (1)(d) of section 490:4-213 and] section 490:4-302 dealing with the payor bank's responsibility for late return of items[.]; or
- (5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

[(2)] (b) Subject to [the provisions of] subsection [(1)] (a), items may be accepted, paid, certified, or charged to the indicated account of its customer in any order [convenient to the bank].

**PART 4. RELATIONSHIP BETWEEN
PAYOR BANK AND ITS CUSTOMER**

§490:4-401 When bank may charge customer's account. [(1) As against its customer, a] (a) A bank may charge against [his] the account [any] of a customer an item [which] that is [otherwise] properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice will be effective for the period stated in section 490:4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in section 490:4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 490:4-402.

[(2)] (d) A bank [which] that in good faith makes payment to a holder may charge the indicated account of its customer according to:

[(a)] (1) The original [tenor] terms of [his] the altered item; or

[(b)] (2) The [tenor] terms of [his] the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

§490:4-402 Bank's liability to customer for wrongful dishonor[.]; time of determining insufficiency of account. (a) Except as otherwise provided in this Article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it had agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. [When the dishonor occurs through mistake liability] Liability is limited to actual damages proved[. If so proximately caused and proved damages] and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

§490:4-403 Customer's right to stop payment; burden of proof of loss. [(1)] (a) A customer [may by order to his bank stop payment of any item payable for his account but the order must be] or any person authorized to draw on the

account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at [such] a time and in [such] a manner [as to afford] that affords the bank a reasonable opportunity to act on it [prior to] before any action by the bank with respect to the item described in section 490:4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

[(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.]

(b) A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

[(3) (c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a [binding stop payment] stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 490:4-402.

§490:4-404 Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

§490:4-405 Death or incompetence of customer. [(1) (a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes [such] the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

[(2) (b) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or [prior to] before that date unless ordered to stop payment by a person claiming an interest in the account.

§490:4-406 Customer's duty to discover and report unauthorized signature or alteration. [(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.] (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The state-

ment of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

[(2)] (d) If the bank [establishes] proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection [(1)] (c), the customer is precluded from asserting against the bank:

[(a) His] (1) The customer's unauthorized signature or any alteration on the item, if the bank also [establishes] proves that it suffered a loss by reason of [such] the failure; and

[(b) An] (2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank [after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.] if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

[(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).]

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

[(4)] (f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year [from the time] after the statement [and] or items are made available to the customer (subsection [(1)]) (a) discover and report [his] the customer's unauthorized signature on or any alteration [on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement] on the item is precluded from asserting against the bank [such] the unauthorized signature [or indorsement] or [such] alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 490:4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

[(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon

request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.]

§490:4-407 Payor bank's right to subrogation on improper payment.

If a payor bank has paid an item over the [stop payment] order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank [shall be] is subrogated to the rights:

- [(a)] (1) Of any holder in due course on the item against the drawer or maker; [and
- (b)] (2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- [(c)] (3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS

§490:4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor. A bank [which] that takes a documentary draft for collection [must] shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course [must], shall seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

§490:4-502 Presentment of "on arrival" drafts. [When] If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of [such] the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

§490:4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need. Unless otherwise instructed and except as provided in Article 5, a bank presenting a documentary draft:

- [(a)] (1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and
- [(b)] (2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize [his] the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

[But] However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for [such] those expenses.

§490:4-504 Privilege of presenting bank to deal with goods; security interest for [expense.] expenses. [(1)] (a) A presenting bank [which,] that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

[(2)] (b) For its reasonable expenses incurred by action under subsection [(1)] (a), the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien."

SECTION 5. Article 3 of chapter 490, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 1992.

(Approved May 10, 1991.)

ACT 119

S.B. NO. 1719

A Bill for an Act Relating to the Uniform Commercial Code Article 6 – Bulk Sales.

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

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new Article to read as follows:

“ARTICLE 6. BULK SALES

§490:6-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code – Bulk Sales.

§490:6-102 Definitions and index of definitions. (1) In this Article, unless the context otherwise requires:

- (a) “Assets” means the inventory that is the subject of a bulk sale and any tangible and intangible personal property used or held for use primarily in, or arising from, the seller's business and sold in connection with that inventory, but the term does not include:
- (i) Fixtures (section 490:9-313(1)(a)) other than readily removable factory and office machines;
 - (ii) The lessee's interest in a lease of real property; and
 - (iii) Property to the extent it is generally exempt from creditor process under nonbankruptcy law.

- (b) "Auctioneer" means a person whom the seller engages to direct, conduct, control, or be responsible for a sale by auction.
- (c) "Bulk sale" means:
 - (i) In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf, a sale or series of sales not in the ordinary course of the seller's business of more than half of the seller's inventory, as measured by value on the date of the bulk-sale agreement, if on that date the auctioneer or liquidator has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale or series of sales; and
 - (ii) In all other cases, a sale not in the ordinary course of the seller's business of more than half the seller's inventory, as measured by value on the date of the bulk-sale agreement, if on that date the buyer has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale.
- (d) "Claim" means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorneys' fees only to the extent that the laws of this State permit the holder of the claim to recover them in an action against the obligor.
- (e) "Claimant" means a person holding a claim incurred in the seller's business other than:
 - (i) An unsecured and unmatured claim for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay;
 - (ii) A claim for injury to an individual or to property, or for breach of warranty, unless:
 - (A) A right of action for the claim has accrued;
 - (B) The claim has been asserted against the seller; and
 - (C) The seller knows the identity of the person asserting the claim and the basis upon which the person has asserted it; and
 - (iii) A claim for taxes owing to a governmental unit.
- (f) "Creditor" means a claimant or other person holding a claim.
- (g) (i) "Date of the bulk sale" means:
 - (A) If the sale is by auction or is conducted by a liquidator on the seller's behalf, the date on which more than ten per cent of the net proceeds is paid to or for the benefit of the seller; and
 - (B) In all other cases, the later of the date on which:
 - (i) More than ten per cent of the net contract price is paid to or for the benefit of the seller; or
 - (ii) More than ten per cent of the assets, as measured by value, are transferred to the buyer.
- (ii) For the purposes of this paragraph:
 - (A) Delivery of a negotiable instrument (section 490:3-104(1)) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto;

- (B) To the extent that the contract price is deposited in an escrow, the contract price is paid to or for the benefit of the seller when the seller acquires the unconditional right to receive the deposit or when the deposit is delivered to the seller or for the benefit of the seller, whichever is earlier; and
 - (C) An asset is transferred when a person holding an unsecured claim can no longer obtain through judicial proceedings rights to the asset that are superior to those of the buyer arising as a result of the bulk sale. A person holding an unsecured claim can obtain those superior rights to a tangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to possess the asset, and a person holding an unsecured claim can obtain those superior rights to an intangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to use the asset.
- (h) “Date of the bulk-sale agreement” means:
 - (i) In the case of a sale by auction or conducted by a liquidator (paragraph (c)(i)), the date on which the seller engages the auctioneer or liquidator; and
 - (ii) In all other cases, the date on which a bulk-sale agreement becomes enforceable between the buyer and the seller.
 - (i) “Debt” means liability on a claim.
 - (j) “Liquidator” means a person who is regularly engaged in the business of disposing of assets for businesses contemplating liquidation or dissolution.
 - (k) “Net contract price” means the new consideration the buyer is obligated to pay for the assets less:
 - (i) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and
 - (ii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all the property securing the debt on the date of the bulk sale.
 - (l) “Net proceeds” means the new consideration received for assets sold at a sale by auction or a sale conducted by a liquidator on the seller’s behalf less:
 - (i) Commissions and reasonable expenses of the sale;
 - (ii) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and
 - (iii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt

secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

- (m) A sale is “in the ordinary course of the seller’s business” if the sale comports with usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices.
- (n) “United States” includes its territories and possessions and the Commonwealth of Puerto Rico.
- (o) “Value” means fair market value.
- (p) “Verified” means signed and sworn to or affirmed.
- (2) The following definitions in other Articles apply to this Article:
 - (1) “Buyer”. Section 490:2-103(1)(a).
 - (2) “Equipment”. Section 490:9-109(2).
 - (3) “Inventory”. Section 490:9-109(4).
 - (4) “Sale”. Section 490:2-106(1).
 - (5) “Seller”. Section 490:2-103(1)(d).

(3) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

§490:6-103 Applicability of article. (1) Except as otherwise provided in subsection (3), this Article applies to a bulk sale if:

- (a) The seller’s principal business is the sale of inventory from stock; and
- (b) On the date of the bulk-sale agreement the seller is located in this State or, if the seller is located in a jurisdiction that is not a part of the United States, the seller’s major executive office in the United States is in this State.

(2) A seller is deemed to be located at the seller’s place of business. If a seller has more than one place of business, the seller is deemed located at the seller’s chief executive office.

(3) This Article does not apply to:

- (a) A transfer made to secure payment or performance of an obligation;
- (b) A transfer of collateral to a secured party pursuant to section 490:9-503;
- (c) A sale of collateral pursuant to section 490:9-504;
- (d) Retention of collateral pursuant to section 490:9-505;
- (e) A sale of an asset encumbered by a security interest or lien if (i) all the proceeds of the sale are applied in partial or total satisfaction of the debt secured by the security interest or lien, or (ii) the security interest or lien is enforceable against the asset after it has been sold to the buyer and the net contract price is zero;
- (f) A general assignment for the benefit of creditors or to a subsequent transfer by the assignee;
- (g) A sale by an executor, administrator, receiver, trustee in bankruptcy, or any public officer under judicial process;
- (h) A sale made in the course of judicial or administrative proceedings for the dissolution or reorganization of an organization;
- (i) A sale to a buyer whose principal place of business is in the United States and who:

- (i) Not earlier than twenty-one days before the date of the bulk sale (A) obtains from the seller a verified and dated list of claimants of whom the seller has notice three days before the seller sends or delivers the list to the buyer, or (B) conducts a reasonable inquiry to discover the claimants;
 - (ii) Assumes in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or on the date the buyer completes the reasonable inquiry, as the case may be;
 - (iii) Is not insolvent after the assumption; and
 - (iv) Gives written notice of the assumption not later than thirty days after the date of the bulk sale by sending or delivering a notice to the claimants identified in subparagraph (ii) or by filing a notice in the bureau of conveyances;
- (j) A sale to a buyer whose principal place of business is in the United States and who:
- (i) Assumes in full the debts that were incurred in the seller's business before the date of the bulk sale;
 - (ii) Is not insolvent after the assumption; and
 - (iii) Gives written notice of the assumption not later than thirty days after the date of the bulk sale by sending or delivering a notice to each creditor whose debt is assumed or by filing a notice in the bureau of conveyances;
- (k) A sale to a new organization that is organized to take over and continue the business of the seller and that has its principal place of business in the United States if:
- (i) The buyer assumes in full the debts that were incurred in the seller's business before the date of the bulk sale;
 - (ii) The seller receives nothing from the sale except an interest in the new organization that is subordinate to the claims against the organization arising from the assumption; and
 - (iii) The buyer gives written notice of the assumption not later than thirty days after the date of the bulk sale by sending or delivering a notice to each creditor whose debt is assumed or by filing a notice in the bureau of conveyances;
- (l) A sale of assets having:
- (i) A value, net of liens and security interests, of less than \$10,000. If a debt is secured by assets and other property of the seller, the net value of the assets is determined by subtracting from their value an amount equal to the product of the debt multiplied by a fraction, the numerator of which is the value of the assets on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale; or
 - (ii) A value of more than \$25,000,000 on the date of the bulk-sale agreement; or
- (m) A sale required by, and made pursuant to, statute.
- (4) The notice under subsection (3)(i)(iv) must state:
- (a) That a sale that may constitute a bulk sale has been or will be made;
 - (b) The date or prospective date of the bulk sale;
 - (c) The individual, partnership, or corporate names and the addresses of the seller and buyer;

- (d) The address to which inquiries about the sale may be made, if different from the seller's address; and
 - (e) That the buyer has assumed or will assume in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or completes a reasonable inquiry to discover the claimants.
- (5) The notice under subsection (3)(j)(iii) and (k)(iii) must state:
- (a) That a sale that may constitute a bulk sale has been or will be made;
 - (b) The date or prospective date of the bulk sale;
 - (c) The individual, partnership, or corporate names and the addresses of the seller and buyer;
 - (d) The address to which inquiries about the sale may be made, if different from the seller's address; and
 - (e) That the buyer has assumed or will assume the debts that were incurred in the seller's business before the date of the bulk sale.

(6) For purposes of subsection (3)(l), the value of assets is presumed to be equal to the price the buyer agrees to pay for the assets. However, in a sale by auction or a sale conducted by a liquidator on the seller's behalf, the value of assets is presumed to be the amount the auctioneer or liquidator reasonably estimates the assets will bring at auction or upon liquidation.

§490:6-104 Obligations of buyer. (1) In a bulk sale as defined in section 490:6-102(1)(c)(ii) the buyer shall:

- (a) Obtain from the seller a list of all business names and addresses used by the seller within three years before the date the list is sent or delivered to the buyer;
- (b) Unless excused under subsection (2), obtain from the seller a verified and dated list of claimants of whom the seller has notice three days before the seller sends or delivers the list to the buyer and including, to the extent known by the seller, the address of and the amount claimed by each claimant;
- (c) Obtain from the seller or prepare a schedule of distribution (section 490:6-106(1));
- (d) Give notice of the bulk sale in accordance with section 490:6-105;
- (e) Unless excused under section 490:6-106(4), distribute the net contract price in accordance with the undertakings of the buyer in the schedule of distribution; and
- (f) Unless excused under subsection (2), make available the list of claimants (subsection (1)(b)) by:
 - (i) Promptly sending or delivering a copy of the list without charge to any claimant whose written request is received by the buyer no later than six months after the date of the bulk sale;
 - (ii) Permitting any claimant to inspect and copy the list at any reasonable hour upon request received by the buyer no later than six months after the date of the bulk sale; or
 - (iii) Filing a copy of the list in the bureau of conveyances no later than the time for giving a notice of the bulk sale (section 490:6-105(5)). A list filed in accordance with this subparagraph must state the individual, partnership, or corporate name and a mailing address of the seller.

(2) A buyer who gives notice in accordance with section 490:6-105(2) is excused from complying with the requirements of subsection (1)(b) and (f).

§490:6-105 Notice to claimants. (1) Except as otherwise provided in subsection (2), to comply with section 490:6-104(1)(d) the buyer shall send or deliver a written notice of the bulk sale to each claimant on the list of claimants (section 490:6-104(1)(b)) and to any other claimant of whom the buyer has knowledge at the time the notice of the bulk sale is sent or delivered.

(2) A buyer may comply with section 490:6-104(1)(d) by filing a written notice of the bulk sale in the bureau of conveyances if:

- (a) On the date of the bulk-sale agreement the seller has two hundred or more claimants, exclusive of claimants holding secured or matured claims for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay; or
- (b) The buyer has received a verified statement from the seller stating that, as of the date of the bulk-sale agreement, the number of claimants, exclusive of claimants holding secured or matured claims for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay, is two hundred or more.

(3) The written notice of the bulk sale must be accompanied by a copy of the schedule of distribution (section 490:6-106(1)) and state at least:

- (a) That the seller and buyer have entered into an agreement for a sale that may constitute a bulk sale under the laws of the State of Hawaii;
- (b) The date of the agreement;
- (c) The date on or after which more than ten per cent of the assets were or will be transferred;
- (d) The date on or after which more than ten per cent of the net contract price was or will be paid, if the date is not stated in the schedule of distribution;
- (e) The name and a mailing address of the seller;
- (f) Any other business name and address listed by the seller pursuant to section 490:6-104(1)(a);
- (g) The name of the buyer and an address of the buyer from which information concerning the sale can be obtained;
- (h) A statement indicating the type of assets or describing the assets item by item;
- (i) The manner in which the buyer will make available the list of claimants (section 490:6-104(1)(f)), if applicable; and
- (j) If the sale is in total or partial satisfaction of an antecedent debt owed by the seller, the amount of the debt to be satisfied and the name of the person to whom it is owed.

(4) For purposes of subsection (3)(e) and (g), the name of a person is the person's individual, partnership, or corporate name.

(5) The buyer shall give notice of the bulk sale not less than forty-five days before the date of the bulk sale and, if the buyer gives notice in accordance with subsection (1), not more than thirty days after obtaining the list of claimants.

(6) A written notice substantially complying with the requirements of subsection (3) is effective even though it contains minor errors that are not seriously misleading.

(7) A form substantially as follows is sufficient to comply with subsection (3):

Notice of Sale

(1) _____, whose address is _____, is described in this notice as the "seller."

(2) _____, whose address is _____, is described in this notice as the "buyer."

(3) The seller has disclosed to the buyer that within the past three years the seller has used other business names, operated at other addresses, or both, as follows: _____.

(4) The seller and the buyer have entered into an agreement dated, for a sale that may constitute a bulk sale under the laws of the State of Hawaii.

(5) The date on or after which more than ten per cent of the assets that are the subject of the sale were or will be transferred is _____, and (if not stated in the schedule of distribution) the date on or after which more than ten per cent of the net contract price was or will be paid is _____.

(6) The following assets are the subject of the sale: _____.

(7) (If applicable) The buyer will make available to claimants of the seller a list of the seller's claimants in the following manner: _____.

(8) (If applicable) The sale is to satisfy \$_____ of an antecedent debt owed by the seller to _____.

(9) A copy of the schedule of distribution of the net contract price accompanies this notice.

§490:6-106 Schedule of distribution. (1) The seller and buyer shall agree on how the net contract price is to be distributed and set forth their agreement in a written schedule of distribution.

(2) The schedule of distribution may provide for distribution to any person at any time, including distribution of the entire net contract price to the seller.

(3) The buyer's undertakings in the schedule of distribution run only to the seller. However, a buyer who fails to distribute the net contract price in accordance with the buyer's undertakings in the schedule of distribution is liable to a creditor only as provided in section 490:6-107(1).

(4) If the buyer undertakes in the schedule of distribution to distribute any part of the net contract price to a person other than the seller, and, after the buyer has given notice in accordance with section 490:6-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the buyer is excused from any obligation arising under this Article or under any contract with the seller to distribute the net contract price in accordance with the buyer's undertakings in the schedule if the buyer:

- (a) Distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;
- (b) Distributes the net contract price remaining available in accordance with an order of court;
- (c) Commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or
- (d) Reaches a new agreement with the seller for the distribution of the net contract price remaining available, sets forth the new agreement in an amended schedule of distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the buyer's undertakings in the amended schedule.

(5) The notice under subsection (4)(d) must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and be given in accordance with subsection (1) or (2) of section 490:6-105, whichever is applicable, at least fourteen days before the buyer distributes any part of the net contract price remaining available.

(6) If the seller undertakes in the schedule of distribution to distribute any part of the net contract price, and, after the buyer has given notice in accordance with section 490:6-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the seller and any person in control of the seller are excused from any obligation arising under this Article or under any agreement with the buyer to distribute the net contract price in accordance with the seller's undertakings in the schedule if the seller:

- (a) Distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;
- (b) Distributes the net contract price remaining available in accordance with an order of court;
- (c) Commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or
- (d) Prepares a written amended schedule of distribution of the net contract price remaining available for distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the amended schedule.

(7) The notice under subsection (6)(d) must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and be given in accordance with subsection (1) or (2) of section 490:6-105, whichever is applicable, at least fourteen days before the seller distributes any part of the net contract price remaining available.

§490:6-107 Liability for noncompliance. (1) Except as provided in subsection (3), and subject to the limitation in subsection (4):

- (a) A buyer who fails to comply with the requirements of section 490:6-104(1)(e) with respect to a creditor is liable to the creditor for damages in the amount of the claim, reduced by any amount that the creditor would not have realized if the buyer had complied; and
- (b) A buyer who fails to comply with the requirements of any other subsection of section 490:6-104 with respect to a claimant is liable to the claimant for damages in the amount of the claim, reduced by any amount that the claimant would not have realized if the buyer had complied.

(2) In an action under subsection (1), the creditor has the burden of establishing the validity and amount of the claim, and the buyer has the burden of establishing the amount that the creditor would not have realized if the buyer had complied.

(3) A buyer who:

- (a) Made a good faith and commercially reasonable effort to comply with the requirements of section 490:6-104(1) or to exclude the sale from the application of this Article under section 490:6-103(3); or
- (b) On or after the date of the bulk-sale agreement, but before the date of the bulk sale, held a good faith and commercially reasonable belief that this Article does not apply to the particular sale is not liable to creditors for failure to comply with the requirements of section 490:6-104. The buyer has the burden of establishing the good faith and commercial reasonableness of the effort or belief.

(4) In a single bulk sale the cumulative liability of the buyer for failure to comply with the requirements of section 490:6-104(1) may not exceed an amount equal to:

- (a) If the assets consist only of inventory and equipment, twice the net contract price, less the amount of any part of the net contract price paid to or applied for the benefit of the seller or a creditor; or
- (b) If the assets include property other than inventory and equipment, twice the net value of the inventory and equipment less the amount of the portion of any part of the net contract price paid to or applied for the benefit of the seller or a creditor which is allocable to the inventory and equipment.

(5) For the purposes of subsection (4)(6), the “net value” of an asset is the value of the asset less:

- (a) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and
- (b) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale. The portion of a part of the net contract price paid to or applied for the benefit of the seller or a creditor that is “allocable to the inventory and equipment” is the portion that bears the same ratio to that part of the net contract price as the net value of the inventory and equipment bears to the net value of all of the assets.

(6) A payment made by the buyer to a person to whom the buyer is, or believes the buyer is, liable under subsection (1) reduces pro tanto the buyer’s cumulative liability under subsection (4).

(7) No action may be brought under subsection (1)(b) by or on behalf of a claimant whose claim is unliquidated or contingent.

(8) A buyer’s failure to comply with the requirements of section 490:6-104(1) does not:

- (a) Impair the buyer’s rights in or title to the assets;
- (b) Render the sale ineffective, void, or voidable;
- (c) Entitle a creditor to more than a single satisfaction of the creditor’s claim; or
- (d) Create liability other than as provided in this Article.

(9) Payment of the buyer’s liability under subsection (1) discharges pro tanto the seller’s debt to the creditor.

(10) Unless otherwise agreed, a buyer has an immediate right of reimbursement from the seller for any amount paid to a creditor in partial or total satisfaction of the buyer’s liability under subsection (1).

(11) If the seller is an organization, a person who is in direct or indirect control of the seller, and who knowingly, intentionally, and without legal justification fails, or causes the seller to fail, to distribute the net contract price in accordance with the schedule of distribution is liable to any creditor to whom the seller undertook to make payment under the schedule for damages caused by the failure.

§490:6-108 Bulk sales by auction; bulk sales conducted by liquidator.

(1) Sections 490:6-104, 490:6-105, 490:6-106, and 490:6-107 apply to a bulk sale by auction and a bulk sale conducted by a liquidator on the seller's behalf with the following modifications:

- (a) "Buyer" refers to auctioneer or liquidator, as the case may be;
 - (b) "Net contract price" refers to net proceeds of the auction or net proceeds of the sale, as the case may be;
 - (c) The written notice required under section 490:6-105(3) must be accompanied by a copy of the schedule of distribution (section 490:6-106(1)) and state at least:
 - (i) That the seller and the auctioneer or liquidator have entered into an agreement for auction or liquidation services that may constitute an agreement to make a bulk sale under the laws of the State of Hawaii;
 - (ii) The date of the agreement;
 - (iii) The date on or after which the auction began or will begin or the date on or after which the liquidator began or will begin to sell assets on the seller's behalf;
 - (iv) The date on or after which more than ten per cent of the net proceeds of the sale were or will be paid, if the date is not stated in the schedule of distribution;
 - (v) The name and a mailing address of the seller;
 - (vi) Any other business name and address listed by the seller pursuant to section 490:6-104(1)(a);
 - (vii) The name of the auctioneer or liquidator and an address of the auctioneer or liquidator from which information concerning the sale can be obtained;
 - (viii) A statement indicating the type of assets or describing the assets item by item;
 - (ix) The manner in which the auctioneer or liquidator will make available the list of claimants (section 490:6-104(1)(f)), if applicable; and
 - (x) If the sale is in total or partial satisfaction of an antecedent debt owed by the seller, the amount of the debt to be satisfied and the name of the person to whom it is owed; and
 - (d) In a single bulk sale the cumulative liability of the auctioneer or liquidator for failure to comply with the requirements of this section may not exceed the amount of the net proceeds of the sale allocable to inventory and equipment sold less the amount of the portion of any part of the net proceeds paid to or applied for the benefit of a creditor which is allocable to the inventory and equipment.
- (2) A payment made by the auctioneer or liquidator to a person to whom the auctioneer or liquidator is, or believes the auctioneer or liquidator is, liable under this section reduces pro tanto the auctioneer's or liquidator's cumulative liability under subsection (1)(d).
- (3) A form substantially as follows is sufficient to comply with subsection (1)(c):

Notice of Sale

(1) _____, whose address is _____, is described in this notice as the "seller."

(2) _____, whose address is _____, is described in this notice as the "auctioneer" or "liquidator."

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(3) The seller has disclosed to the auctioneer or liquidator that within the past three years the seller has used other business names, operated at other addresses, or both, as follows: _____.

(4) The seller and the auctioneer or liquidator have entered into an agreement dated _____ for auction or liquidation services that may constitute an agreement to make a bulk sale under the laws of the State of Hawaii.

(5) The date on or after which the auction began or will begin or the date on or after which the liquidator began or will begin to sell assets on the seller's behalf is _____, and (if not stated in the schedule of distribution) the date on or after which more than ten per cent of the net proceeds of the sale were or will be paid is _____.

(6) The following assets are the subject of the sale: _____.

(7) (If applicable) The auctioneer or liquidator will make available to claimants of the seller a list of the seller's claimants in the following manner:
_____.

(8) (If applicable) The sale is to satisfy \$_____ of an antecedent debt owed by the seller to _____.

(9) A copy of the schedule of distribution of the net proceeds accompanies this notice.

(End of Notice)

(4) A person who buys at a bulk sale by auction or conducted by a liquidator need not comply with the requirements of section 490:6-104(1) and is not liable for the failure of an auctioneer or liquidator to comply with the requirements of this section.

§490:6-109 What constitutes filing; duties of filing officer; information from filing officer. (1) Presentation of a notice or list of claimants for filing and tender of the filing fee or acceptance of the notice or list by the filing officer in the bureau of conveyances constitutes filing under this Article.

(2) The filing officer shall:

- (a) Mark each notice or list with a file number and with the date and hour of filing;
- (b) Hold the notice or list or a copy for public inspection;
- (c) Index the notice or list according to each name given for the seller and for the buyer; and
- (d) Note in the index the file number and the addresses of the seller and buyer given in the notice or list.

(3) If the person filing a notice or list furnishes the filing officer with a copy, the filing officer upon request shall note upon the copy the file number and date and hour of the filing of the original and send or deliver the copy to the person.

(4) The fee for filing and indexing and for stamping a copy furnished by the person filing to show the date and place of filing shall be in the amount specified by the filing officer pursuant to section 502-25 or rules adopted pursuant to section 502-25.

(5) Upon request of any person, the filing officer shall issue a certificate showing whether any notice or list with respect to a particular seller or buyer is on file on the date and hour stated in the certificate. If a notice or list is on file, the certificate must give the date and hour of filing of each notice or list and the name and address of each seller, buyer, auctioneer, or liquidator. The fee for the certificate shall be in the amount specified by the filing officer pursuant to section 502-25 or rules adopted pursuant to section 502-25. Upon request of any person,

the filing officer shall furnish a copy of any filed notice or list for the fee specified by section 502-25 or rules adopted pursuant to section 502-25.

(6) The filing officer shall keep each notice or list for two years after it is filed.

§490:6-110 Limitation of actions. (1) Except as provided in subsection (2), an action under this Article against a buyer, auctioneer, or liquidator must be commenced within one year after the date of the bulk sale.

(2) If the buyer, auctioneer, or liquidator conceals the fact that the sale has occurred, the limitation is tolled and an action under this Article may be commenced within the earlier of (a) one year after the person bringing the action discovers that the sale has occurred, or (b) one year after the person bringing the action should have discovered that the sale has occurred, but no later than two years after the date of the bulk sale. Complete noncompliance with the requirements of this Article does not of itself constitute concealment.

(3) An action under section 490:6-107(11) must be commenced within one year after the alleged violation occurs.”

SECTION 2. Section 490:1-105, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 490:2-402.

Applicability of the Article on Bank Deposits and Collections. Section 490:4-102.

Bulk [transfers] sales subject to the Article on Bulk [Transfers.] Sales. Section [490:6-102.] 490:6-103.

Applicability of the Article on Investment Securities. Section 490:8-106.

Perfection provisions of the Article on Secured Transactions. Section 490:9-103.”

SECTION 3. Section 490:2-403, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk [Transfers] Sales (Article 6) and Documents of Title (Article 7).”

SECTION 4. Article 6 of chapter 490, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on January 1, 1992.

(Approved May 10, 1991.)

A Bill for an Act Relating to Trade.

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

SECTION 1. Chapter 486M, Hawaii Revised Statutes, is amended to read as follows:

“[[CHAPTER 486M]]
[METAL AND GEM] PAWNBROKERS AND SECONDHAND DEALERS

[[§486M-1]] Definitions. As used in this chapter, unless the context otherwise requires:

“Article” means any previously owned good or chattel, including, but not limited to, precious or semiprecious metals or precious or semiprecious gems.

“Dealer” means any person, firm, partnership, corporation, or other entity who engages in a business which includes the buying of previously owned [precious or semiprecious metals or precious or semiprecious gems.] article, and includes any pawnbroker or secondhand dealer.

“Pawnbroker” means any person, firm, partnership, corporation, or other entity who advances for interest or for or in expectation of profit, gain, or reward any sum of money upon security of any goods or chattels taken by such person by way of pawn or pledge, and includes any person subject to part V of chapter 445.

“Precious or semiprecious gem” means any of the less common and more valuable stones and pearls, including but not limited to amethyst, diamond, emerald, jade, opal, ruby, sapphire, topaz, turquoise, and zircon, whether natural or synthetic, cut or polished.

“Precious or semiprecious metal” means any of the less common and more valuable metals, including but not limited to gold, silver, platinum, and alloys thereof, without regard to their fineness, [but excludes] and includes bullion and bullion type coins and bars.

“Secondhand dealer” means any person who trades in secondhand or previously owned articles, and includes any person subject to Part VII of Chapter 445.

[[§486M-2]] Record of transactions. Every dealer, or the agent, employee, or representative of the dealer shall, immediately upon receipt of any [precious or semiprecious metals or precious or semiprecious gems,] article, record the following information, on a form prescribed by the chief of police in each county:

- (1) The name and address of the dealer;
- (2) The name, residence address, date of birth, and the age of the person from whom the [precious or semiprecious metals or precious or semiprecious gems were] article was received;
- (3) The date and time the [precious or semiprecious metals or precious or semiprecious gems are] article was received by the dealer;
- (4) The signature of the person from whom the [precious or semiprecious metals or precious or semiprecious gems were] article was received;
- (5) The Hawaii drivers license number, or if the person does not possess a Hawaii drivers license, the number of and description of any identification which bears a photograph of the person from whom the

[precious or semiprecious metals or precious or semiprecious gems were] article was received;

- (6) A complete and accurate description of [all precious or semiprecious metals and all precious and semiprecious gems] the article received, including all markings, names, initials, and inscriptions;
- (7) A reasonable estimate of the fineness and weights of the precious and semiprecious metals and precious and semiprecious gems received; and
- (8) The price paid by the dealer for each [item.] article.

The copies of all completed forms required by this section shall be surrendered[,] or mailed, upon request[,] and at the discretion of the chief of police of each county, to the chief of police [of each county,] or to the chief of police's authorized representative.

[[§486M-3]] Transactions by minors prohibited. A dealer shall not receive or purchase any [precious or semiprecious metals or precious or semiprecious gems] article from any person under the age of eighteen.

[[§486M-4]] Minimum retention of items. No dealer, the dealer's agents, employees, or representatives shall alter, melt, deface, break apart or dispose of or change the character or integrity of the precious or semiprecious metals or precious or semiprecious gems received or purchased for a period of ten working days after the purchase or possession by the dealer, whichever comes later, [and all precious and semiprecious metals and all precious and semiprecious gems] Every article received by the dealer, the dealer's agents, employees, or representatives shall be retained by the dealer in the county where received or purchased for a period of ten working days after the purchase or possession by the dealer, whichever comes later.

[[§486M-5]] Inspections. The chief of police of each county or the chief of police's authorized representative may immediately inspect, during normal business hours or whenever the dealer or the dealer's agents or employees are otherwise present, any records required by this chapter and any [items] articles described in such records that the police reasonably believe are stolen goods.

[[§486M-6]] Applicability. Any dealer [when transacting in precious or semiprecious metals or precious or semiprecious gems and which] who is otherwise licensed shall comply with the provisions of this chapter as a condition of [its] the dealer's license except as to those statutory conditions of [its] the license which are more restrictive.

[[§486M-7]] Penalties. Any dealer, or any agent, employee, or representative of a dealer who knowingly violates any of the provisions of sections 486M-2, 486M-3, 486M-4, or who refuses to allow the inspection provided for in section 486M-5, and any person who offers or records information which is required under section 486M-2 that the person knows or has reason to know is false, shall be guilty of a misdemeanor. Any dealer, or any agent, employee or representative of a dealer who is convicted for a second violation of any provision of this chapter shall, in addition to the foregoing penalty, be permanently prohibited from engaging in the business of buying or selling of precious or semiprecious metals or precious or semiprecious gems[.] or any article.

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[[§486M-8]] **Severability.** If any provision of this chapter or the application thereof to any person or circumstances 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. 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, 1991.)

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H.B. NO. 934

A Bill for an Act Relating to Names.

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

SECTION 1. Section 574-1, Hawaii Revised Statutes, is amended to read as follows:

“**§574-1 Married persons.** Upon marriage each of the parties to a marriage shall declare the [surname] middle and last names each will use as a married person. The [surname] last name chosen may be the person’s own, that of the person’s spouse alone or that of the person’s spouse placed before or after the person’s own [surname] last name and separated by a hyphen. The middle name or names chosen may be the person’s last name or the last name of a person’s spouse converted to a middle name or the middle name or names given on the person’s birth certificate or a combination of a middle name or names on a person’s birth certificate and the person’s last name converted to a middle name.”

SECTION 2. Section 574-2, Hawaii Revised Statutes, is amended to read as follows:

“**§574-2 Legitimate children.** The registrar of births shall register any child born in wedlock as having both a family name and a given name chosen by one of the child’s parents[.], or, if the parents do not agree on the name or names, the name or names specified by a court of competent jurisdiction to be in the best interests of the child; provided that the name or names of the child, if already registered on the birth certificate, need not be changed until the court order specifies otherwise. The registrar shall register any child legitimated, as provided in section 338-21, as having both a family name and a given name chosen by the child’s parents, or, if the parents do not agree on the name or names, the name or names specified by a court of competent jurisdiction to be in the best interests of the child.”

SECTION 3. Section 574-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“**§574-5 Change of name: procedure.** (a) It shall be unlawful to change any name adopted or conferred under this chapter, except:

- (1) Upon an order of the lieutenant governor;
- (2) By a final order, decree, or judgment of family court issued as follows:
 - (A) When in an adoption proceeding a change of name of the person to be adopted is requested and the court includes the change of name in the adoption decree;
 - (B) When in a divorce proceeding either party to the proceeding requests to resume the [surname] middle name or names and the last name used by him or by her prior to the marriage or a [surname] middle name or names and last name declared and used during any prior marriage and the court includes the change of [name] names in the divorce decree; or
 - (C) When in a proceeding for a change of name of a legitimate or legitimated minor initiated by one parent, the family court, upon proof that the parent initiating the name change has made all reasonable efforts to locate and notify the other parent of the name change proceeding but has not been able to locate, notify, or elicit a response from the other parent, and after an appropriate hearing, orders a change of name determined to be in the best interests of the minor;
- (3) Upon marriage pursuant to section 574-1;
- (4) Upon legitimation pursuant to section 338-21; or
- (5) By an order or decree of any court of competent jurisdiction within any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, changing the name of a person born in this State.”

SECTION 4. Section 574-4, Hawaii Revised Statutes, is repealed.

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 16, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 122

H.B. NO. 816

A Bill for an Act Relating to Claims by the State.

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

SECTION 1. Section 41D-4, Hawaii Revised Statutes, is amended to read as follows:

“§41D-4 State risk management revolving fund. (a) The state risk management revolving fund is created and shall be funded in amounts reasonably necessary to:

- (1) Carry out the responsibilities of the comptroller established in section 41D-2;

- (2) Pay claims to state agencies for losses to property of the State caused by fire or other casualty, including the cost to repair or replace buildings and other structures, replace damaged contents, and to provide alternate structures while damaged structures are being repaired or replaced;
- (3) Pay claims against the State under sections 662-11, 41D-3, and 41D-8; and
- (4) Pay for losses to the State incurred by the dishonesty, nonfeasance, or misfeasance of any officer or employee of the State or for any losses to the State through larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wilful misapplication, or any other fraudulent or dishonest act committed by one or more of the employees of the State acting directly or in collusion with others.

(b) In addition to any appropriation the legislature shall make to the state risk management revolving fund, the comptroller may apportion to, and collect from, state agencies those amounts of money that, in the discretion of the comptroller, reflect benefits received by the agencies under this chapter. The comptroller may consider the relevant risk and loss experience of the agencies in making apportionments and assessments. Funds so collected shall be deposited [to] into the state risk management revolving fund.

(c) The comptroller may establish deductibles for the state agencies for certain perils or classes of property losses and may:

- (1) Assess the agencies for losses incurred in the amount of the deductible[,]; or
- (2) Reduce the payment from the state risk management revolving fund to cover the casualty loss by the amount of the deductible.

(d) The comptroller may establish a formula for refunds to the state agencies based upon the agencies' risk and loss experience.

(e) Money in the state risk management revolving fund shall be expended only for the purposes delineated in subsection (a) and only upon the authority of the comptroller, who is given discretion when to permit expenditures from the fund. Money in the state risk management revolving fund shall not be garnished, attached, or otherwise subjected to legal compulsion to pay actual or alleged obligations of the State, any state agency, or any state employee.

(f) The comptroller shall prepare, for each fiscal year, a report of all claims arbitrated, compromised, or settled for \$10,000 or less paid from the state risk management revolving fund. The report shall be submitted to the legislature twenty days prior to the commencement of the regular session next succeeding the year for which the report is made.

(g) Money received from the settlement of claims or losses of the State as delineated in subsection (a) may be deposited into the state risk management revolving 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 22, 1991.)

ACT 123

H.B. NO. 22

A Bill for an Act Relating to Child Abuse.

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

SECTION 1. Section 350-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department shall maintain a central registry of reported child abuse or neglect cases and [may] shall promptly expunge [such] the reports [as it deems appropriate and may] in cases where:

- (1) The department has found the reports to be unsubstantiated; or
- (2) The petition arising from the report has been dismissed by order of the family court after an adjudicatory hearing on the merits pursuant to chapter 587.

For purposes of expungement under (c)(1) above, a report is unsubstantiated only when the department has found the allegations contained therein to be frivolous or to have been made in bad faith.

However, the department may retain records and information of alleged child abuse and neglect with respect to the child that is the subject of the alleged abuse.

The department shall adopt such rules as may be necessary in carrying out 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 May 22, 1991.)

ACT 124

H.B. NO. 114

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Section 514A-11, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-11 Recordation and contents of declaration.** The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration to which section 514A-20 refers shall express the following particulars:

- (1) Description of the land, whether leased or in fee simple, on which the building or buildings and improvements are or are to be located[.];

- (2) Description of the building or buildings, stating the number of stories and basements, the number of apartments, and the principal materials of which it or they is or are constructed or to be constructed[.];
- (3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common element to which it has access, designated parking stall, if considered a limited common element, and any other data necessary for its proper identification[.];
- (4) Description of the common elements[.];
- (5) Description of the limited common elements, if any, stating to which apartments their use is reserved[.];
- (6) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting[.];
- (7) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use[.];
- (8) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of the person which shall be within the county [or city and county] in which the property is located[.];
- (9) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, or restore the property in the event of damage or destruction of all or part of the property[.];
- (10) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter[.];
- (11) The method by which the declaration may be amended, consistent with this chapter[.]; provided that an amendment to the declaration of all condominium projects existing as of the effective date of this Act and all condominium projects created thereafter shall require a vote or written consent of [not less than] seventy-five per cent of all apartment owners, except as otherwise provided in this chapter[.]; provided further that the declarations of condominium projects having five or fewer apartments may provide for the amendment thereof by a vote or written consent of more than seventy-five per cent of all apartment owners;
- (12) Description as to any additions, deletions, modifications, and reservations as to the property, including without limitation provisions concerning the merger or addition of later phases of the project. To the extent provided in the declaration, an amendment to the declaration which is made to implement [such] those additions, deletions, modifications, reservations or merger provisions shall require the vote or written consent of only the declarant or such percentage of apartment owners as is provided in the declaration[.];
- (13) In the case of a project which includes one or more existing structures being converted to condominium status, a statement that the project is in compliance with all ordinances, codes, rules, regulations, or other requirements in force at the time of its construction[.]; and
- (14) In the case a project which includes one or more existing structures being converted to condominium status, statement of whether any

variance has been granted from any ordinance, code, rule, regulation, or other requirement in force at the time of its construction or from any current ordinance, code, rule, regulation, or other requirement.”

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 22, 1991.)

ACT 125

H.B. NO. 148

A Bill for an Act Relating to the Budget.

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

SECTION 1. The purpose of this Act is to require the state administration to submit the six-year program and financial plan, the budget, the supplemental budget, and the variance report to the legislature thirty days before the convening of the appropriate legislative session.

SECTION 2. Section 37-69, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The governor shall prepare a state six-year program and financial plan encompassing all state programs. Not [less] fewer than [twenty] thirty days before the legislature convenes in every odd-numbered year, the governor shall submit to the legislature and to each member thereof[,] the six-year program and financial plan. The program and financial plan shall be annually and continually updated and maintained. The program and financial plan [shall], in general, shall contain:

- (1) The state program structure[.];
- (2) Statements of statewide objectives and program objectives[.];
- (3) Program plans [which] that describe the programs recommended to implement the statewide and program objectives and the manner in which the recommended programs are proposed to be implemented over the next six fiscal years[.]; and
- (4) A financial plan [which] that shows the fiscal implications of the recommended programs for the next six fiscal years.”

SECTION 3. Section 37-71, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Not [less] fewer than [twenty] thirty days before the legislature convenes in every odd-numbered year, the governor shall submit to the legislature and to each member thereof[,] a budget [which] that shall contain the program and budget recommendations of the governor for the succeeding two fiscal years. The budget [shall], in general, shall contain:

- (1) The state program structure[.];
- (2) Statements of statewide objectives[.];

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- (3) The financial requirements for the next two fiscal years to carry out the recommended programs[.]; and
- (4) A summary of state receipts and revenues in the last completed fiscal year, a revised estimate for the fiscal year in progress, and an estimate for the succeeding biennium.”

SECTION 4. Section 37-72, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Not [less] fewer than [twenty] thirty days before the legislature convenes in regular session in an even-numbered year, the governor may submit to the legislature a supplemental budget to amend any appropriation for the current fiscal biennium. The supplemental budget shall reflect the changes being proposed in the State’s program and financial plan and shall be submitted as applicable, in the manner provided in section 37-71. In any supplemental budget [which] that proposes appropriations for which the source of funding is general obligation bonds, the budget shall include the schedule, declaration, and computation specified in section 37-71(d)(6).”

SECTION 5. Section 37-75, Hawaii Revised Statutes, is amended to read as follows:

“**§37-75 Variance report.** Not [less] fewer than [twenty] thirty days prior to the convening of each regular session of the legislature, the governor shall submit to the legislature and to each member thereof a report on program performance for the last completed fiscal year and the fiscal year in progress. In format, the report [shall] generally shall follow the fiscal requirements portion of the executive budget or budgets. The report shall include:

- (1) At the lowest level of the program structure, for each program contained in the budget finally approved by the legislature for the last completed fiscal year and the fiscal year in progress:
 - (A) A comparison, by the operating and research and development cost categories, of the budgeted expenditures and the actual expenditures for the last completed fiscal year and the budgeted expenditures and the estimated expenditures for the fiscal year in progress[.];
 - (B) A comparison, for the operating and research and development cost categories, of the budgeted expenditures and positions authorized and the actual expenditures and positions filled in the last completed fiscal year and a comparison of the budgeted expenditures and the number of positions authorized for the fiscal year in progress and the actual expenditures and number of positions filled in the first three months of the fiscal year in progress and the estimated expenditures and number of positions expected to be filled in the remaining months of the fiscal year in progress[.];
 - (C) The program size indicators[.], and a comparison of the program size anticipated and the size actually realized in the last completed fiscal year and the program size anticipated and the size estimated for the fiscal year in progress[.];
 - (D) The effectiveness measures[.], and a comparison of the level of effectiveness anticipated and the level actually attained in the

last completed fiscal year and the level of effectiveness anticipated and the level estimated for the fiscal year in progress[.]; and

- (E) A narrative explanation of the significant differences for the last completed fiscal year in each of the comparisons made in subparagraphs (A), (B), (C), and (D), including an explanation of the basis upon which the original estimates were made and the reasons why [such] the estimates proved accurate or inaccurate, and a statement of what the actual experience portends for the future of the program in terms of costs, size, and effectiveness[.

Expenditure]; provided that expenditure amounts in the comparisons shall be shown to the nearest thousand dollars[.];

- (2) Appropriate summaries at each level of the state program structure for each major grouping of programs encompassed therein, showing:
 - (A) A comparison of the total budgeted expenditure and the total actual expenditure for the last completed fiscal year and the total budgeted expenditure and the total estimated expenditure for the fiscal year in progress[. The]; provided that the expenditure amounts shall be shown to the nearest thousand dollars[.];
 - (B) The effectiveness measures[,] and a comparison of the level of effectiveness anticipated and the level actually attained in the last completed fiscal year and the level of effectiveness anticipated and the level estimated for the fiscal year in progress[.]; and
 - (C) A narrative explanation summarizing the major reasons for the differences in the comparisons made for the last completed fiscal year in subparagraphs (A) and (B)[.]; and
- (3) [Significant] A narrative explanation of the significant variations in capital improvement costs [will be explained in the narrative. Capital]; provided that capital improvement project variances [will] shall be referenced to the six-year program and financial plan, which [will] shall contain the information specified in section 37-69(d)(1)(K).”

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 22, 1991.)

ACT 126

H.B. NO. 214

A Bill for an Act Relating to Tourism.

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

SECTION 1. Section 203-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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“(b) The office of tourism shall be responsible for establishing procedures for the selection and evaluation of statewide tourism promotion projects. The procedures shall include submission of proposals to the office [and the council] prior to disbursement of any tourism promotion funds, and a final report at the completion of the project to be submitted by the funded entity to the office. All statewide tourism promotion contracts, including the Hawaii Visitors Bureau, shall be subject to this subsection.”

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved May 22, 1991.)

ACT 127

H.B. NO. 249

A Bill for an Act Relating to the Issuance 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 and refunding special purpose revenue bonds under this Act will assist the Kauai Electric Division of Citizens Utilities Company in providing electric service to the general public and in obtaining lower interest rate bond financing for capital improvement projects through the use of tax exempt special purpose revenue bonds and refunding bonds. This savings in interest cost would be reflected in the electric rates established by the public utilities commission in rate case proceedings. Ratepayers pay for capital costs, including the cost of financing, as part of the rates set by the public utilities commission. Therefore, the entire savings resulting from the reduction in capital costs will benefit the ratepayers of Kauai Electric Division of Citizens Utilities Company. Furthermore, these bonds cannot be secured directly or indirectly by the general credit of the counties or the revenues or taxes of the State but rather solely by Kauai Electric Division of Citizens Utilities Company. Thus, the cost of financing necessary capital improvements can be decreased with no cost or risk to the State. For the foregoing reasons, the legislature finds and declares that the issuance under this Act of special purpose revenue bonds and refunding special purpose revenue bonds is in the public interest and for the public health, safety, and general welfare. Kauai Electric Division of Citizens Utilities Company 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 in a total amount not to exceed \$42,000,000 to finance the following capital improvement programs for the local furnishing of electric energy by Kauai Electric Division of Citizens Utilities Company, an electric utility serving the general public: multi-purpose capital improvement programs, including acquisition of land, transmission lines, generating facilities (including two additional diesel generating units at the Port Allen station), and other power plant additions or electric systems or both. The special purpose revenue bonds will be issued during the period from July 1, 1991,

through December 31, 1994; provided that approval by the public utilities commission 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 in this section none shall be used for nuclear fuel generating units.

SECTION 3. The public utilities commission shall prepare a report annually for submittal to the legislature as to the progress in reducing financing costs of electric utilities under this Act, including the cost of the bonds at the time of issue as compared to the cost to the utility if the issue was made on other than the issuance of revenue bonds, 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. The public utilities commission and the utility receiving assistance under this Act shall include, in the public utilities commission's annual report, a report on the extent to which any funded undertaking supports the State's energy policies to promote the development of alternate energy resources and the development of energy efficiency technologies.

SECTION 4. The department of budget and finance is authorized, from time to time including times subsequent to December 31, 1991, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this 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 5. The special purpose revenue bonds and the refunding 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 and refunding special purpose revenue bonds to assist utilities serving the general public in providing electric energy.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on December 31, 1994.

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

(Approved May 22, 1991.)

ACT 128

H.B. NO. 387

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. Section 286-4.1, Hawaii Revised Statutes, is amended to read as follows:

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“§286-4.1 Medical advisory board. (a) There is established within the office of the state director of transportation for administrative purposes a medical advisory board consisting of not fewer than five physicians licensed to practice in the State. The members of the board shall be appointed by the governor as provided in section 26-34, except as otherwise provided by this section. [At least one of the members shall be a psychiatrist, at least one shall be a specialist in cardiovascular disease, at least one shall be an ophthalmologist, at least one shall be an optometrist, and at least one shall be an orthopedic surgeon.] The board shall consist of one psychiatrist, one neurologist, one orthopedic surgeon, one ophthalmologist or optometrist, and one specialist in cardiovascular disease. The members of the board shall serve without compensation but [they] shall be reimbursed for expenses, including travel expense, actually incurred in the performance of their duties under this chapter.

(b) The duties of the board shall include:

- (1) The development of a system for [medical evaluation of] medically evaluating persons [whom] who an examiner of drivers has reason to believe have mental or physical conditions [which] that might impair their driving ability; and
- (2) The furnishing of advice to the examiners of drivers [on] respecting medical criteria and vision standards [with respect to] for motor vehicle drivers.”

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 22, 1991.)

ACT 129

H.B. NO. 505

A Bill for an Act Relating to Coastal Zone Management.

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

SECTION 1. Section 205A-22, Hawaii Revised Statutes, is amended as follows:

“§205A-22 Definitions. As used in this part, unless the context otherwise requires:

[(1)] “Applicant” means any individual, organization, partnership, or corporation, including any utility[,] and any agency of government.

[(2)] “Authority” means the county planning commission, except in counties where the county planning commission is advisory only, in which case “authority” means the county council or such body as the council may by ordinance designate. The authority may, as appropriate, delegate the responsibility for administering this part.

[(3)] “Development” means any of the uses, activities, or operations on land[;] or in or under water[,] within [the] a special management area that are included below[, but not those uses, activities, or operations excluded in subparagraph (B)]:

- [(A) "Development" includes the following:
- (i) The placement] (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - [(ii)] (2) Grading, removing, dredging, mining, or extraction of any materials;
 - [(iii)] (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - [(iv)] (4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
 - [(v)] (5) Construction, reconstruction, demolition, or alteration of the size of any structure.
- [(B) "Development" does not include the following:
- [(i)] (1) Construction of a single-family residence that is not part of a larger development;
 - [(ii)] (2) Repair or maintenance of roads and highways within existing rights-of-way;
 - [(iii)] (3) Routine maintenance dredging of existing streams, channels, and drainage ways;
 - [(iv)] The repair] (4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
 - [(v)] (5) Zoning variances, except for height, density, parking, and shoreline setback;
 - [(vi)] (6) Repair, maintenance, or interior alterations to existing structures;
 - [(vii)] (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
 - [(viii)] The use] (8) Use of any land for the purpose of cultivating, planting, growing, and harvesting [of] plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes [subject to review by the authority in accordance with subparagraph (C)];
 - [(ix)] The transfer] (9) Transfer of title to land;
 - [(x)] The creation] (10) Creation or termination of easements, covenants, or other rights in structures or land;
 - [(xi)] The subdivision] (11) Subdivision of land into lots greater than twenty acres in size;
 - [(xii)] The subdivision] (12) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed[,]; provided that any [such] land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
 - [(xiii)] (13) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;

- [(xiv)] (14) Structural and nonstructural improvements to existing single-family residences, including additional dwelling [unit,] units, where otherwise permissible; and
- [(xv)] (15) Nonstructural improvements to existing commercial structures[.];

[(C) Whenever] provided that whenever the authority finds that any excluded use, activity, or operation [excluded in subparagraph (B)] is or may become part of a larger project[,], the cumulative impact of which may have a significant environmental or ecological effect on [the] a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.

[(4)] “Special management area” means the land extending inland from the shoreline as delineated on the maps filed with the authority as of June 8, 1977, or as amended pursuant to section 205A-23.

[(5)] “Special management area emergency permit” means an action by the authority authorizing development in cases of emergency requiring immediate action to prevent substantial physical harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form[.]; provided that such structures were previously found to be in compliance with requirements of the Federal Flood Insurance Program.

[(6)] “Special management area minor permit” means an action by the authority authorizing development[,], the valuation of which is not in excess of [~~\$65,000~~] \$125,000 and which has no substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

[(7)] “Special management area use permit” means an action by the authority authorizing development[,], the valuation of which exceeds [~~\$65,000~~] \$125,000 or which may have a substantial adverse environmental or ecological effect, taking into account potential cumulative effects.

[(8)] “Structure” includes[,], but is not limited to[,], any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

[(9)] “Valuation” shall be determined by the authority and means the estimated cost to replace the structure in kind[,], based on current replacement costs, or in the cases of other development[,], as defined above, the fair market value of the development.”

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 22, 1991.)

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

“§76-16 Civil service and exemptions. The civil service to which this part applies comprises all positions in the State now existing or hereafter established and embraces all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of personnel services has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the temporary service, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, and one law clerk for each judge of the circuit court, one additional law clerk for the civil administrative judge of the circuit court of the first circuit, one additional law clerk for the civil motions judge of the circuit court of the first circuit, one additional law clerk for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and

- any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, and not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work in the department of education, the special assistant to the state librarian, one secretary for the special assistant to the state librarian, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
 - (12) Employees engaged in special, research, or demonstration projects approved by the governor;
 - (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
 - (14) A custodian or guide at Iolani Palace, Royal Mausoleum, and Hulihee Palace;
 - (15) Positions filled by persons employed on a fee, contract, or piece-work basis who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
 - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; one additional deputy to administer all hospitals within the jurisdiction of the department of health; one additional deputy in the department of health to administer all environmental health programs within the jurisdiction of the department; one additional deputy in the department of human services either in charge of welfare or other functions within the department as may be assigned by the director of human services; four additional deputies in the department of health in charge of administration or other functions within the department as may be assigned by the director of health with the approval of the governor; one additional deputy in the department of business, economic development, and tourism to perform the duties assigned by the director of business, economic development, and tourism and approved by the governor; one additional deputy in the department of business, economic development, and tourism in charge of the office of tourism and other tourism-related activities as may be assigned by the director of business, economic development, and tourism, with the approval of the governor; one additional deputy in the department of budget and finance to perform the duties assigned by the director of finance and

- approved by the governor; one additional deputy within the department of land and natural resources to perform the duties to be assigned by the chairperson of the board of land and natural resources; one additional deputy in the department of taxation to perform the duties assigned by the director of taxation and approved by the governor; and an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
 - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
 - (19) Household employees at the official residence of the president of the University of Hawaii;
 - (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;
 - (21) Employees hired under the tenant hire program of the Hawaii housing authority; provided that not more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
 - (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii which require hiring of nutrition program assistants who live in the areas they serve;
 - (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
 - (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution; and
 - (25) Sheriff, first deputy sheriff, and second deputy sheriff.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 2. Section 601-3, Hawaii Revised Statutes, is amended to read as follows:

"§601-3 Administrative director. The chief justice, with the approval of the supreme court, shall appoint an administrative director of the courts to assist the chief justice in directing the administration of the judiciary. The administrative director shall be a resident of the State for a continuous period of three years prior to the administrative director's appointment, and shall be appointed without regard to chapters 76 and 77 and shall serve at the pleasure of the chief justice. The administrative director shall hold no other office or employment. Effective January 1, 1989, the administrative director shall receive a salary of \$81,629 a year. Effective January 1, 1990, the administrative director shall receive a salary of \$85,302 a year. The administrative director shall, subject to the direction of the chief justice, perform the following functions:

- (1) Examine the administrative methods of the courts and make recommendations to the chief justice for their improvement;

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- (2) Examine the state of the dockets of the courts, secure information as to their needs of assistance, if any, prepare statistical data and reports of the business of the courts and advise the chief justice to the end that proper action may be taken;
- (3) Examine the estimates of the courts for appropriations and present to the chief justice the administrative director's recommendations concerning them;
- (4) Examine the statistical systems of the courts and make recommendations to the chief justice for a uniform system of judicial statistics;
- (5) Collect, analyze, and report to the chief justice statistical and other data concerning the business of the courts;
- (6) Assist the chief justice in the preparation of the budget, the six-year program and financial plan, the variance report and any other reports requested by the legislature;
- (7) Carry out all duties and responsibilities that are specified in title 7 as it pertains to employees of the judiciary; and
- (8) Attend to such other matters as may be assigned by the chief justice.

The administrative director shall, with the approval of the chief justice, appoint a deputy administrative director of the courts [subject to chapter 76 but not subject to chapter 77] without regard to chapters 76 and 77 and such assistants as may be necessary. Such assistants shall be appointed [subject to chapters 76 and 77.] without regard to chapters 76 and 77. Effective January 1, 1989, the salary of the deputy administrative director shall be \$74,608 a year. Effective January 1, 1990, the salary of the deputy administrative director shall be \$77,966 a year. The administrative director shall be provided with necessary office facilities.

The judges, clerks, officers, and employees of the courts shall comply with all requests of the administrative director for information and statistical data relating to the business of the courts and expenditure of public funds for their maintenance and operation."

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 22, 1991.)

ACT 131

H.B. NO. 611

A Bill for an Act Relating to the Center for Dispute Resolution.

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

SECTION 1. Act 346, Session Laws of Hawaii 1989, is amended by amending Section 4 to read as follows:

"SECTION 4. This Act shall take effect on July 1, 1989, [provided that this Act shall be repealed on June 30, 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 May 22, 1991.)

ACT 132

H.B. NO. 666

A Bill for an Act Relating to Condominium Association Budgets and Reserves.

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

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514A- Associations of apartment owners; budgets and reserves. (a)

The board of directors of each association of apartment owners shall prepare and adopt an annual operating budget and distribute it to the apartment owners. At a minimum, the budget shall include the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total cash reserves of the association as of the date of the budget;
- (4) The estimated cash reserves the association will require to maintain the property;
- (5) A general explanation of how the estimated cash reserves are computed; and
- (6) The amount the association must collect for the fiscal year to fund the estimated cash reserves.

(b) The association shall assess the apartment owners to fund the estimated cash reserves; provided that a new association created after the effective date of this Act need not collect estimated cash reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year the association shall collect the full amount required to fund the estimated cash reserves for that fiscal year except:

- (1) The commission shall adopt rules to permit an existing association to fund its estimated cash reserves in increments during the first five years after the effective date of this Act; and
- (2) The commission shall adopt rules to permit an association to fund in increments, over two years, estimated cash reserves which have been substantially depleted by an emergency.

(c) The association shall compute the estimated cash reserves by a formula which is based on the estimated life and the estimated replacement cost or major maintenance expense of each part of the property. The estimated cash reserves shall include:

- (1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(d) No association or apartment owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated cash reserves for an association shall be liable if the estimate subsequently proves incorrect.

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(e) The commission may request a copy of the annual operating budget of the association of apartment owners as part of the association's registration with the commission under section 514A-95.1.

(f) A board may not exceed its adopted annual operating budget by more than twenty per cent in a fiscal year except in emergency situations. Prior to the imposition or collection of an assessment under this paragraph, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(g) The commission may adopt rules to implement this section.

(h) As used in this section:

"Capital expenditure" means an expense which results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset which extends the life of an existing asset for a period greater than one year.

"Emergency situation" means any of the following:

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered; or
- (3) An extraordinary expense necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget.

"Major maintenance" means an expenditure for maintenance or repair which will result in extending the life of an asset for a period greater than one year.

"Cash reserves" means funds for the upkeep, repair, or replacement of those parts of the property including, but not limited to roofs, walls, decks, paving, and equipment, which the association is obligated to maintain."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on January 1, 1993.

(Approved May 22, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 133

H.B. NO. 669

A Bill for an Act Relating to Dispensing Opticians.

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

SECTION 1. Chapter 458, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§458- Practical Examination. The practical examination required under section 458-6.5 will be required for licensing until December 31, 1995.

Effective January 1, 1996, the practical examination may be replaced by a nationally standardized practical examination as approved by the board.”

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. (a) The following sections are hereby repealed effective December 31, 1990:

(1) Sections 321-13 to 321-15 (laboratory directors, laboratory technologists, laboratory supervisors, and laboratory technicians)

(b) The following chapters are hereby repealed effective December 31, 1991:

[(1)] Chapter 458 (Board of Dispensing Opticians)

[(2)] (1) Chapter 460J (Pest Control Board)

[(3)] (2) Chapter 462A (Pilotage)

[(4)] (3) Chapter 468K (Travel Agencies)

(c) The following chapters and sections are hereby repealed effective December 31, 1992:

(1) Chapter 446 (Debt Adjusters)

(2) Chapter 467D (Social Workers)

(3) Sections 321-13 to 321-15 only as they relate to sanitarians

(4) Sections 445-21 to 38 (Auctions)

(5) Sections 445-131 to 136 (Pawnbrokers)

(6) Sections 445-171 to 172 (Secondhand Dealers)

(7) Sections 445-231 to 235 (Scrap Dealers)

(d) The following chapters are hereby repealed effective December 31, 1993:

(1) Chapter 452 (Board of Massage)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 460 (Board of Osteopathic Examiners)

(4) Chapter 461J (Board of Physical Therapy)

(5) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective December 31, 1994:

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 457 (Board of Nursing)

(3) Chapter 457A (Nurse Aides)

(4) Chapter 457B (Board of Examiners of Nursing Home Administrators)

(5) Chapter 461 (Board of Pharmacy)

(f) The following chapters are hereby repealed effective December 31, 1995:

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

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

(3) Chapter 440 (Boxing Commission)

(4) Chapter 448H (Elevator Mechanics Licensing Board)

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

(g) The following chapters [] and sections [] are hereby repealed effective December 31, 1996:

(1) Chapter 321, Part XXX, (Tattoo Artists)

(2) Chapter 321, Part XXXI, (Midwives)

(3) Chapter 448F (Electrologists)

(4) Chapter 466J (Board of Radiologic Technology)

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- (5) Sections 321-13 to 321-15 (laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, and sanitarians)
- (6) Sections 431:10A-116(4) and 432:1-605 (Mammogram Screening)
- (h) The following chapters are hereby repealed effective December 31,

1997:

- (1) Chapter 438 (Board of Barbers)
- (2) Chapter 448 (Board of Dental Examiners)
- (3) Chapter 455 (Board of Examiners in Naturopathy)
- (4) Chapter 459 (Board of Examiners in Optometry)
- (5) Chapter 471 (Board of Veterinary Examiners)
- (i) The following chapters are hereby repealed effective December 31,

1998:

- (1) Chapter 373 (Commercial Employment Agencies)
- (2) Chapter 441 (Cemetery and Funeral Trusts)
- (3) Chapter 443B (Collection Agencies)
- (4) Chapter 463 (Board of Private Detectives and Guards)
- (5) Chapter 468 (Solicitors; Business of Taking Orders)
- (j) The following chapters are hereby repealed effective December 31,

1999:

- (1) Chapter 436E (Board of Acupuncture)
- (2) Chapter 442 (Board of Chiropractic Examiners)
- (3) Chapter 444 (Contractors License Board)
- (4) Chapter 448E (Board of Electricians and Plumbers)
- (5) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
- (6) Chapter 465 (Board of Psychology)
- (7) Chapter 468E (Speech Pathology and Audiology)
- (k) The following chapters are hereby repealed effective December 31,

2000:

- (1) Chapter 439 (Board of Cosmetology)
- (2) Chapter 448F (Electrologists)
- (3) Chapter 454 (Mortgage Brokers and Solicitors)
- (4) Chapter 454D (Real Estate Collection Servicing Agents)
- (5) Chapter 466 (Board of Public Accountancy)
- (6) Chapter 466K (Real Estate Appraisers)
- (7) Chapter 467 (Real Estate Commission)
- (l) The following chapter is hereby repealed effective December 31, 2001:
 - (1) Chapter 458 (Board of Dispensing Opticians)

SECTION 3. Section 458-6.8, Hawaii Revised Statutes, is amended to read as follows:

“**[§458-6.8] Certificate to engage in the business of dispensing optician; application; issuance.** (a) Before engaging in the business of dispensing optician, a firm, including a sole proprietorship for which the proprietor is to be a licensed dispensing optician, shall first be issued a certificate of dispensing optician by the board.

(b) Each application shall be on forms prescribed by the board and shall contain:

- (1) The name of the licensed dispensing optician who will be employed at that business address;
- (2) The names and experience of each person who will take facial measurements, fit or adjust lenses or frames, or duplicate lenses; and

- (3) Such other information as the board requires. The application shall bear the signature of the proprietor if the applicant is a sole proprietorship, partner if the applicant is a partnership, or a president or secretary if the applicant is a corporation, and shall contain the name under which the applicant proposes to do business and the business address. [Separate applications shall be made for each place of business, and each application shall be accompanied by the application and registration fees.]

(c) The board shall establish the procedures for issuing certificates of dispensing opticians and qualifications of firms applying to engage in the business of dispensing optician. Upon approval of an application for a certificate of dispensing optician and payment of a certificate fee, the board shall issue a certificate of dispensing optician within sixty days. [A separate certificate shall be required for each address where the business is to be conducted.] No application for certificate of dispensing optician shall be approved unless a licensed dispensing optician is to be employed at the place of business. The certificate shall authorize the applicant to engage in the business of dispensing optician. The certificate or a copy shall at all times be displayed in a conspicuous place at the place of business. The certificate shall not be transferable.”

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

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved May 22, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 134

H.B. NO. 790

A Bill for an Act Relating to Fresh Produce.

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

SECTION 1. Section 147-4, Hawaii Revised Statutes, is amended to read as follows:

“**§147-4 Rules [and regulations].** The department [of agriculture] may make rules [and regulations:], subject to chapter 91:

(1) Defining grades and grade labeling requirements of agricultural commodities and standard containers for packing of particular agricultural commodities [and prohibiting];

(2) Prohibiting the sale, offering for sale, or transportation of agricultural commodities unless packed in standard containers and labeled [in the manner provided for by the regulation] with [a] the appropriate grade [for which the product meets the minimum standards, or unless labeled “OFFGRADE”]; or offgrade designation; provided that [the] this prohibition shall not apply to the sale, offering for sale, or transportation to a plant for grading, packing, or processing, or transportation to a warehouse for storage;

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(3) Prohibiting the use of grade terms or abbreviations of grade terms on agricultural commodities for which no grades have been established under this part;

(4) Defining “suitable shipping condition” for agricultural commodities which are to be shipped for sale from one island to another within the State or to points outside the State, and prohibiting such shipment for sale of agricultural commodities which do not meet the minimum standards set for “suitable shipping condition”;

(5) Prescribing records to be kept in connection with purchases of agricultural commodities by persons, other than produce dealers purchasing from a producer or producers, for purposes of resale five or more tons of agricultural commodities during any one calendar month; and

(6) Prescribing records to be kept by produce dealers in connection with the purchase, sale, transport for sale, solicitation, or negotiation of sale with respect to an agricultural commodity.

[All rules and regulations shall be made only after consultation by the department with the advisory committee on markets and in compliance with all other laws concerning the making of rules and regulations having the force of law. When made, all such rules and regulations shall have the force and effect of law.

The department, in] In making the rules the department shall[, among other things,] take into account, [so far as applicable,] among other things, the factors of maturity, condition, soundness, color, shape, size, and freedom from defects of the agricultural commodity in question and shall also take into consideration the official standards, grades or classifications [promulgated from time to time] adopted by the secretary of the Department of Agriculture of the United States, commonly known as U.S. Grades.”

SECTION 2. Section 147-3, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 147-6, Hawaii Revised Statutes, is repealed.

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

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

(Approved May 22, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

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H.B. NO. 791

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 26-16, Hawaii Revised Statutes, is amended to read as follows:

“§26-16 Department of agriculture. (a) The department of agriculture shall be headed by an executive board to be known as the board of agriculture.

The board shall consist of eight members, one who shall be a resident of the county of Hawaii, one who shall be a resident of the county of Maui, one who shall be a resident of the county of Kauai, four at large, and the chairperson of the board of land and natural resources who shall serve as an ex officio voting member. The majority of the members of the board shall be from the agricultural community of the agricultural support sector. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. The governor shall appoint a [chairman] chairperson of the board from the members.

(b) The board may delegate to the [chairman] chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The [chairman] chairperson of the board shall serve in a full-time capacity. The [chairman] chairperson shall, in that capacity, perform such duties, and exercise such powers and authority, or so much thereof, as may be delegated to the [chairman] chairperson by the board.

(c) The department shall promote the conservation, development, and utilization of agricultural resources in the State; assist the farmers of the State and any others engaged in agriculture by research projects, dissemination of information, crop and livestock reporting service, market news service, and any other means of improving the well-being of those engaged in agriculture and increasing the productivity of the lands, and administer the programs of the State relating to animal husbandry, entomology, farm credit, development and promotion of agricultural products and markets, and the establishment and enforcement of the rules on the grading and labeling of agricultural products.

(d) The chairman or the chairman’s designated representative shall hold at least one publicly announced hearing on each of the islands of Oahu, Hawaii, Maui, Kauai, and Molokai each year for the purpose of hearing complaints and suggestions, if any, from the farmers, ranchers, consumers and other interested groups and persons with respect to matters within the duties, powers, and authority of the department of agriculture.

(e) (d) The functions and authority heretofore exercised by the board of commissioners of agriculture and forestry (except the management of state parks and the conservation, development, and utilization of forest resources, including regulatory powers over the forest reserve provided in section 183-41, and of fish and game resources transferred to the department of land and natural resources), by the farm loan board as heretofore constituted, and by the University of Hawaii with respect to the crop and livestock reporting service and market news service, are transferred to the department of agriculture established by 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 May 22, 1991.)

A Bill for an Act Relating to the Payment of Interest on Taxes.

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

SECTION 1. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) This subsection shall apply to a refund for an overpayment of a tax.
- (1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection (c). The interest shall be allowed and paid at the rate of two-thirds of one per cent for each calendar month or fraction thereof, beginning with [the first month after] the due date of the return or, if the return is filed after the prescribed due date, the date the return is received, and continuing until the date that the director approves the refund voucher. If the director approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty-five days from the date of the director’s approval, no interest on the overpayment will be allowed or paid. However, if either the director or the comptroller exceeds the time allowed herein, interest will be computed from the due date of the return or from the date the return is received by the director if the return is filed after the prescribed due date, until the date that the comptroller sends the refund warrant to the taxpayer.
 - (2) If any overpayment of taxes results or arises from (A) the taxpayer filing an amended return, or from (B) a determination made by the director and such overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the [first month after the] due date of the original return or, if the original return is filed after the prescribed due date, the date the return is received, to the date that the director signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the director’s approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.
 - (3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, the overpayment shall be deemed not to have been made prior to the close of the taxable year in which the net operating loss arises. To the extent that the carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest which would be chargeable because of the underpayment shall not be applicable with respect to that amount or amounts which are carried back.
 - (4) In the case of credit, interest shall be allowed and paid from the due date of the return, the date the return is received by the director, or

the date of payment, whichever is later, to the date the credit is taken; provided that the director may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit.”

SECTION 2. Section 231-39, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) There shall be added to and become a part of the tax imposed by such tax or revenue law, and collected as such:

- (1) Failure to file tax return. In case of failure to file any tax return required to be filed on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause and not due to neglect, there shall be added to the amount required to be shown as tax on the return five per cent of the amount of the tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five per cent in the aggregate. For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. This paragraph shall not apply to any failure to file a declaration of estimated tax required by section 235-97.
- (2) Failure to pay tax.
 - (A) If any part of any underpayment is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the tax an amount up to twenty-five per cent of the underpayment as determined by the director.
 - (B) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount up to fifty per cent of the underpayment as determined by the director.
 - (C) If any penalty is assessed under subparagraph (B) (relating to fraud) for any¹ underpayment of tax which is required to be shown on a return, no penalty under paragraph (1) (relating to failure to file the return) shall be assessed with respect to the same underpayment.
- (3) Failure to pay tax after filing timely returns. If a return is filed on or before the date prescribed therefor and the amount shown as tax on the return is not completely paid within sixty days of the prescribed filing date, there shall be added to the unpaid tax an amount up to twenty per cent as determined by the director.
- (4) Interest on underpayment or nonpayment of tax.
 - (A) If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate of two-thirds of one per cent a month or fraction of a calendar month shall be paid for the period beginning with [the first month following] the date prescribed for payment, or if the prescribed date for payment is the end of¹ calendar month, and section 231-21 is applicable, beginning with the month on which the due date as so extended is a part, to the date paid.

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- (B) If the amount of any tax is reduced by reason of a carryback of a net operating loss allowed under chapter 235, such reduction in tax shall not affect the computation of interest under this paragraph for the period ending with the last day of the taxable year in which the net operating loss arises.
- (C) Interest prescribed under this paragraph on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes.
- (D) No interest under this paragraph shall be imposed on interest provided by this paragraph.
- (E) If any portion of a tax is satisfied by credit of any overpayment, then no interest shall be imposed under this paragraph on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to the overpayment.
- (F) Interest prescribed under this paragraph on any tax may be assessed and collected at any time during the period within which the tax to which the interest relates may be collected.
- (G) This paragraph shall not apply to any failure to pay estimated tax required by section 235-97.”

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 22, 1991.)

Note

1. So in original.

ACT 137

H.B. NO. 813

A Bill for an Act Relating to Tax Credit for Employment of Vocational Rehabilitation Referrals.

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

SECTION 1. Section 235-55.91, Hawaii Revised Statutes, is amended to read as follows:

“[[§235-55.91]] Credit for employment of [certain new employees.] vocational rehabilitation referrals. (a) [Section 51 (with respect to targeted jobs credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section.

(b)] There shall be allowed to each taxpayer subject to the tax imposed by this chapter, a [targeted jobs] credit for employment of vocational rehabilitation referrals which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

[(c)] (b) The amount of the credit determined under this section for the taxable year shall be equal to twenty per cent of the qualified first-year wages for

that year. The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed \$6,000 [per year].

[(d)] (c) For purposes of this section:

“Hiring date” means the day the vocational rehabilitation referral is hired by the employer.

“Qualified first-year wages” means, with respect to any [individual,] vocational rehabilitation referral, qualified wages attributable to service rendered during the [taxable year] one-year period beginning with the day the individual begins work for the employer [and ending on the last day of the taxable year].

“Qualified wages” means the wages paid or incurred by the employer during the taxable year to an individual who is a vocational rehabilitation referral[,] and more than one-half of the wages paid or incurred for such an individual is for services performed in a trade or business of the employer.

“Vocational rehabilitation referral” means any individual who is certified by the department of human services vocational [and] rehabilitation and services [to] for the blind division in consultation with the Hawaii state employment service of the department of labor and industrial relations as:

- (1) Having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment; and
- (2) Having been referred to the employer upon completion of (or while receiving) rehabilitative services [as specified in section 51(d) (2)(B).] pursuant to:
 - (A) An individualized written rehabilitation plan under the State’s plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, as amended; or
 - (B) A program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

“Wages” has the meaning given to such term by section 3306(b) of the Internal Revenue Code (determined without regard to any dollar limitation contained in the Internal Revenue Code section). “Wages” shall not include:

- (1) Amounts paid or incurred by an employer for any period to any vocational rehabilitation referral for whom the employer receives state or federally funded payments for on-the-job training of the individual for the period;
- (2) Amounts paid to an employer (however utilized by the employer) for any vocational rehabilitation referral under a program established under section 414 of the Social Security Act; and
- (3) If the principal place of employment is at a plant or facility, and there is a strike or lockout involving vocational rehabilitation referrals at the plant or facility, amounts paid or incurred by the employer to the vocational rehabilitation referral for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of strike or lockout.

(d) The following shall apply to certifications of vocational rehabilitation referrals:

- (1) An individual shall not be treated as a vocational rehabilitation referral unless, on or before the day on which the individual begins work for the employer, the employer:
 - (A) Has received a certification from the department of human services vocational rehabilitation and services for the blind division that the individual is a qualified vocational rehabilitation referral; or

(B) Has requested in writing the certification from the department of human services vocational rehabilitation and services for the blind division that the individual is a qualified vocational rehabilitation referral.

For purposes of the preceding sentence, if on or before the day on which the individual begins work for the employer, the individual has received from the department of human services vocational rehabilitation and services for the blind division a written preliminary determination that the individual is a vocational rehabilitation referral, then "the fifth day" shall be substituted for "the day" in the preceding sentence.

- (2) If an individual has been certified as a vocational rehabilitation referral and the certification is incorrect because it was based on false information provided by the individual, the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.
- (3) In any request for a certification of an individual as vocational rehabilitation referral, the employer shall certify that a good faith effort was made to determine that such individual is a vocational rehabilitation referral.

(e) [The definitions and special rules in section 51(c), (d)(2), (13), (14), (15), and (16), (f), (h), (i), (j), and (k) of the Internal Revenue Code shall be operative for this section. Penalties and interest shall apply in accordance with section 235-104.] The following wages paid to vocational rehabilitation referrals are ineligible to be claimed by the employer for this credit:

- (1) No wages shall be taken into account under this section with respect to a vocational rehabilitation referral who:
 - (A) Bears any of the relationships described in section 152(a)(1) to (8) of the Internal Revenue Code to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than fifty per cent in value of the outstanding stock of the corporation (determined with the application of section 267(c) of the Internal Revenue Code);
 - (B) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in section 152(a)(1) to (8) of the Internal Revenue Code to a grantor, beneficiary, or fiduciary of the estate or trust; or
 - (C) Is a dependent (described in section 152(a)(9) of the Internal Revenue Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.
- (2) No wages shall be taken into account under this section with respect to any vocational rehabilitation referral if, prior to the hiring date of the individual, the individual had been employed by the employer at any time during which the individual was not a vocational rehabilitation referral.
- (3) No wages shall be taken into account under this section with respect to any vocational rehabilitation referral unless such individual either:

- (A) Is employed by the employer at least ninety days; or
- (B) Has completed at least one hundred-twenty hours of services performed for the employer.

(f) In the case of a successor employer referred to in section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the tax credit allowable under this section with respect to wages paid by the successor employer shall be made in the same manner as if the wages were paid by the predecessor employer referred to in the section.

(g) No credit shall be determined under this section with respect to wages paid by an employer to a vocational rehabilitation referral for services performed by the individual for another person unless the amount reasonably expected to be received by the employer for the services from the other person exceeds the wages paid by the employer to the individual for such services.

[(f)] (h) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

[(g)] (i) All claims for tax credits under this section, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

[(h)] (j) No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year that is equal to the amount of the credit determined under this section.

[(i)] (k) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section."

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 59A) (with respect to determination of tax liability), except section 42 (with respect to the low-income housing credit)[,] and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property)[,] and except section 51 (with respect to the targeted jobs credit)]. For treatment, see sections 235-110.7[,], and 235-110.8[,], and 235-55.91].
- (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 state and local bonds). For treatment, see section 235-7(b).
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see sections 235-2.4 and 235-7(a)(9) to (11).
- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).

- (7) Section 135 (with respect to income from United States saving bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1).
- (8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds).
- (9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- (10) Section 196 (with respect to deduction for certain unused investment credits).
- (11) 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).
- (12) Section 269A (with respect to personal service corporations formed or availed of to avoid or evade income tax).
- (13) Section 280C (with respect to certain expenses for which credits are allowable).
- (14) Section 280D (with respect to portion of chapter 45 taxes for which credit or refund is allowable under section 6429).
- (15) Section 291 (with respect to special rules relating to corporate preference items).
- (16) Section 367 (with respect to foreign corporations).
- (17) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
- (18) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
- (19) Section 521 (with respect to exemption of farmers cooperatives from tax). For treatment, see section 421-23.
- (20) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- (21) Subchapter H (sections 581 to 597) (with respect to banking institutions). For treatment, see chapter 241.
- (22) Section 642(a), (b), and (d) (with respect to special rules for credits and deductions).
- (23) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- (24) Subchapter L (sections 801 to 847) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204.
- (25) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- (26) 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).
- (27) Section 1055 (with respect to redeemable ground rents).
- (28) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- (29) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).
- (30) Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421."

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

SECTION 4. This Act, upon its approval, shall take effect retroactive to October 1, 1990.

(Approved May 22, 1991.)

ACT 138

H.B. NO. 820

A Bill for an Act Relating to Health Care Professionals.

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

SECTION 1. Section 451D-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§451D-1]] Construction of laws.~~ The purpose of licensing health care professionals is to protect the public health and safety and the general welfare of the people of this State. The powers conferred upon licensing boards and the department by the applicable licensing statutes and by this chapter shall be liberally construed to carry out this purpose. Any license issued to a health care professional is a revocable privilege. The provisions of this chapter are not intended to confer any particular professional status upon health care providers mentioned in this chapter for purposes of third party payments for services rendered.”

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

“~~[[451D-2]] Definitions.~~ [As used in] Solely for the purpose of this chapter:

“Board” means the board of dental examiners, the board of medical examiners, the board of psychology, the board of nursing, the board of osteopathic examiners, [and] the board of veterinary examiners[.], the board of acupuncture, the board of massage therapy, the board of examiners in naturopathy, the board of chiropractic examiners, and the board of pharmacy.

“Department” means the department of commerce and consumer affairs.

“Health care professional” includes physicians and surgeons and others licensed pursuant to chapters 453 and 460, podiatrists licensed pursuant to chapter 463E, dentists licensed pursuant to chapter 448, psychologists licensed pursuant to chapter 465, nurses licensed pursuant to chapter 457, [and] veterinarians licensed pursuant to chapter 471[.], acupuncturists licensed pursuant to chapter 436E, massage therapists licensed pursuant to chapter 452, naturopathic physicians licensed pursuant to chapter 455, chiropractors licensed pursuant to chapter 442, and pharmacists licensed pursuant to chapter 461.”

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 22, 1991.)

A Bill for an Act Relating to Temporary Permits to Practice Nursing.

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

SECTION 1. Section 457-13, Hawaii Revised Statutes, is amended to read as follows:

“**§457-13 Exceptions.** This chapter does not prohibit:

- (1) The furnishing of nursing assistance in an emergency;
- (2) The practice of nursing which is incidental to their program of study by students enrolled in nursing education programs accredited by the board;
- (3) The practice of nursing under a nonrenewable permit by [a]:
 - (A) A graduate of; or
 - (B) An applicant who has provided proof that the applicant has completed the entire educational curriculum required for graduation for a nursing license from

a school which is in [[or[]] under the jurisdiction of the United States, and whose accreditation is recognized by the board; provided that following [graduation,] completion of (A) or (B), the candidate [enters] takes the first licensing examination scheduled by any board of nursing recognized by the board and has submitted to the board an application for a license to practice nursing in this State; and provided further that the permit shall be valid for three months or until the results of the licensing examination are received by the board[, whichever occurs first];
- (4) The practice of any legally qualified nurse of another state who is employed by the United States or any bureau, division, or agency thereof, while in the discharge of the nurse's official duties;
- (5) The practice of nursing in connection with healing by prayer or spiritual means alone in accordance with the tenets and practice of any well recognized church or religious denomination, provided that no person practicing such nursing claims to practice as a registered nurse or a licensed practical nurse; or
- (6) The administration of oral and topical medication by school health aides as provided in section 321-242.”

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 22, 1991.)

ACT 140

A Bill for an Act Relating to District and Circuit Court Costs and Fees.

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

SECTION 1. The legislature finds that the current multitude of small fees charged by the district and circuit courts as court costs constitute a burdensome and inefficient practice for both the parties involved as well as for the State. The purpose of this Act is to remedy this problem by increasing certain basic fees and completely eliminating many smaller ones. This will reduce the number and types of fees which must be accounted for and collected, thereby enabling the court staff to devote more time to more pressing concerns, such as monitoring child support payments, rather than bookkeeping.

SECTION 2. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) The fees referred to in subsection (a) are:
 - (1) For the institution of each action or proceeding, to include all charges except as provided by paragraphs (2) to [(13)] (6)[\$15] \$25
 - (2) Intervention; answer containing one or more cross-claims or counterclaims; third-party complaint, for each such matter.....\$10
 - [(3)] Motion or other application for: change of venue; involuntary dismissal, or preliminary hearing of a defense which may lead to involuntary dismissal; judgment on the pleadings; summary judgment; new trial; vacating, altering, or amending judgment, for each such matter, provided that an application in the alternative shall be treated as one matter.....\$10
 - (4) For the issuance of garnishee summons; writ of possession, attachment, or execution; or any other writ, for each such matter\$5
 - (5) Issuance of a subpoena, for each witness to be served\$1
 - (6) Deposition upon oral examination or written questions, or physical or mental examination, or examination of judgment debtor or other person under section 636-4, to be paid by the party filing the first paper in the matter, for each person whom the party seeks to question or examine\$3
 - (7)] (3) Demand for jury trial.....Fee prescribed by section 607-5
 - [(8)] (4) Filing of notice of appeal to the supreme court, to be paid in addition to the deposit of appellate court costs\$30
 - [(9)] Search of records by the clerk\$2
 - [(10)] (5) Making of a copy; comparing of copy with originalFees prescribed by section 92-21
 - [(11)] Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal.....\$1
 - (12) Exemplification, instead of paragraph (1).....\$1
 - [(13)] (6) Posting notice; service fees; garnishee fees; mileage charges; or other services actually performedAmounts necessary to cover actual costs or disbursements.”

SECTION 3. Section 607-5, Hawaii Revised Statutes, is amended to read as follows:

“§607-5 Costs; circuit courts. (a) The fees prescribed by the [below] schedule in this section shall be paid to the clerk of the circuit court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the circuit court; provided that nothing in the schedule shall apply to cases of adults charged with commission of a crime, or to proceedings under section 571-11(1) or (2), or to proceedings under chapter 333F or 334, or to small estates (including decedents’ estates and protection of property of minors and persons under disability) when the amount payable is fixed by another statute.

For the purpose of this section, “judgment” includes a decree and any order from which an appeal lies.

SCHEDULE

In the application of this schedule, each case assigned a new number or filed under the number previously assigned to a probate, trust, guardianship, or conservatorship, shall carry a fee for the institution or transfer of the action or proceeding as prescribed by part I, and in addition the fees prescribed by [parts] part II [and III] unless otherwise provided.

(b) **PART I**

Action or proceeding, general:

- (1) Civil action or special proceeding, unless another item in this part I applies[\$30] **\$100**
- (2) Appeal to a circuit court\$30
- (3) Transfer of action to circuit court from district court, in addition to district court fees.....\$20

Trusts:

- (4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F) approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter\$15
- (5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust, for each such matter.....\$15
- (6) Accounting, this fee to be paid for each account filed and to include the settlement of the account\$10
- (7) Vesting order.....no charge under part I
- (8) Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section.....no charge under part I
- (8a) Registration of a trust, or release of registration, under chapter 560\$3
- (9) Any other proceeding relating to a trust.....\$15

Guardianship of estate or conservatorship:

- (10) Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings; (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter.....\$15
- (11) Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter\$15
- (12) Accounting, same as provided by item (6) in relation to a trust ...\$10
- (13) Any other proceeding relating to guardianship of an estate, or a conservatorshipno charge under part I

Probate (decedents' estates). These fees include all matters of the nature listed in items (4) to (9), without additional charge:

- (14) Application for appointment of special administrator by order of the court, in addition to fee prescribed by item (15)\$10
- (15) Probate, administration, or ancillary administration, this fee to be paid once only for each decedent's estate\$30
- (15a) Informal probate or appointment proceeding under chapter 560, this fee to be paid instead of the fee prescribed by item (15)\$10
- (15b) Application under chapter 560 for formal testacy proceedings, or for supervised administration, this fee to be paid once only for each decedent's estate as an addition to the fee prescribed by item (15a).....\$20

Family court cases:

- (16) Matrimonial action (annulment, divorce, separation, or separate maintenance).....\$30
- (17) Adoption\$15
- (18) Guardianship of the person, including all matters of the nature listed in items (4) to (9).....\$15
- (19) Termination of parental rights.....no charge under part I
- (20) Any other family court proceeding, including without limitation custody proceedings even if in the form of an habeas corpus proceeding.....\$15

[(c) **PART II**

The fees prescribed by this part do not apply to decedents' estates, guardianships, or conservatorships.

Intervention; affirmative relief:

- (21) Intervention.....\$15
- (22) Answer containing one or more cross-claims, cross-complaints, or counterclaims\$15
- (23) Third-party complaint\$15

Motions:

- (24) Motion or other application for: (A) preliminary injunction including temporary restraining order; (B) change of venue; (C) involuntary dismissal, or preliminary hearing of a defense which may lead to involuntary dismissal; (D) judgment on the pleadings; (E) summary judgment; (F) new trial; (G) vacating, altering, or amending judgment, for each such matter, provided that an application in the alternative shall be treated as one matter.....\$15

Writs; garnishee summons. For the issuance of the following:

- (25) Garnishee summons.....\$10
- (26) Writ of possession, attachment, or execution\$10
- (27) Temporary restraining order or other injunctionno charge except for the motion
- (28) Any other writ.....\$10

(d) **PART III] (c) PART II**

The fees prescribed by this part apply without exception.

Jury trial:

- [(29)] (21) Demand for jury trial, including without limitation probate cases, appeals to the circuit court, and cases transferred to the circuit court from the district court, this fee to be paid to the court in which the demand is filed by the party first making the demand.....[.50] \$100

ACT 141

[(30)] (22) Remand to district court in cases transferred to circuit court from district court on demand for jury trial, where jury trial is waived and a remand of such cases to district court is allowed....\$50

[Subpoena:

(31) Issuance of a subpoena, for each witness to be served\$3

Deposition; examination:

(32) Deposition upon oral examination or written questions, or physical or mental examination, or examination of judgment debtor or other person under section 636-4, to be paid by the party filing the first paper in the matter, for each person whom the party seeks to question or examine.....\$10]

Miscellaneous:

[(33)] (23) Filing of notice of appeal to supreme court, to be paid in addition to the deposit of supreme court costs\$30

[(34)] (24) Search of records by the clerk\$2

[(35)] (25) Making of copy; comparing of copy with original; certification or authentication of notariesFees prescribed by section 92-21

[(36)] (26) Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal\$1

[(37)] (27) Exemplification, instead of item [(36)] (26)\$2

[(38)] (28) Filing of copy of notice of completion of contract, with affidavit of publication.....\$3

[(39)] (29) Filing of initial paper under section 507-43 by person asserting mechanic's or materialman's lien (this fee to be additional to the fee prescribed by part I for bringing an action under section 507-47)\$15

[(40)] (30) Filing of any other paper not in a pending proceeding\$3

[(41)] (31) Printing, publishing, or posting notice; service fees; garnishee fees; mileage charges; or other services actually performedAmounts necessary to cover actual costs or disbursements."

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

SECTION 5. This Act shall take effect upon its approval, except that section 2 shall take effect one year after its approval.

(Approved May 22, 1991.)

ACT 141

S.B. NO. 140

A Bill for an Act Relating to Child Abuse.

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

SECTION 1. The Legislature finds that there is a desperate need to enhance the continuity and quality of health and human service care to the children of the State of Hawaii.

A sector of Hawaii's health care and human service professionals has expressed much frustration and anguish over the need to know a child's HIV status in order to provide the best possible care for a foster or adoptive child who

maybe a subject of abuse. The lack of pertinent information regarding a child's HIV status compounds the difficulties faced by health care and human service providers in determining the appropriate referral and provision of services to abused and neglected children. Because of this, the Legislature finds that the disclosure of information relating to the HIV status of children involved in alleged cases of abuse or neglect would significantly assist in the provision of critical services.

The purpose of this Act is to allow the release of medical records regarding the HIV status of a child to foster parents or adoptive parents.

SECTION 2. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The records of any person [which] that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual, or organization in the State shall be strictly confidential. For the purposes of this part, the term “records” shall be broadly construed to include all communication which identifies any individual who has HIV infection, ARC, or AIDS. This information shall not be released or made public upon subpoena or any other method of discovery. Notwithstanding any other provision to the contrary, release of the records protected under this part shall be permitted under the following circumstances:

- (1) Release is made to the department of health in order that it may comply with federal reporting requirements imposed on the State. The department shall ensure that personal identifying information from these records are protected from public disclosure;
- (2) Release is made of the records, or of specific medical or epidemiological information contained therein, with the prior written consent of the person or persons to whom the records pertain;
- (3) Release is made to medical personnel in a medical emergency only to the extent necessary to protect the health, life, or well-being of the named party;
- (4) Release to or by the department of health is necessary to protect the health and well-being of the general public; provided that release is made in such a way that no person can be identified, except as specified in paragraph (5);
- (5) Release is made by the department of health of medical or epidemiological information from the records to medical personnel, appropriate county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, preschools, day care centers, or county or district courts to enforce [the provisions of] this part and to enforce rules adopted by the department of health concerning the control and treatment of HIV infection, ARC, and AIDS; provided that release of information under this paragraph shall only be made by confidential communication to a designated individual charged with compliance [of the provisions of] with this part;
- (6) Release [is made for the purpose] of a child's records is made to the department of human services for the purpose of enforcing [the provisions of] chapters 350[;] and 587;
- (7) Release of a child's records is made within the department of human

services and to child protective services team consultants under contract to the department of human services for the purpose of enforcing and administering chapters 350 and 587 on a need to know basis pursuant to a written protocol to be established and implemented, in consultation with the director of health, by the director of human services;

- (8) Release of a child's records is made by employees of the department of human services authorized to do so by the protocol established in paragraph (7) in a case arising under chapters 350 and 587 to a natural parent of a child who is the subject of the case when the natural parent is a client in the case, the guardian ad litem of the child, the court, each party to the court proceedings, and also to an adoptive or a prospective adoptive parent, an individual or an agency with whom the child is placed for 24 hour residential care, and medical personnel responsible for the care or treatment of the child. When a release is made to a natural parent of the child, it shall be with appropriate counseling as required by section 325-16. In no event shall proceedings be initiated against a child's natural parents for claims of child abuse under chapter 350 or harm to a child or to affect parental rights under chapter 587 solely on the basis of the HIV seropositivity of a child or the child's natural parents.
- (7) (9) Release is made to the patient's health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall not be made if, after being informed that a claim will be made to an insurer, the patient is afforded the opportunity to make the reimbursement directly and actually makes the reimbursement;
- (8) (10) Release is made by the patient's health care provider to another health care provider for the purpose of continued care or treatment of the patient; or
- (9) (11) Release is made pursuant to a court order, after an in camera review of the records, upon a showing of good cause by the party seeking the release of the records.

As used in this part, unless the context requires otherwise:

"Medical emergency" means any disease-related situation [which] that threatens life or limb.

"Medical personnel" means any health care provider in the State, as provided in section 323D-2, who deals directly or indirectly with the identified patient or the patient's contacts, and includes hospital emergency room personnel, the staff of the communicable disease division of the department of health, and any other department personnel as designated by the director."

SECTION 3. Section 586-10.5, Hawaii Revised Statutes, is amended to read as follows:

"§586-10.5 Reports by the department of human services. In cases where there are allegations of domestic abuse involving a minor family or household member, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, as required under [chapter 350,] chapters 350 and 587, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. The department of human services shall provide the family court with an oral or written report of the investigation's progress on or before the hearing 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 May 22, 1991.)

ACT 142

S.B. NO. 163

A Bill for an Act Relating to Energy.

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

PART I

SECTION 1. The legislature finds that it is in the public interest to encourage the development of nonfossil fuel projects that make electric energy available to members of the general public by its sale to an electric utility serving the public. The legislature further finds that the Wailuku River Hydroelectric Power Company, Inc., a Hawaii corporation, is engaged in the development of a hydroelectric power plant project that will sell the electric energy it produces to the Hawaii Electric Light Company, Inc., which is an electric utility serving the public.

The legislature further finds that the Wailuku River Hydroelectric Power Company, Inc., may be assisted through the issuance of special purpose revenue bonds because it is an industrial enterprise pursuant to part V, chapter 39A, Hawaii Revised Statutes. The legislature previously authorized under Act 222, Session Laws of Hawaii 1990, the issuance of one or more series of special purpose revenue bonds in a total amount not to exceed \$18,000,000 for the purpose of assisting the Wailuku River Hydroelectric Power Company, Inc., or a partnership in which the Wailuku River Hydroelectric Power Company, Inc., is a general partner, for the establishment of a hydroelectric power plant and related facilities.

The legislature finds and declares that the issuance of special purpose revenue bonds under this part is in the public interest and for the public health, safety, and general welfare.

SECTION 2. 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 in one or more series special purpose revenue bonds in a total amount not to exceed \$7,000,000, for the purpose of assisting the Wailuku River Hydroelectric Power Company, Inc., or a partnership in which Wailuku River Hydroelectric Power Company, Inc., is a general partner, for the establishment of a hydroelectric power plant and related facilities. The electrical output of this plant and facilities shall be made available for use by members of the general public by sale to the Hawaii Electric Light Company, Inc. The legislature finds and determines that the activity and facilities of the Wailuku River Hydroelectric Power Company, Inc., constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

PART II

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1995.

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

(Approved May 22, 1991.)

ACT 143

S.B. NO. 180

A Bill for an Act Relating to the Housing Finance and Development Corporation.

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

SECTION 1. Section 201E-2, Hawaii Revised Statutes, is amended by amending the definition of "qualified resident" to read as follows:

""Qualified resident" means a person who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is domiciled in the State and [has a bona fide intent to] shall physically reside in the dwelling unit purchased or rented under this chapter;
- (4) In the case of purchase of a dwelling unit in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- (5) Is not found by the corporation to be within one of the following classes:
 - (A) A person who oneself or whose husband or wife or both (unless husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71) owns or own in fee simple or leasehold any lands suitable for dwelling purposes; or
 - (B) A person who oneself or whose husband or wife (unless husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71) has pending another unrefused application to purchase a dwelling unit under this chapter from the corporation; or
 - (C) A person who oneself or whose husband or wife (unless husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71) has a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land;

provided that for purchasers of market-priced units in an economically integrated housing project, the term "qualified resident" means a person who is a citizen of the United States or a resident alien; is domiciled in the State and shall physically reside in the dwelling unit purchased; is at least eighteen years of age; and meets other qualifications as determined by the developer."

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

SECTION 3. The provisions of this Act shall not apply to any contracts which have been executed by the housing finance and development corporation for the development of a housing project as of the effective date of this Act.

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

(Approved May 22, 1991.)

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S.B. NO. 212

A Bill for an Act Relating to Towing 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 not more than \$35 a tow, \$40 for a tow using a dolly, plus \$1 a mile for any towing mileage over five miles, and \$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]:

- (1) The maximum towing charges and fees allowed by law;
- (2) The telephone number of the consumer information service of the department of commerce and consumer affairs; and

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- (3) 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 the owner's 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 recovered by the owner before written notice is sent by registered or certified mail, the towing company shall provide the owner with a receipt stating:

- (1) The maximum towing charges and fees allowed by law; and
- (2) The telephone number of the consumer information service of the department of commerce and consumer affairs.

[(c)] (d) 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 the owner of the towing company's 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)] (e) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due the authorized seller 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 the legal or registered owner can be found. If the legal or registered owner 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)] (f) 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)] (g) 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 May 22, 1991.)

ACT 145

S.B. NO. 369

A Bill for an Act Relating to Government Records.

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

SECTION 1. In 1988 the legislature enacted the Uniform Information Practices Act (Modified) as Act 262, Session Laws of Hawaii 1988, which was codified as chapter 92F, Hawaii Revised Statutes. The purpose of Act 262 was to open governmental processes to public scrutiny and participation and, among other things, enhance governmental accountability through a general policy of access to government records. Act 262 contains a definition of "government record" which means information maintained by an agency in written, auditory, visual, electronic, or other physical form. Act 262 also repealed the then existing public records law which contained a definition of "public record". However, many other references in the Hawaii Revised Statutes to the term "public record" were not similarly changed to "government record". The purpose of this Act is to make the technical amendments to change existing occurrences of the terms "public record", "public records", "public document", or "public documents" to the new term, "government record" for consistency. This Act does not intend to make any substantive changes to the sections amended.

SECTION 2. Sections 92-29, 94-7, 312-3.5, 346-10(c), 490:9-403(3), 576D-12(c), and 710-1017 are amended by replacing the terms "public record" or "public records" with the terms "government record" or "government records", or like terms, as the context requires.

SECTION 3. Sections 92-21, 92-26, and 171-6, are amended by replacing the terms "public document", "public documents", "public document or record", or "public documents and records" with the terms "government record" or "government records", or like terms, as the context requires.

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

(Approved May 22, 1991.)

ACT 146

S.B. NO. 389

A Bill for an Act Relating to Financial Services Loan Companies.

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

SECTION 1. Chapter 408, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§408- Establishment of branches in the Territory of Guam and the Commonwealth of the Northern Marianas. (a) Any financial services loan company having a combined capital and surplus of \$1,000,000 or more may establish financial services loan company branches in the Territory of Guam and the Commonwealth of the Northern Marianas, upon such conditions and under

such rules as may be prescribed by the commissioner. The term "Guam or Commonwealth of the Northern Marianas branch," as used in this section, refers to any branch of a financial services loan company so established.

(b) The commissioner, at any time, may examine any Guam or Commonwealth of the Northern Marianas branch, and, at any time, require the discontinuance of any Guam or Commonwealth of the Northern Marianas branch. The financial services loan company maintaining the branch shall pay for the cost of all examinations.

(c) The accounts of each Guam or Commonwealth of the Northern Marianas branch shall be maintained independently of the accounts of every other Guam or Commonwealth of the Northern Marianas branch, and independently of the accounts of the domestic offices and branches of the financial services loan company. On June 30 and December 31 of each year, the financial services loan company shall transfer to its general ledger at its head office the profit and loss from each Guam or Commonwealth of the Northern Marianas branch as a separate item.

(d) The total capital investment of a financial services loan company in all Guam or Commonwealth of the Northern Marianas branches maintained by it shall not exceed ten per cent of its capital and surplus.

(e) An application to establish a Guam or Northern Marianas branch shall be accompanied by an application fee of \$500 for each Guam or Commonwealth of the Northern Marianas branch sought to be established, and in addition, the commissioner may assess the financial services loan company the actual necessary and reasonable expenses incurred in making the investigation to determine the necessity of establishing a Guam or Commonwealth of the Northern Marianas branch."

SECTION 2. Section 408-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every financial services loan company, in addition to the powers exercisable by or conferred upon it under or by the general corporation law of the State, or by any other provision of this chapter, shall possess and may exercise the following powers:

- (1) To borrow money upon its own secured or unsecured notes;
- (2) To lend money upon individual credit or upon the security of comakers, personal endorsement, or the pledge or mortgage of real or personal property or choses in action, or upon any combination of such credit and security, and to contract for such interest, discount, or other consideration as is permitted by this chapter, and to sell or broker, loans or contracts, in whole or in part, to other lenders, and charge or retain a fee for the originating, selling, brokering, or servicing of such loans or contracts;
- (3) To discount, purchase, or otherwise acquire notes, installment contracts, warehouse receipts, or other choses in action;
- (4) To establish branches within the State, the Territory of Guam, and the Commonwealth of the Northern Marianas with the prior written approval of the commissioner;
- (5) To finance purchases for others by taking title to merchandise temporarily and only for the purpose of securing loans entered into for the purchases;
- (6) To issue and sell certificates for the payment of money at any time, either fixed or uncertain, including without limitation evidences of

thrift accounts as defined in and subject to chapter 408A, and to receive amounts invested therein in installments or otherwise, with or without allowance of interest on the investments; provided no company may issue the certificates or receive those amounts unless the company is a corporation organized and operating in good standing under the laws of this State. A company may, but need not, require an investor to subscribe to a certain amount of investment in such certificates, subject to minimum or maximum investments required by law or rules. Nothing herein shall be construed to authorize any financial services loan company to receive deposits or to create any liability due on demand; and

- (7) To become the legal or beneficial owner of tangible personal property and other tangible property for the purpose of leasing such property, to obtain an assignment of a lessor's interest in a lease of such property, and to incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property."

SECTION 3. New statutory material is underscored.¹

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

(Approved May 22, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 147

S.B. NO. 597

A Bill for an Act Relating to Courts.

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

SECTION 1. Section 806-6, Hawaii Revised Statutes, is amended to read as follows:

"§806-6 Use of; furnishing of copy. In all cases of offenses against the laws of the State[,] brought in the first instance in a court of record, the accused shall be arraigned and prosecuted upon an information, complaint, or indictment[,] as soon after the commitment of the offense of which he is accused as may be expedient.

In all cases of felony the defendant shall be furnished before arraignment with a copy of the complaint or indictment found against him."

SECTION 2. Section 806-7, Hawaii Revised Statutes, is amended to read as follows:

"§806-7 Preparation of indictment, complaint, or information; true bill by grand jury. Informations, complaints, and indictments shall be duly prepared by a legal prosecuting officer. Every indictment shall be duly found by a grand jury before the arraignment of the accused, and when so found shall be indorsed a true bill, and the indorsement shall be signed by the foreman."

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SECTION 3. Section 806-8, Hawaii Revised Statutes, is amended to read as follows:

“§806-8 Prosecution where indictment not essential. In criminal cases brought in the first instance in a court of record, but in which the accused may be held to answer without an indictment by a grand jury, the legal prosecutor may arraign and prosecute the accused upon [either] an information, complaint, or an indictment at the prosecutor’s election; and in all criminal cases brought in the first instance in a court of record the prosecutor may arraign and prosecute the accused by information, complaint, or indictment, as the case may be, whether there has been a previous examination, or commitment for trial by a judge, or not.”

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 22, 1991.)

ACT 148

S.B. NO. 602

A Bill for an Act Relating to Family Court.

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

SECTION 1. Section 578-14.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whenever possible, a completed form with the required information on each natural parent shall accompany any document, to be filed with the family court, which requests the relinquishment, termination, or divestiture of parental rights, as provided under sections 571-61 and 587-73(b)(3), and the petition for adoption under this chapter. If available, a copy of the hospital or other facility’s medical records under subsection (b) shall also accompany the document to be filed in the family court. This copy shall not be disseminated to the parties and shall be sealed by the family court pending transmittal to the department of health [with the decree of adoption].”

SECTION 2. Section 578-14.5, Hawaii Revised Statutes, is amended by amending subsections (e), (f) and (g) to read as follows:

“(e) The completed forms shall be made a part of the [adoption records of the family court under section 578-15.] records of the department of health.

(f) [A copy of each] The completed [form] forms and, if applicable, the previously sealed copy of the natural mother’s medical records shall be forwarded to the department of health [with the decree of adoption]. The department shall extract from the medical records pertinent information relating to inheritable diseases and genetic disorders and shall retain this information in an abstract. The completed forms and the abstract, if available, shall be included in the department’s adoption records.

(g) An adopted child upon reaching the age of majority, the adoptive parent, guardian or custodian on behalf of a minor adopted child, or an authorized designee of the adult adopted child or of the minor's adoptive parent may file a written application with the department of health for access to the information described in subsection (f)."

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

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

(Approved May 22, 1991.)

ACT 149

S.B. NO. 741

A Bill for an Act Relating to Motor Vehicle Insurance.

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

SECTION 1. Section 431:10C-305, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) (1) Except as provided in [item] paragraph (2), no-fault benefits shall be paid primarily from the following sources in the following conditions:
- (A) The insurance on the vehicle occupied by the injured person at the time of the accident, or
 - (B) The insurance on the vehicle which caused accidental harm if the injured person is a pedestrian (including a bicyclist).
- If there is no insurance on the vehicle, any other no-fault insurance applicable to the injured person shall apply.
- No person shall recover no-fault benefits from more than one insurer for accidental harm as a result of the same accident.
- (2) 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:
- (A) The total amount a person is entitled to receive for monthly earnings loss under this article shall be limited to the amount set out in section [[431:10C-103(10)(A)(iii)]] or the amount of any applicable coverage under section 431:10C-302, without any deduction of any amount received as compensation for lost earnings under any workers' compensation law;
 - (B) 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 431:10C-103(7)[; and]. However, if the person's employer provides both workers' compensation and no-fault payments, the aggregate shall not exceed the person's net monthly earnings (computed by subtracting the total of federal and state income taxes and employee social security contributions from the gross monthly earnings), provided that the workers' compensation payments shall not be less than required by chapter 386; and

(C) This section shall [be inapplicable] not apply to benefits payable to a surviving spouse and any surviving dependent as provided under section 431:10C-304.

If the person does not collect such benefits under the workers' compensation laws by reason of the contest of this 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 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 22, 1991.)

ACT 150

S.B. NO. 800

A Bill for an Act Relating to Public Record Disclosures of Financial Interests.

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 and duplication:

- (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[.], regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general.
- (3) The administrative director of the State.
- (4) The president, the vice presidents, the assistant vice presidents, the chancellors, and the provosts of the University of Hawaii.
- (5) The superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education.
- (6) The administrative director and the deputy director of the courts.
- (7) The administrator and the assistant administrator of the office of Hawaiian affairs.”

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 22, 1991.)

ACT 151

S.B. NO. 952

A Bill for an Act Relating to Public Safety.

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

SECTION 1. The purpose of this Act is to exempt the department of public safety and the office of youth services from state and county requirements relating to planning, land use, and construction for the renovation or expansion of existing facilities or construction of new facilities on their property located in Kailua, Oahu.

In 1985, the State of Hawaii entered into a consent decree with the American Civil Liberties Union (ACLU) to improve conditions at the Oahu community correctional center (OCCC) and the women's community correctional center (WCCC). The State has substantially complied with conditions at the OCCC. However, expert monitors appointed by the United States District Court have stated that the State will not be able to comply with consent decree requirements at the WCCC because of its inadequate and deteriorated physical plant. Therefore, the department of public safety has developed plans to rebuild the WCCC at its existing site in Kailua. The legislature authorized this construction through an appropriation in Act 316, Session Laws of Hawaii 1989.

In view of the State's good faith efforts to rebuild the WCCC, the ACLU and the court monitors have tolerated conditions at the WCCC. However, the State's efforts have been stalled because of the city planning commission's denial of the request for a special use permit to allow the rebuilding of the facility on Mt. Olomana. Any challenge to this denial may cause a significant delay which is unacceptable to the ACLU and the court monitors. The ACLU, in fact, has served notice that it will petition the United States District Court for relief which may include closing down the WCCC unless the State can provide a firm plan for construction.

In order to avoid delay and possible litigation by the ACLU over this issue, the State has an alternative plan to relocate the existing women's facility across the highway to the present Hawaii Youth Correctional Facility (HYCF) and to subsequently construct a new youth facility on the grounds of the present women's facility. This alternative plan requires the renovation of existing structures and the construction of new structures at both the present HYCF and WCCC facilities.

Obtaining all approvals relating to planning and/or land use reclassification would be a time-consuming and expensive process. Time, as the ACLU and court monitors have indicated, is something the State can little afford.

The legislature finds that a new WCCC is urgently needed. The purpose of this Act is to provide a three-year exemption to the department of public safety and the office of youth services from planning, land use classification, and construction requirements, either state or county, otherwise applicable to the relocation of the WCCC to the makai side of Kalaniana'ole highway, and the renovation and expansion of existing buildings and addition of other needed structures there, and the relocation of the HYCF to the mauka side of Kalaniana'ole highway, and the renovation of existing buildings and construction of other needed structures there. In conjunction with this exemption, however, it is the intent of the legislature that the department of public safety and the office of youth services shall work closely with the community regarding concerns in the renovation and expansion of existing structures, as well as the construction of new structures, and

address with sensitivity, the needs and aesthetic preferences of the community and the pristine appearance of Mt. Olomana.

SECTION 2. Section 352D-6, Hawaii Revised Statutes, is amended to read as follows:

“§352D-6 **Organizational structure.** The office of youth services shall be composed of such divisions and sections as are deemed necessary by the director to [provide]:

- (1) [Diagnostic] Provide diagnostic evaluation, treatment, and rehabilitation services for all youths referred to services provided by the office or placed in the office’s custody by the family court;
- (2) [Supervision] Provide supervision and counseling services for youth in shelter or correctional facilities under the office’s jurisdiction, including community-based facilities;
- (3) [Educational,] Provide educational, vocational-educational, and other programs to effectively occupy the time of the youth placed in a facility under the office’s jurisdiction which promote the development of self-esteem and useful skills to prepare youths in becoming productive members of the community;
- (4) [Continuous] Provide continuous program planning, development, and coordination of youth services, including the coordination with other government and private social service agencies that work with youths to ensure that a full-range of programs is available and that such programs are consistent with the policy of this chapter and are not unnecessarily duplicative or conflicting;
- (5) [Prevention] Provide prevention services to include a comprehensive intake/assessment and information/referral system throughout the State which shall access services to youth and their families;
- (6) [A] Provide a case management system based on the individual needs of youth which shall provide for in-depth client assessment, appropriate service planning, and client advocacy;
- (7) Provide for the implementation of chapter 352, youth correctional facilities and other needed correctional services[;], including ensuring that these facilities and services meet the present and future needs of youth under the jurisdiction of the youth correctional facilities;
- (8) Facilitate the development of and, when appropriate, provide for training programs for persons offering services to youth at risk;
- (9) Provide for technical assistance and consultation to providers and potential providers;
- (10) Seek, apply for, and encourage the use of all federal funds for youth services and facilitate the coordination of federal, state, and local policies concerning services for youth;
- (11) Prepare and submit an annual report to the governor and the legislature. This report shall include, but not be limited to, a review of the status of youth services within the State, recommendations for priorities for the development and coordination of youth services; and
- (12) Monitor, evaluate, and audit all grants, subsidies, and purchase of services under chapter 42 which relate to the office of youth services.”

SECTION 3. Section 353C-2, Hawaii Revised Statutes, is amended to read as follows:

“**[§353C-2] Director of public safety; powers and duties.** The director of public safety shall administer the public safety programs of the department of public safety and shall be responsible for the formulation and implementation of state goals and objectives for correctional and law enforcement programs[.], including ensuring that correctional facilities and correctional services meet the present and future needs of persons committed to the correctional facilities. In the administration of these programs, the director may:

- (1) Preserve the public peace, prevent crime, detect and arrest offenders against the law, protect the rights of persons and property, and enforce and prevent violation of all laws and administrative rules of the State as the director deems to be necessary or desirable or upon request, to assist other state officers or agencies that have primary administrative responsibility over specific subject matters or programs;
- (2) Train, equip, maintain, and supervise the force [of] public safety officers, including law enforcement and correctional personnel, and other employees of the department;
- (3) Serve process both in civil and criminal proceedings;
- (4) Perform other duties as may be required by law;
- (5) Adopt, pursuant to chapter 91, rules that are necessary or desirable for the administration of public safety programs; and
- (6) Enter into contracts in behalf of the department and take all actions deemed necessary and appropriate for the proper and efficient administration of the department.”

SECTION 4. For the purposes of this Act only, notwithstanding the provisions in section 205-8, Hawaii Revised Statutes, the lawful use of land or buildings for correctional purposes that qualify as nonconforming uses under section 205-8, Hawaii Revised Statutes, may continue as lawful nonconforming uses, even if a nonconforming building is replaced, reconstructed, renovated, enlarged, changed, or additional nonconforming buildings are constructed, so long as the land and buildings continue to be used for correctional purposes; provided that such use is strictly limited to the subject properties under this Act presently owned by the State of Hawaii and located in Kailua, Oahu and specifically set aside for correctional purposes; and provided further that such lawful nonconformity in use shall apply to this land only so long as the land and buildings continue to be used for correctional purposes. The department of public safety and the office of youth services shall advise their consultants and contractors that in the design and construction of all lawful nonconforming uses, such design and construction, to the extent practicable and as long as it does not delay construction or renovation, shall blend into the pristine natural environment surrounding the facilities and be minimally intrusive, if at all, as to the surrounding communities. The department of public safety and the office of youth services shall submit to the legislature an annual status report regarding the HYCF and WCCC at least twenty days prior to the convening of each regular session which shall include:

- (1) A breakdown of the population incarcerated at each facility, including the numbers of serious or violent offenders incarcerated at each facility;
- (2) An assessment of each facility’s ability to accommodate the numbers of serious or violent offenders committed to each facility;

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- (3) An assessment of the implementation of programs providing alternatives to incarceration, including whether the numbers and types of programs have been adequate to meet the needs of persons under the jurisdiction of the facility; and
- (4) All plans and designs, except for security details, for the renovation of existing structures and the building of new structures at each facility, including the status of implementation and the costs of such plans, designs, and implementation.

SECTION 5. Notwithstanding any other law to the contrary, the department of public safety and the office of youth services shall be exempt from the necessity of obtaining any state or county approvals, permits, or licenses, including planning, land use classification, and environmental approvals which relate to the construction, improvement, use, reconstruction, renovation, replacement, enlargement, or relocation of buildings, facilities, or land used or to be used for correctional purposes, provided that such exemption is limited to the subject properties under this Act presently owned by the State of Hawaii and located in Kailua, Oahu and specifically set aside for correctional purposes.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval; provided that no new construction or development shall be initiated at the Kailua sites, for correctional or any other purpose, after July 1, 1994 without prior legislative approval.

(Approved May 22, 1991.)

ACT 152

S.B. NO. 1082

A Bill for an Act Relating to Collective Bargaining.

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

SECTION 1. Section 89-16.1,¹ Hawaii Revised Statutes, is amended to read as follows:

“**[§89-16.6]** **Disclosure to an exclusive representative.** (a) The appropriate government agencies shall, upon written request, disclose to an exclusive representative[,], as defined in chapter 89, information relating to the administration of payroll deductions as authorized by section 89-4, as follows: name[,]; mailing address; social security number[,]; bargaining unit[,]; date of change in bargaining unit status of the employee[,]; full time equivalence of the employee[,]; the employee’s leave without pay status with effective dates and duration[,]; basic rate of pay[,]; types and effective dates of personnel actions that affect the amount and payment of the basic rate of pay[,]; salary scale and range or equivalent[,]; salary step or equivalent[,]; amounts and dates of differential pay[,]; amounts and dates of statutory dues deductions[,]; and amounts and dates of other authorized voluntary payroll deductions remitted to the exclusive representative; except that this provision shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency.

(b) Information disclosed to the exclusive representative under this section shall be provided [on a timely basis.] within a reasonable time after receipt of the written request.

(c) An exclusive representative receiving government records pursuant to this section shall be subject to the same restrictions on disclosure of the records as the originating agency.

(d) Information disclosed pursuant to this section shall be provided in a form conducive to electronic data processing; provided the employer possesses appropriate data processing capability."

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 22, 1991.)

Note

1. So in original.

ACT 153

S.B. NO. 1188

A Bill for an Act Relating to Measurement Standards.

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

SECTION 1. The purpose of this Act is to update chapter 486, Hawaii Revised Statutes, to bring its provisions into alignment with national consensus standards for uniformity in weights and measures.

SECTION 2. Chapter 486, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§486- Remedies. Notwithstanding other penalties, the board may enforce this chapter in both administrative and judicial proceedings:

- (1) **Administrative.** If the administrator determines that any person is violating any provision of this chapter or any rule adopted thereunder, or any variance or exemption or waiver issued pursuant thereto, the administrator 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 \$2,000 for each day of violation, correct the violation at the alleged violator's own expense, or appear before the board at a time and place specified in the order and answer the charges complained of. The order shall become final twenty calendar days after service unless within those twenty calendar days the alleged violator requests in writing a hearing before the board. Upon such request the board shall specify a time and place for the alleged violator to appear. After a hearing pursuant to this subsection, the board may affirm, modify, or rescind the order as appropriate.

Factors to be considered in imposing the administrative penalty may 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.

- (2) Judicial. The board may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. In any judicial proceeding to enforce the administrative penalty imposed pursuant to this chapter, the board shall be required to show that:
- (A) Notice was given;
 - (B) A hearing was held or the time granted for requesting a hearing had expired without such a request;
 - (C) The administrative penalty was imposed; and
 - (D) The penalty imposed remains unsatisfied.

The board may also institute a civil action in any court of competent jurisdiction for injunctive relief to enjoin 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 3. Chapter 486, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

“§486- Rules; severability and continuation. (a) If any provision of the rules adopted under this chapter is declared invalid, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the rules and the applicability thereof to other persons and circumstances shall not be affected thereby.

(b) Except as specifically excepted, all rules currently in effect, as they relate to this chapter, shall remain in effect until they are updated, amended, or repealed.”

SECTION 4. Chapter 486, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

“§486- General duties and powers. The board may:

- (1) Enforce and administer this part by inspections, analyses, and other appropriate actions;
- (2) Have access during normal business hours to all places where petroleum products are marketed or being held for the purpose of examination, inspection, taking of samples, and investigation. If such access is refused by the owner or agent or other persons leasing the same, the board or its agent may obtain a search warrant from a court of competent jurisdiction;
- (3) Collect, or cause to be collected, samples of petroleum products marketed or being held in this State, and cause such samples to be tested or analyzed for compliance with this part; and
- (4) Issue a stop-sale order for any petroleum product found not to be in compliance and remand said stop-sale order if the petroleum product is brought into full compliance with this part.”

SECTION 5. Chapter 486, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

“§486- Adoption of standards and rules. The standards as published by the American Society for Testing and Materials (ASTM) and the Society of Automotive Engineers (SAE) are adopted except as amended or modified by rule of the board pursuant to chapter 91. The board may also adopt rules on the advertising, labeling, standards for, handling, storing, dispensing, and selling of petroleum products.”

SECTION 6. Chapter 486, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . MEASUREMENT STANDARDS, UNIFORM PACKAGING AND LABELING

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

“Commodity in package form” means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be considered a commodity in package form. Where the term “package” is used in this chapter, it shall mean “commodity in package form” as here defined.

“Consumer package; package of consumer commodity” means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

“Measure” includes all measures of every kind, including but not limited to weight, mass, length, volume, and count; instruments and devices for measuring; and appliances and accessories associated with any such instruments and devices. When used in connection with any commodity in package form, the term shall mean net measure.

“National type evaluation program” means a program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices”; National Institute of Standards and Technology handbook 105-1, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST class F)”; National Institute of Standards and Technology handbook 105-2, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flask”; or National Institute of Standards and Technology handbook 105-3, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards”.

“Net weight” means:

- (1) As applied to commodities, the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Materials, substances, or items not considered to be part

of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece covering, decorative accompaniments, and coupons.

- (2) As applied to services, materials considered to be part of a service may or may not include packaging materials, depending upon the type of service that is being purchased. It shall in no instance include the weight of the conveyance used to transport goods if the service is transportation of goods.

“Package” means a container or wrapper enclosing a commodity for sale, delivery, or display, but does not include shipping containers or wrapping used solely for the transportation of that commodity.

“Participating laboratory” means any state measurement laboratory that has been certified by the National Institute of Standards and Technology, in accordance with its program for the certification of capability of state measurement laboratories, to conduct a type evaluation under the national type evaluation program.

“Sale from bulk” means sale of commodities or services when the quantity is determined at the time of sale.

“Type” means a model or models of a particular measurement system, instrument, element, or a field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.

“Type evaluation” means the testing, examination, or evaluation of a type by a participating laboratory under the national type evaluation program.

“Weight” as used in connection with any commodity or service, means net weight; when a commodity is sold by drained weight, the term means net drained weight.

§486- Systems of measurement. The United States customary system of weights and measures and the metric system of measurement are jointly recognized, and either one or both shall be used for all measurement purposes in the State. The definitions of basic units of measure, the tables of measure and measure equivalents, the specifications, tolerances and other technical requirements for measuring devices, as published by the National Institute of Standards and Technology and adopted, or modified and adopted by the board, together with the measurement standards provided for herein, are recognized and shall govern measurement standards, measuring equipment and measuring transactions in the State.

§486- State measurement standards. The State measurement standard artifacts shall be in conformity with the measurement standards of the United States. As applicable, they shall have been calibrated for such use by the National Institute of Standards and Technology or other appropriate agency and shall be maintained in such calibration as is prescribed by that bureau or agency by the laboratory of the State division of measurement standards. They shall not be removed from that laboratory except upon request of the National Institute of Standards and Technology or other appropriate agency for calibration audit, provided that they may be relocated for the convenience of the State by directive of the governor.

§486- Secondary standards and equipment. The State shall supply secondary standards and other equipment as is necessary to carry out the provi-

sions of this chapter. These standards shall be verified, by comparison with the State standards, upon their initial receipt and at least once a year thereafter.

§486- General testing. Unless otherwise provided by law, the department, through the division of measurement standards, shall inspect and test, to ascertain if they are correct, all measurement standards and measuring devices kept, offered, or exposed for sale, sold or in use in the State. The department may, as often as it deems necessary, inspect and test, to ascertain if they are correct, all measurement standards and measuring devices used in determining the measurement of commodities or things sold, or offered or exposed for sale, on the basis of measure; in computing the basic charge or payment, including taxes, for services rendered on the basis of measure; in determining measurement when a charge is made for such determination, including the payment of any associated tax; provided that in compliance with a rule of the board, tests may be made on representative samples of such commodities of things or devices, and the lots of which samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples; and provided, that with respect to single-service devices designed to be used only once and to be then discarded or with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, the inspection and testing requirements of this section will be satisfied when inspections and tests are made on representative samples of such devices, and the lots of which samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests of such samples.

§486- Testing at State-supported institutions. The department, through the division of measurement standards, shall from time to time test all measures used in establishing or verifying any other measurement, including any measure or measurement standard used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting its findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

§486- Type evaluation; requirements; certificate of conformance. Any weight or measure, or any weighing or measuring instrument or device, shall have a certificate of conformance indicating that it has passed a national type evaluation by a participating laboratory, prior to being introduced for use for commercial or law enforcement purposes in the State.

§486- Use; disposition of correct or incorrect apparatus. The department, through the division of measurement standards, shall seal or mark with appropriate devices, such measures and measurement standards as it finds, upon inspection and test, to be "correct" as defined in this chapter. The department, through the division of measurement standards, shall reject and mark or tag as "rejected" such measures and measurement standards as it finds, upon inspection and test, to be in non-compliance provided that sealing or marking shall not be required with respect to such measures and measurement standards as may be exempted therefrom by a rule of the board adopted under section 486-7. Measures and measurement standards that have been rejected may be confiscated and may be destroyed by the department, through the division of measurement standards, if not corrected as required by section 486- , or if used or disposed of contrary to the requirements of section 486- . In carrying out this section, the department, through the division of measurement standards, may use such terms as "rejected,"

“accepted,” “incorrect,” “inaccurate,” “accurate,” “tested,” “approved,” “certified,” or terms of similar import on marks or tags or certificates, as necessary, to convey to all interested parties the condition or state of the device or apparatus. Any such mark or tag shall be subject to section 486-7 and its unauthorized application or removal shall be a violation of this chapter.

§486- Duties of owners or custodians of measuring apparatus. Measures and measurement standards shall be subject to the control of the department, through the division of measurement standards, until such time as they receive a certificate of conformance. Measures or measurement standards that have been initially type evaluated and approved, and subsequently found to be incorrect as defined in this chapter shall remain subject to the control of the department, through the division of measurement standards, until such time as suitable repairs shall have been made, and the measure or measurement standard is found to be correct as defined in this chapter, or such devices may be destroyed. The owners of the unapproved or rejected measures or measurement standards shall cause the same to be type evaluated and approved or made correct within thirty days or such longer period as may be authorized by the department, through the division of measurement standards; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the department, through the division of measurement standards. Measures and measurement standards subject to this chapter that have not been type evaluated and approved or that have been rejected shall not be used until they have been officially type evaluated and approved or reexamined and found to be correct or until specific written permission for such use is issued by the department, through the division of measurement standards, or until the rejection tag has been removed by the department, through the division of measurement standards, and the rejected device or apparatus repaired or corrected and placed in service by a person duly registered to perform the acts under rules adopted by the board pursuant to section 486-7.

§486- Method of sale of commodities; general. Except as otherwise provided in this chapter, or by firmly established trade custom and practice, or exempted by a rule of the board:

- (1) Commodities in liquid form shall be sold by liquid measure or weight; and
- (2) Commodities not in liquid form shall be sold by weight, mass, volume, length, area, or by count;

provided that liquid commodities shall be sold by weight and commodities not in liquid form shall be sold by measures other than weight, when such methods give accurate information as to the quantity of commodity sold. All methods of sale shall provide accurate and adequate quantity information that permits the buyer to make price and quantity comparisons. The board may adopt such reasonable rules as may be necessary to assure that the measure of any commodity for sale reflects accurate information and fair measurement practices to all concerned.

§486- Packages; information required; variations; exemptions. Except as otherwise provided in this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale, shall bear on the outside of the package definite, plain, and conspicuous declarations of:

- (1) The identity of the commodity in the package, unless the commodity can be identified easily through the wrapper or container;
- (2) The net quantity of the contents in terms of measure; and

- (3) In the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rule of the board;

provided that, in connection with the declaration of net quantity, neither the qualifying term "when packed" or words of similar import, nor any term qualifying a unit of measure (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package shall be used; and provided further that the board may, by rule, establish reasonable variations from the declared measure and exemptions pertaining to the required declarations.

§486- Declarations of unit price on random packages. In addition to the declarations required by section 486- , any commodity in package form that is one of a lot containing random measure of the same commodity and that bears the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of measure, as established by rule of the board.

§486- Deceptive package. No commodity in package form shall be so wrapped or labeled, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the commodity in the package, and the contents of a container shall not fall below such reasonable standard of fill as has been prescribed for the commodity by rule of the board.

For commodities measured by volume and packaged in containers standardized as to capacity or generally recognized by consumers as having a set capacity, the standard of fill shall be equal to that capacity, e.g. the volume of fill in the commonly designed one-gallon jug shall be one gallon.

§486- Advertising packages for sale. Whenever a commodity in package form is advertised in any manner, excluding its labeling, and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or rule to appear on the package; provided that, where the law or rule requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of measure (the declaration that is required to appear first and without parentheses on the package) need appear in the advertisement; and provided further that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed," "minimum," "not less than," or other terms of similar import, nor any term qualifying a unit of measure (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

§486- Sale by net measure. Commodities or services shall be offered for sale on a net weight or net measure basis.

§486- Misrepresentation of price. Whenever any commodity or service is bought or sold, or is offered, exposed, or advertised for sale or purchase, by weight, measure, or count, the price shall not be misrepresented, nor presented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser or seller. The price of commodities in package form or commodities sold from bulk, when offered for sale at retail, shall be clearly displayed and shall reflect the retail price at which the public may, without special credentials

or other requirements, purchase such commodities. Whenever an advertised, posted, or labeled price per unit of measure includes a fraction of a cent, all numerals expressing the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to and of the same general design and style as the whole numeral or numerals of the price per unit as established by rule of the board.

§486- Inspection of packages. (a) The department, through the division of measurement standards, shall measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale or sold in accordance with the law. When such packages or amounts of commodities are found not to contain the amount represented, or are found to be kept, offered, or exposed for sale in violation of law, the department, through the division of measurement standards, may order them off sale and may mark or tag them to show them to be illegal. The department, through the division of measurement standards, may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from the representative of the lot.

(b) No person shall:

- (1) Sell, or keep, offer, or expose for sale any package or amount of commodity in package form unless the package or amount of commodity in package form is in full compliance with all legal requirements;
- (2) Sell, or keep, offer, or expose for sale any package or amount of commodity in package form that has been ordered off sale or marked or tagged as provided in this section, and which package or amount of commodity in package form has subsequently been brought into legal compliance, unless and until written authorization for such action has been issued by the administrator; or
- (3) Dispose of any package or amount of commodity in package form that has been ordered off sale or marked or tagged as provided in this chapter that has not been brought into full compliance with all legal requirements, until written authorization for such disposal has been issued by the administrator.

(c) Nothing in this section shall prohibit the administrator from authorizing the disposal of any package or amount of commodity in package form, when in the administrator's discretion the best interest of the public will be served by such disposal.

(d) The department, through the division of measurement standards, may seize and dispose of any package or amount of commodity in package form that has been ordered off sale for reasons of legal noncompliance when remedial action is not effected as required under the terms of the off sale order, as established by rule of the board.

§486- Misbranding. (a) No person shall deliver for introduction, hold for introduction or introduce into the State; or keep, offer, or expose for sale; or sell any consumer commodity which is misrepresented or misbranded in any manner.

(b) The board, pursuant to section 486-7 and chapter 91, shall adopt rules relating to misbranding. The rules may:

- (1) Require any person involved in the manufacture, processing, production, assembly, fabrication, or importation of a specified consumer commodity to keep and make available for inspection or copying by the administrator adequate records to substantiate the source of the consumer commodity, or in the case of blends, the source of such constituents, as may be required by the board;
- (2) Establish fanciful names or terms, and in the case of blends, minimum constituent content by weight, to be used in labeling to differentiate a specific consumer commodity from an imitation or look-alike; and
- (3) Establish requirements to reconcile the respective volumes of specific consumer commodities received versus the total amounts output, either as whole or processed product or as blends.

In addition, the board may adopt other rules as it deems necessary for the correct and informative labeling of consumer commodities.

§486- Hawaii-made products. No person shall keep, offer, display or expose for sale, or solicit for the sale of any item, product, souvenir, or any other merchandise which is labeled "made in Hawaii" or which by any other means misrepresents the origin of the item as being from any place within the State, which has not been manufactured, assembled, fabricated, or produced within the State and which has not had at least fifty-one per cent of its wholesale value added by manufacture, assembly, fabrication, or production within the State.

§486- "Island fresh" milk. (a) No person shall keep, offer, display, expose for sale, or solicit for the sale of any processed milk or milk product which is labeled with the term "island fresh," or like terms, or which by any other means misrepresents the origin of the item as being from any place within the State unless the processed milk or milk product has been at least ninety per cent, by weight, produced in the State.

(b) It shall be unlawful for any person to sell or offer to sell to a consumer, or expose for sale to a consumer, any processed milk or milk product for human consumption which has been at least ninety per cent produced within the State, without providing notice to the consumer that the processed milk or milk product has been locally produced. The notice shall be made by displaying on a conspicuous area on the principal display panels of the carton or container a label or sign printed in bold face or other distinctive type stating that the product is "island fresh" or using another similar term.

(c) For the purpose of this section:

"Carton" or "container" means a package containing processed milk or milk products.

"Consumer" means any person who purchases processed milk or milk products.

"Processed milk or milk product" means processed fresh milk and fresh milk products.

§486- Misrepresentation of quantity. No person shall:

- (1) Sell, offer, or expose for sale less than the quantity represented; nor
- (2) Take any more than the quantity represented when the buyer furnishes the weight or measure by means of which the quantity is determined.

§486- Sale from bulk. All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel, and all other bulk sales specified by rule or regulation of the board shall be accompanied by a delivery ticket containing the following information:

- (1) The name and address of the buyer and seller;
- (2) The date delivered;
- (3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity;
- (4) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and
- (5) The count of individually wrapped packages, if more than one.

§486- Nonapplicability. This part shall not apply to measures or measuring devices utilized in public utilities that are subject to measurement standards control under any other statute or rule of the State.”

SECTION 7. Chapter 486, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . MEASUREMASTERS

§486- Definitions. For the purposes of this part:

“Certificate of measure” includes a certificate of measure issued in compliance with this part, and shall be prima facie evidence of the accuracy of the amount shown.

“Public weighing” means the weighing, measuring, or counting, upon request, of vehicles, property, produce, commodities, or articles other than those that the weigher or the weigher’s employer, if any, is either buying or selling.

“Public measuremaster” means any person who performs public weighing.

“Vehicle” means any device in, upon, or by which any property, produce, commodity, or article is or may be transported or drawn.

§486- Enforcement; rules. The board is authorized to enforce the provisions of this part and shall adopt reasonable rules for the implementation and enforcement of this part. These rules shall have the force and effect of law. The board may adopt rules that include, but are not limited to, the licensing of measuremasters; determining the qualifications of the applicant for a license as a public measuremaster; annual license fees; the granting, renewal, or refusal of a license; period of license validity; measurement practices that must be followed, including the measurement or recording of tare; the required information to be submitted with or as part of a certificate; and the period of record keeping.

§486- Requirement for measuremaster license; duties; prohibitions. Any person who engages in public weighing shall be licensed as a public measuremaster and shall perform the duties as specified by rule of the board. Any person who is not licensed as a public measuremaster is prohibited from assuming the title of public measuremaster and is prohibited from performing the acts or duties of a public measuremaster.

§486- Optional licensing. The following persons shall not be required, but shall be permitted, to obtain licenses as public measuremasters:

- (1) A law enforcement or measurement standards officer, or other qualified employee of a state, city, or county agency or institution when acting within the scope of the officer's or employee's official duties;
- (2) A person weighing property, produce, commodities, or articles that the person, or the person's employer, if any, is either buying or selling; and
- (3) A person weighing property, produce, commodities, or articles in conformity with the requirements of federal statutes or the statutes of this State relative to warehousepersons or processors.

§486- Reciprocal acceptance of certificates. Whenever in any other state that licenses public weighmasters or measuremasters there is statutory authority for the recognition and acceptance of the certificates issued by measuremasters of this State, the board is authorized to recognize and accept the certificates of that state.

§486- Offenses and penalties. (a) Criminal. Any person who performs any one of the acts enumerated in this subsection shall be guilty of a misdemeanor:

- (1) Use or have in possession a device which has been altered to facilitate fraud;
- (2) Falsely certify any gross, tare, or net weight or measure required by this part to be on the certificate;
- (3) Falsify a certificate;
- (4) Issue a certificate simulating the certificate in this part;
- (5) Refuse without cause to weigh or measure any article or thing which it is the person's duty to weigh or measure, or refuse to state in any certificate anything required to be therein;
- (6) Assume the title of public measuremaster, or any title of similar import, without a valid license;
- (7) Perform the duties or acts to be performed by a public measuremaster without a valid license;
- (8) Present oneself as a public measuremaster without a valid license;
- (9) Issue any certificate, ticket, memorandum, or statement for which a fee is charged without a valid license;
- (10) Engage in the full-time or part-time business of measuring for hire without a valid license;
- (11) Delegate the person's own authority as a public measuremaster to any person not licensed as a public measuremaster;
- (12) Request a public measuremaster to weigh, measure, or count any vehicle, property, produce, commodity, or article falsely or incorrectly; or
- (13) Request a false or incorrect certificate.

(b) Civil. Any person who performs any one of the acts enumerated in this subsection shall be fined not more than \$2,000 for each separate offense:

- (1) Use any device for certification purposes that does not meet the requirements of the National Institute of Standards and Technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices";
- (2) Operate devices in a manner not in accordance with the National Institute of Standards and Technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" requirements; or

- (3) Violate any provision of this part or any rule adopted under this part for which a specific penalty has not been prescribed.

§486- Suspension and revocation of license. The board is authorized to suspend or revoke the license of any public measuremaster:

- (1) When it is satisfied, after a hearing pursuant to chapter 91, that the licensee has violated any provision of this part or of any valid rule of the board affecting public measuremasters; or
- (2) In accordance with section 831-3.1.”

SECTION 8. Chapter 486, Hawaii Revised Statutes, is amended by amending the title of part I to read:

“PART I. [MEASUREMENT STANDARDS, UNIFORM PACKAGING AND LABELING] GENERAL PROVISIONS”

SECTION 9. Section 486-1, Hawaii Revised Statutes, is amended to read as follows:

“§486-1 Definitions. As used in this chapter, unless the context otherwise requires:

“Administrator” means the administering officer of the division of measurement standards.

“Advertising” or “advertising medium” includes all publicity, mass media, signs, banners, posters, placards, labels, streamers, marks, brands, grades, descriptions or displays.

“Board” means board of agriculture.

“Certificate of conformance” means a document issued by the National Institute of Standards and Technology based on testing in participating laboratories and constitutes evidence of conformance of a type with the requirements of National Institute of Standards and Technology handbooks 44, 105-1, 105-2, or 105-3.

[“Certificate of measure” includes a certificate of measure issued in compliance with this chapter, and shall be prima facie evidence of the accuracy of the amount shown.]

“Chairperson” includes the chairperson of the board of agriculture and when specifically designated by the chairperson for the purpose of effectuating this chapter, the deputy to the chairperson.

[“Commodity in package form” includes a measure of a consumer commodity in either bulk or packaged form, which may or may not be associated with a posted price per unit measure, exclusive however of any auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form in the usual sense, but with which a price per unit measure is associated is a commodity in package form.]

“Consumer commodity” means any article, product, good or agricultural or other commodity of any kind that is customarily produced or distributed for sale through mercantile or retail sales outlets for consumption or use by individuals, including but not limited to food products or consumer packages.

“Consumer package” or “package of consumer commodity” means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by

individuals for the [purpose] purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

“Correct” as used in connection with measurement standards, means conformance to all applicable requirements of this chapter and to rules adopted under its authority; all other measures and measurement standards are “incorrect”.

“Department” means department of agriculture.

["Gasoline" includes any product which conforms to the standards as established by the American Society for Testing and Materials, and as adopted or amended and adopted by rule of the board.

“Holding tank” includes any tank, other than vehicle tank, intended to hold, store, or otherwise contain, any product for commercial use, either as a measure per se or as a container.]

“Incorrect” means to be in non-compliance with any specification, tolerance, performance criteria, standard, or any part of this chapter or any rule adopted under it.

“Inspector” [includes the chairperson, administrator, and any qualified individual so designated by the department of personnel services and appointed as such by the board.] means any employee or official of the department authorized by the board to administer and enforce the provisions of this law.

“Intrastate commerce” means commerce or trade begun, carried on, and completed wholly within the limits of the State.

“Introduced into intrastate commerce” means the time and place at which the first sale and delivery of a commodity is made within the State, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

“Label” includes any written, printed or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity, or a package containing any consumer commodity, for purposes of branding, pricing, identifying, or giving any information with respect to the [consumer] commodity[,] or to the contents of the package, except that an inspector’s tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be considered a label requiring the repetition of label information required by this chapter.

["Lubricating product" includes those products which are intended for use in internal combustion engines or for purposes of lubrication, and which conform to the specifications as established by the American Society for Testing and Materials, or the Society of Automotive Engineers and which have been adopted, or amended and adopted by rule of the board.

“Manufacturer” includes manufacturers, processors, producers, packers, refiners, importers, dealers, or agents at wholesale or retail level.]

“Measure” includes all measures of every kind, including but not limited to weight, mass, length, volume, and count; instruments and devices for weighing, measuring[;], or counting; and appliances and accessories associated with any such instruments and devices.

“Measurement standards” includes any standard or definition or model or reference or measurement relating to metrology including but not limited to weights and measures, artifacts, and reproducible definitions of a unit of measure and their applicable tolerances including those of the SI, and definitions of a lot size, sample and tolerances as related to statistical inspection.

Such standards shall, insofar as it is appropriate, be traceable and in agreement with their counterpart as established by the National [Bureau of Standards,] Institute of Standards and Technology, the American Society for Testing and

Materials, the American National Standards Institute, the International Organization of Legal Metrology, the International Bureau of Weights and Measures and as related to SI, to the standards established by the Secretary of Commerce and adopted or amended and adopted by rule [of the board].

“Metric system” means the SI or International System of Units, as established by the General Conference of Weights and Measures in 1960 and as interpreted or modified for the United States by the Secretary of Commerce. The modernized metric system is identified by the capital letters “SI” in all languages. Whenever the term “metric” or “metric system” or “metric system of measurement” is used, it shall mean “SI”.

“Misbranded” includes:

- [(A)] (1) False, incomplete, incorrect, or misleading labeling;
- [(B)] (2) Misrepresentation as to the identity, quantity, quality, or point of origin;
- [(C)] (3) Misrepresentation as to the principal place of business of the manufacturer[;],¹ packer, or distributor;
- [(D)] (4) Misrepresentation by vignette, pictorial display, identifiable geographical location, or by any term, word, or phrase in juxtaposition to any other information associated with, labeled on, or accompanying the consumer commodity which falsely alludes to a specific point of origin, a general locale such as a state, or to historical usage by a people;
- [(E)] (5) Misrepresentation as to originality or creativity;
- [(F)] (6) Misrepresentation of the consumer commodity as an imitation [to] of another or as an imitation [to] of a generic product; and
- [(G)] (7) Misrepresentation in any other manner tending to confuse the prospective purchaser.

“Nonconsumer package” means any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

“Octane index” means the resultant of the RON (Research Octane Number) plus MON (Motor Octane Number) divided by two.

“Package” means a container or wrapper enclosing a commodity for sale, delivery or display, but does not include shipping containers or wrapping used solely for the transportation of that commodity.

“Petroleum product” shall have the meaning established under section 486-50.

“Petroleum product dispenser” includes petroleum product measuring devices but is not limited to: lubricating oil bottles, measure-containers, containers, and mechanisms or machines designed to measure and deliver liquid by a definite mass or volume. Means may or may not be provided to indicate automatically or on a command signal, one of a series of unit prices or the total money value or cost of the liquid measured, or to make deliveries corresponding to specific money at a definite unit price.]

“Sell” and “sale” include barter and exchange.

“Standard test” or “standard method” includes any test or method conducted or prescribed in accordance with the measurement standards established under section 486-1.

[“State” means the State of Hawaii.]

“Type” means a model or models of a particular measurement system, instrument, element, or a field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.

[“Vehicle tank” means any tank, which is mounted on a vehicle and is intended for use as a container.]”

SECTION 10. Section 486-4, Hawaii Revised Statutes, is amended to read as follows:

“§486-4 Division of measurement standards; administrator. There shall be a division of measurement standards within the department [of agriculture.]. The board shall appoint an administrator of measurement standards, who shall enforce the board’s rules and administer the division and such technical and clerical personnel as are necessary to carry out [parts I, II, III, and IV of] this chapter, in accord with the power, authority and duties delegated by the board.”

SECTION 11. Section 486-6, Hawaii Revised Statutes, is amended to read as follows:

“§486-6 General powers and duties of board. The board shall have the custody of the State measurement standards including the other standards and equipment provided for by this chapter, and shall keep accurate records of the same. The board shall maintain such standards in a protective environment, as appropriate to such standards, and through the administrator and inspectors, shall enforce [parts I, II, III and IV of] this chapter. The board shall have and maintain general supervision over the measurement standards proposed, established, or in use, and measures and measurement standards offered for sale, sold, or in use in the State.”

SECTION 12. Section 486-7, Hawaii Revised Statutes, is amended to read as follows:

“§486-7 Specific powers and duties of the board; rules. (a) The board shall [issue from time to time] adopt reasonable rules pursuant to chapter 91 for the enforcement of [the respective parts of] this chapter. These rules shall have the force and effect of law and shall govern the use or application of measurement standards, measures, and measuring transactions in the State.

(b) These rules may include:

- (1) Standards of net measure, and reasonable standards of fill for any commodity in package form;
- (2) [Rules governing the] The technical and reporting procedures to be followed, the report and record forms to be used by persons subject to the provisions of this chapter, and the marks of approval and rejection to be used by the administrator, inspectors, and measurement standards personnel in the discharge of their official duties;
- (3) Exemptions from the sealing, labeling, marking, or other requirements of the respective parts of this chapter;
- (4) [Rules and fees governing the mandatory registration of resident service persons, and procedures for invalidating such registration when necessary for protection of the consumer;]

The voluntary registration of service persons and service agencies for commercial weighing and measuring devices. These rules may include, but are not limited to, provisions for registration fees, period of registration, requirements for test equipment, privileges

and responsibilities of a voluntary registrant, reports required, qualification requirements, examinations to be administered, certificates of registration, and means for revocation of registration:

- [(5)] Rules governing performance bonding of nonregistered or nonresident service persons;]
- [(6)] (5) Schedules and fees for licensing measuring devices;
- [(7)] (6) Schedules and fees for calibrating or testing measurement standards, and registration of the products covered by such measurement standards;
- [(8)] (7) Specifications, tolerances, and other technical requirements with respect to the packaging, registering, handling, storing, advertising, labeling, dispensing, and selling of petroleum products;
- (8) Specifications, tolerances, and other technical requirements for weighing and measuring devices:
- (9) [Rules] Practices to assure that amounts of commodities or services sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest; [and]
- [(10)] Requirements for type evaluation; and
- [(10)] (11) Such other rules [or regulations] as the board deems necessary for the enforcement of [the respective parts of] this chapter.

(c) These rules shall include specifications, tolerances, and other technical requirements designed to eliminate from use those measures and measurement standards:

- [(A)] (1) That are not accurate;
- [(B)] (2) That are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or
- [(C)] (3) That facilitate the perpetration of fraud.

(d) In addition, the board [shall promulgate] may adopt rules relating to SI, definitions, standards, tolerances, use, applicability, and units. The specifications, tolerances, and other technical requirements for measuring devices as recommended and published by the National [Bureau of Standards] Institute of Standards and Technology as adopted, or amended and adopted by the board; and those standards published by any of the standards-setting bodies identified in the definition of measurement standards under section 486-1 as adopted, or amended and adopted by the board, together with rules [issued] adopted by the board under [authority of the respective parts of] chapter 91 and this chapter, shall be the specifications, tolerances, and other technical requirements for measures and measurement standards of the State.

(e) The board may, pursuant to chapter 91, adopt, or amend and adopt, in whole or in part, any measurement standard established by the National [Bureau of Standards] Institute of Standards and Technology or by the standards setting bodies identified in the definition of measurement standards under section 486-1. [For the purpose of parts I, II, III or IV of this chapter, a measure or measurement standard is "correct" when it conforms to all applicable sections of the respective parts of this chapter or to such rules promulgated pursuant thereto; all other measures and measurement standards are "incorrect".]

SECTION 13. Section 486-23, Hawaii Revised Statutes, is amended to read as follows:

“§486-23 Investigations[.]; power to subpoena. The administrator [of measurement standards] shall investigate complaints [made to the administrator concerning violations of this part and shall, upon the administrator’s own initiative, conduct such investigations as the administrator deems] deemed appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of this [part] chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions. In the course of any investigation, the administrator is empowered to subpoena witnesses, examine them under oath, and require the production of books, papers, documents, records, or objects which the administrator deems relevant or material to the inquiry. Upon application by the administrator, compliance with the subpoena may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court. In addition, the administrator may conduct hearings in aid of any investigation or inquiry.”

SECTION 14. Section 486-24, Hawaii Revised Statutes, is amended to read as follows:

“§486-24 Stop-use, [stop-removal, stop movement] stop-sale, hold, and removal orders. The administrator may issue citations and, incident thereto, stop-use, [orders, stop-removal orders, stop movement] hold, and removal orders with respect to measures and measurement standards being, or susceptible of being, unlawfully used; and issue citations and, incident thereto, [stop-removal orders, stop movement] stop-sale, hold and removal orders with respect to [commodities in package form] packages or consumer commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of the administrator’s enforcement of the law the administrator determines that such measure or measurement standard or [commodities in package form] packages or consumer commodities do not comply with [the applicable sections of part I, II, III or IV of] this chapter or the rules [promulgated] adopted thereunder, and no person shall use, sell, remove, or move from the premises, as specified, any measure, measurement standard, package, or amount of commodity contrary to the terms of a stop-use, [order, stop-removal order, stop movement] stop-sale, hold, or removal order issued under [the authority of] this section.”

SECTION 15. Section 486-29, Hawaii Revised Statutes, is amended to read as follows:

“§486-29 Hindering or obstructing an officer or inspector; bribery; penalties. Any person who shall hinder or obstruct in any way an inspector or any other officer or employee of this State in the performance of the inspector’s, officer’s, or employee’s official duties prescribed by this chapter or any rule [or regulation promulgated pursuant to] adopted under this chapter, shall be [fined not less than \$200 nor more than \$500, or imprisoned not more than three months, or both.] guilty of a misdemeanor.

Any person who shall give, pay, or offer, directly or indirectly, to any inspector or any other officer or employee of this State authorized to perform any of the duties prescribed by this chapter or any rule[, regulation] or order adopted or issued pursuant to this chapter, any money or other thing of value, with intent to influence [said] the inspector, or other officer or employee of this State, in the discharge of any duty herein provided for, shall be [fined not more than \$5,000 or imprisoned not more than two years, or both] guilty of a misdemeanor.

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Any inspector or other officer or employee of the State authorized to perform any of the duties prescribed by this chapter or any rule adopted under it who shall accept any money, gift, or other thing of value from any person, given with intent to influence the inspector's, officer's, or employee's official action, shall be summarily discharged from the inspector's, officer's, or employee's employment and shall be [fined not more than \$5,000 or imprisoned not more than five years, or both] guilty of a misdemeanor."

SECTION 16. Section 486-30, Hawaii Revised Statutes, is amended to read as follows:

"§486-30 [Impersonation; forgery;] Forgery; penalties. Any person who shall [impersonate in any way an inspector or any officer or employee charged with the administration or enforcement of the respective parts of this chapter, or] forge any official device, seal, or mark, shall be [fined not less than \$100 nor more than \$500, or imprisoned not more than one year, or both] guilty of a misdemeanor."

SECTION 17. Section 486-31, Hawaii Revised Statutes, is amended to read as follows:

"§486-31 Enforcement; citation and notice to appear; penalty; right of entry and inspection; stopping vehicles. Any authorized inspector or other authorized measurement standards personnel may, upon arresting any person for violation of [part I, II, III or IV of] this chapter, including rules [promulgated] adopted thereunder, take the name, address, and any other pertinent information of [such] the person and issue [him] the person a citation and notice to appear, printed in the form hereinafter described, and answer to the charge against [him] the person at a certain place and at a time as prescribed by the district courts.

There shall be a form of citation and notice to appear for use in citing violators of [part I, II, III or IV of] this chapter and the rules [promulgated] adopted thereunder by the board, which does not mandate the taking into custody of such violators. [The citation and notice to appear shall be printed in a form commensurate with the form of other citations and notice to appear used in modern methods of arrest and shall be designed to include all necessary information.] The form and contents of the citation and notice to appear shall be as adopted or prescribed by the district courts.

In every case when a citation and notice to appear is issued, it shall be [issued in accord with a regulation of the board,] consistent with the provisions [as] established by the district courts. Every citation and notice to appear shall be consecutively numbered and each carbon copy shall bear the number of the respective original.

Any person who fails to appear at the place and within the time specified in the citation and notice to appear shall be guilty of a violation as provided in the penal code.

Any authorized inspector may cite and, incident to such citation, seize, without formal warrant, incorrect or unsealed measures, measurement standards, or amounts or packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law.

Any authorized inspector may stop any vehicle subject to this chapter where probable cause exists and require the driver to move the vehicle to a designated place for inspection.

[The chairperson or the administrator may, in the public interest, serve suitable notices or warnings rather than resorting to prosecution for minor violations and may void citations for de minimis violations hereof, when the best interest of the public is served in so doing.]

Any authorized inspector may enter and go into or upon at any reasonable time, without formal warrant, after having made a reasonable attempt to identify [himself] the inspector[,] in accordance with the law, any structure, premises, or any other place where commercial transactions or articles subject to this chapter are being conducted or are located, provided that, [in the case where an objection to such entry is expressed by] when competent authority objects to the entry, a warrant shall be obtained prior to [such] entry.

When a complaint is made to any prosecuting officer of the violation of any of the parts of this chapter[, including rules and regulations promulgated thereunder,] and the arrest or prosecution of the violator is sought, the arresting officer or employee[,] who issued the citation and notice to appear[,] shall subscribe to it under oath administered by an official, whose name has been submitted to the prosecuting officer and who has been designated by the administrator to administer [the same] oaths and, upon probable cause, the court may issue a warrant for the violator.”

SECTION 18. Chapter¹ 486-32, Hawaii Revised Statutes, is amended to read as follows:

“**§486-32 Offenses and penalties.** (a) Criminal. Any person who[, by himself, or by his servant or agent, or as the servant or agent of another person,] performs any one of the acts enumerated in [paragraphs (1) through (9) of] this [section] subsection shall be guilty of a misdemeanor; [and, upon a first conviction thereof, shall be punished by a fine of not less than \$200 nor more than \$500, or by imprisonment for not more than three months, or both; and, upon a second or subsequent conviction thereof, shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not more than one year, or both:

- (1) Use or have in possession for the purpose of using for any purpose specified in section 486-11, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect or unapproved type measure or measurement standard or any device or instrument used to or calculated to falsify any measure.
- (2) Use, or have in possession for the purpose of current use for any purpose specified in section 486-11, an unapproved type or approved type measure or measurement standard that does not bear a seal or mark such as is specified in section 486-13, unless such measure or measurement standard has been exempted from testing by the provisions of section 486-7 or 486-11 or by a rule of the board issued under the authority of section 486-7, or unless the device has been placed in service as provided by a rule of the board issued under the authority of section 486-11, or unless the measure or measurement standard is being installed or repaired preparatory to installation.
- (3) Dispose of any rejected or condemned measure or measurement standard in a manner contrary to law or rule.
- (4) Remove from any measure or measurement standard, contrary to law or rule, any tag, seal, or mark placed thereon by the appropriate authority.

- (5) Sell, or offer or expose for sale, less than the quantity the person represents of any commodity, thing, or service.
 - (6) Manipulate in any manner the representation of the quantity of any commodity, thing or service furnished, delivered or provided to the detriment or unjust enrichment of any person involved.
 - (7) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or rule.
 - (8) Use in retail trade, a measure that is not so positioned that its indications may be accurately read and the measuring operation observed from some position which may reasonably be assumed by a customer.
 - (9) Violate any provision of the respective parts of this chapter, the rules or the regulations promulgated under the respective parts of this chapter for which a specific penalty has not been prescribed.]
- (1) Use or have in possession a device or measure or measurement standard which has been altered to facilitate fraud;
 - (2) Counterfeit, or remove from any measure or measurement standard, any tag, seal, or mark placed thereon by the appropriate authority; or
 - (3) Manipulate in any manner the representation of the quantity of any commodity, thing, or service furnished, delivered, or provided to the unjust enrichment of the person.
- (b) Civil. Any person who performs any one of the acts enumerated in this subsection shall be fined not more than \$2,000 for each separate offense:
- (1) Use, or have in possession for use in commerce an incorrect device, measure, or measurement standard;
 - (2) Dispose of any rejected or condemned measure or measurement standard in a manner contrary to law or rule;
 - (3) Sell, or offer or expose for sale, less than the quantity the person represents of any commodity, thing, or service;
 - (4) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or rule; or
 - (5) Violate any provision of this chapter or any rules adopted under it for which a specific penalty has not been prescribed."

SECTION 19. Chapter 486, Hawaii Revised Statutes, is amended by amending the title of part II to read:

"PART II. PETROLEUM PRODUCT ACCOUNTING AND INSPECTION"

SECTION 20. Section 486-51, Hawaii Revised Statutes, is amended to read as follows:

"§486-51 Applicability. [This part] (a) Petroleum products accounting and the measurement requirements herein[,] shall apply to the blending, charging, dealing, dispensing, distributing, exchanging, exporting, handling, importing, labeling, loading, manufacturing, marketing, measuring, packaging, piping, processing, reprocessing, producing, refining, or re-refining, retailing, selling, transporting, taxing, or wholesaling, or to any of the variant forms of the above or to the person, equipment, measurements, and calculations incident to such actions or activities involving petroleum products.

(b) Petroleum products inspection shall apply to all petroleum products kept, offered, or exposed for sale.

SECTION 21. Chapter 486, Hawaii Revised Statutes, is amended by amending the title of part III to read:

**“PART III. [ODOMETER ACCURACY AND RECORD
MAINTENANCE] ODOMETERS”**

SECTION 22. Section 486-71, Hawaii Revised Statutes, is amended to read as follows:

§486-71 Definitions. For the purposes of this part:

[“Certificate of accuracy” includes a manufacturer’s certificate of accuracy, an interim certificate of accuracy and any written warranty attesting to the initial and subsequent accuracy of an odometer system, and the endorsement thereon.

“Certificate of ownership” has the meaning under section 286-47.

“Endorsement” means informational disclosure relating to a specific passenger car, including the vehicle identification number, odometer reading, seller’s signature if any, and such other information as required by rule of the board.]

“Odometer” is an analog or digital measuring device that reflects distance traveled.

“Passenger car” means a vehicle with self-contained motive power and seating capacity for up to twelve passengers (excluding the driver), not exceeding 16,000 pounds gross vehicle weight.”

SECTION 23. Section 486-8, Hawaii Revised Statutes, is repealed.

SECTION 24. Section 486-9, Hawaii Revised Statutes, is repealed.

SECTION 25. Section 486-10, Hawaii Revised Statutes, is repealed.

SECTION 26. Section 486-11, Hawaii Revised Statutes, is repealed.

SECTION 27. Section 486-12, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 486-13, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 486-14, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 486-15, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 486-16, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 486-17, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 486-18, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 486-19, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 486-20, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 486-21, Hawaii Revised Statutes, is repealed.

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SECTION 37. Section 486-22, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 486-25, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 486-26, Hawaii Revised Statutes, is repealed.

SECTION 40. Section 486-26.5, Hawaii Revised Statutes, is repealed.

SECTION 41. Section 486-27, Hawaii Revised Statutes, is repealed.

SECTION 42. Section 486-28, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 486-35, Hawaii Revised Statutes, is repealed.

SECTION 44. Section 486-70, Hawaii Revised Statutes, is repealed.

SECTION 45. Section 486-72, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 486-73, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 486-74, Hawaii Revised Statutes, is repealed.

SECTION 48. Section 486-76, Hawaii Revised Statutes, is repealed.

SECTION 49. Section 486-85, Hawaii Revised Statutes, is repealed.

SECTION 50. Section 486-86, Hawaii Revised Statutes, is repealed.

SECTION 51. Part IV of Chapter 486, Hawaii Revised Statutes, is repealed.

SECTION 52. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 53. This Act shall take effect upon its approval.

(Approved May 22, 1991.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 154

S.B. NO. 1251

A Bill for an Act Relating to Residential Leaseholds.

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

SECTION 1. Section 516-56, Hawaii Revised Statutes, is amended to read as follows:

“**[§516-56]** **Eminent domain trial.** The parties to the eminent domain action brought under this chapter shall be the corporation as plaintiff and the

lessees and all other necessary parties as defendants. The corporation does not have the burden of proof in establishing the fair market value of the leased fee interest being acquired. Instead, [All] all parties, including the corporation, shall be given an opportunity to present evidence of the fair market value of the leased fee interest being acquired."

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 22, 1991.)

ACT 155

H.B. NO. 826

A Bill for an Act Relating to Real Estate Professionals.

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

SECTION 1. Section 467-8, Hawaii Revised Statutes, is amended to read as follows:

"§467-8 Prerequisites for licensing. No license hereunder shall be issued to:

- (1) Any person who does not satisfy the requirements set forth in section 467-9.5;
- (2) Any person unless the person has demonstrated by passing with a grade satisfactory to the real estate commission a written examination appropriate to the license sought that the person has a reasonable knowledge of (A) estates, interests, and rights in real property, (B) the documents or acts or occurrences by which such property is transferred or otherwise affected, (C) the rights and duties of an agent, (D) the laws of the State relating to real estate brokers and salespersons, and (E) such other subjects as the commission determines to be essential for the protection of the general public in its real estate transactions;
- (3) Any person who does not possess a reputation for honesty, truthfulness, financial integrity, and fair dealing;
- (4) Any copartnership unless every member of the copartnership who actively participates in the real estate brokerage business thereof holds a real estate broker's license; or
- (5) Any corporation unless the real estate brokerage business thereof is under the direct management of an officer or employee thereof and unless the officer or employee holds a real estate broker's license."

SECTION 2. Section 467-11, Hawaii Revised Statutes, is amended to read as follows:

"§467-11 Fees; original license and biennial renewals. (a) All fees for applications, registrations, certificates, and any license prescribed by this chapter shall be deposited to the credit of the general fund, and all fees allocated to the

real estate education fund shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) 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 duly licensed real estate broker or real estate salesperson to pay the biennial renewal fee shall constitute a forfeiture of the license of the broker or salesperson. The license of the broker or salesperson may be restored upon written application therefor, payment of the delinquent fees and the penalty fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and satisfaction of such other requirements as the commission may impose as a condition to restoration.

(c) A broker or salesperson may place [the] that broker's or salesperson's license on an inactive status [upon payment of the proper fee] by filing an application and setting forth such information as may be prescribed or required by the commission, and such license may be renewed biennially on or before December 31 of each even-numbered year[.] by payment of the proper fee. A broker or salesperson may reactivate that person's inactive license by filing an application and setting forth such information as may be prescribed or required by the commission and payment of the proper fee.

[(d) 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.]

[(e) (d) The commission may refund any fee erroneously paid to it under this section when the commission deems it just and equitable.

[(f) (e) 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 license fees.”

SECTION 3. Section 467-12, Hawaii Revised Statutes, is amended to read as follows:

“§467-12 Place of business and posting of license. (a) A licensed real estate broker shall have and maintain a definite place of business in the State, in compliance with this chapter and the rules of the commission, and shall display therein [his] the real estate broker's license[.] and any associating real estate salesperson's license.

(b) No real estate broker's branch office shall operate without a license previously obtained under and in compliance with this chapter and the rules of the commission.

(c) A real estate broker's site office shall be registered with the commission and in compliance with this chapter and the rules of the commission.”

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 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 to do so 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 the licensee's services from both of such parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson's employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson's employer or the broker with whom 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 salesperson's license to act as a real estate 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 salesperson's license to act as a real estate salesperson therefor;
- (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee 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;
- (13) Violating this chapter, chapter 484, 514A, 514E, 515; section 516-71 or 516D-11; or the rules adopted pursuant thereto;
- (14) 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 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;
- (15) Commingling the money or other property of the licensee's principal with the licensee's own;
- (16) Converting other people's moneys to the licensee's own use;
- (17) The licensee is adjudicated insane or incompetent; [and]
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact; [and]
- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee[.]; or
- (20) Failure to maintain a reputation for honesty, truthfulness, financial integrity, and fair dealing.

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 5. Section 467-30, Hawaii Revised Statutes, is amended to read as follows:

"§467-30 Registration, 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, which are used to provide transient lodging for periods of less than thirty days.

(b) Any sole proprietor, partnership, or corporation[, or other business entity] operating a [a] condominium hotel who is not a custodian or caretaker as defined in section 467-1 shall:

- (1) Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission;
- (2) Register on an annual basis as a condominium hotel operator. Registration information shall include but not be limited to the number of apartment units managed for others as well as the number of apartment units owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not

exceeding an amount equal to \$25 multiplied by the aggregate number of units being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;

- (3) Provide evidence of fidelity bonding to the commission in an amount equal to \$500 multiplied by the aggregate number of apartment units in the condominium hotel operation; provided that the minimum of the bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of units excludes the number of units owned by the condominium hotel operator either as a sole proprietor, partnership, or corporation or those units included in a registered time share plan managed by a registered time share plan manager. The bond shall cover all of the condominium hotel operator's employees handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds, or both; and
- (4) Pay an application fee and upon approval an initial and an annual registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of finance to the credit of the general fund.

(c) In the course of operating a condominium hotel, neither a real estate broker license nor a salesperson license shall be required of those employees of any sole proprietor, partnership, or corporation[, or other business entity] performing or facilitating the delivery of customary hotel services.

(d) All employees handling or having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond. The fidelity bond shall protect the condominium hotel operator against fraudulent or dishonest acts by the employees of the condominium hotel operator.

(e) As used in this section "operating a condominium hotel" includes the management of the apartment units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartment units directly or indirectly from the apartment owners for purposes of providing transient lodging.

(f) Condominium hotel operators operating exclusively in condominium projects specifically authorized as hotels by county zoning and regulations and specifically permitted by the condominium project's declaration and bylaws shall be exempt from subsection (b)(1); provided that they shall apply to the commission for the exemption or exclusion on a form provided by the commission.

(g) Any condominium hotel operator aggrieved by the fraudulent or dishonest acts of an employee shall act promptly and diligently to recover from the fidelity bond required by this section. The condominium hotel operator shall apply all proceeds received from the fidelity bond against all losses incurred by apartment owners due to fraudulent or dishonest acts by employees. If more than one apartment owner suffers a loss, the condominium hotel operator shall divide the proceeds among the apartment owners in proportion to each apartment owner's loss.

(h) All persons handling or having custody and control of either the condominium hotel operator's or the apartment owner's funds shall be either employees of the condominium hotel operator or principals of the condominium hotel operator."

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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 23, 1991.)

ACT 156

H.B. NO. 897

A Bill for an Act Relating to the Hawaii Film Facility Special Fund.

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

SECTION 1. Findings and purpose. The legislature finds that Executive Order Number 3450 sets aside 7.477 acres located on the corner of 18th Avenue and Diamond Head Road to the department of business, economic development, and tourism for the purpose of developing a permanent film facility.

The legislature further finds that the Honolulu city council approved a special management area use permit to the department to construct a film facility at the Diamond Head site and the department of land utilization of the city and county of Honolulu granted a Diamond Head special design district permit to the department for a film facility project at the Diamond Head site.

Therefore, the legislature finds it necessary to establish a special fund within the state treasury into which fees from the rental of the facility and its props and legislative appropriations may be deposited and from which funds may be expended by the department for the operation, maintenance, and management of its film facility.

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

“§201- Hawaii film facility special fund. There is established in the state treasury a fund to be known as the Hawaii film facility special fund, into which shall be deposited all moneys and fees from tenants or other users of the department’s film facility, and appropriations from the legislature. All moneys in the fund are hereby appropriated for the purposes of and shall be expended by the department for the operation, maintenance, and management of its film facility.”

SECTION 3. All moneys and fees collected from tenants and other users of the Diamond Head film facility which have been deposited in the high technology special fund shall be transferred to the Hawaii film facility special fund.

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 23, 1991.)

Note

1. No bracketed material. Edited pursuant to HRS §23G-6.5.

ACT 157

H.B. NO. 922

A Bill for an Act Relating to Environmental Fines and Penalties.

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

SECTION 1. Chapter 342B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342B- Disposition of collected fines and penalties. Fines and penalties collected under sections 342B-9 and 342B-11 shall be deposited into the environmental response revolving fund established by section 128D-2.”

SECTION 2. Chapter 342D, Part II, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342D- Disposition of collected fines and penalties. Fines and penalties collected under this part shall be deposited into the environmental response revolving fund established by section 128D-2.”

SECTION 3. Chapter 342F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342F- Disposition of collected fines and penalties. Fines and penalties collected under sections 342F-9 and 342F-11 shall be deposited into the environmental response revolving fund established by section 128D-2.”

SECTION 4. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342H- Disposition of collected fines and penalties. Fines and penalties collected under sections 342H-9 and 342H-10 shall be deposited into the environmental response revolving fund established by section 128D-2.”

SECTION 5. Chapter 342J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342J- Disposition of collected fines and penalties. Fines and penalties collected under sections 342J-9 and 342J-10 shall be deposited into the environmental response revolving fund established by section 128D-2.”

SECTION 6. Chapter 342L, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342L- Disposition of collected fines and penalties. Fines and penalties collected under sections 342L-10 and 342L-11 shall be deposited into the environmental response revolving fund established by section 128D-2.”

SECTION 7. Chapter 342N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342N- Disposition of collected fines and penalties. Fines and penalties collected under sections 342N-8 and 342N-9 shall be deposited into the environmental response revolving fund established by section 128D-2.”

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SECTION 8. Section 128D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created an environmental response revolving fund within the department which shall consist of moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments, moneys paid to the fund in court-approved or out-of-court settlements, all interest attributable to investment of money deposited in the fund, and moneys allotted to the fund from other sources[.]; provided that when deposits of fines and penalties pursuant to sections 342B- , 342D- , 342F- , 342H- , 342J- , 342L- , and 342N- exceed \$3,000,000, that amount of deposited fines and penalties in excess of \$3,000,000 shall be transferred to the general fund.”

SECTION 9. Section 339-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Littering” means placing, throwing, or dropping litter on public or private property or in any public or private waters, 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; or
- (3) Into a litter bag, provided that the bag is disposed of properly into a litter receptacle or in a place designated by the department or the county for disposal of garbage and refuse.”

SECTION 10. Section 339-8, Hawaii Revised Statutes, is amended to read as follows:

“**§339-8 Penalties.** Except as otherwise provided by this chapter, any person violating any provision of this chapter or any rule adopted hereunder shall be guilty of a violation, and shall be fined not less than \$25, and not more than \$500 for each offense, [or] and 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.] as follows:

- (1) For the first offense, defendant shall spend four hours picking up litter.
- (2) For any subsequent offense, defendant shall spend eight hours picking up litter.

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] shall be required to remove the litter that they caused or [are] shall be liable for the costs of removing that litter.”

SECTION 11. Section 342B-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who violates this chapter, any rule adopted pursuant to this chapter, other than vehicular smoke emission control and open burning control rules, or any condition of a permit or variance issued pursuant to this chapter, shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect

the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular smoke emission and open burning rules, shall be considered a civil action.”

SECTION 12. Section 342D-30, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342D-30]]~~ **Civil penalties.** (a) Any person who violates this chapter or any rule shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this [subsection] section shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$5,000[.] for each day of denial, obstruction, or hampering. Any action taken to impose or collect the penalty provided for in this [subsection] section shall be considered a civil action.”

SECTION 13. Section 342D-51, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342D-51]]~~ **Affirmative duty to report discharges.** [(a)] Any person who has caused an unlawful discharge under section 342D-50(a) has an affirmative duty to report the incident to the director within twenty-four hours of the discharge[.], unless a valid permit issued under section 342D-6 specifies another reporting period for the specific discharge.

[(b)] Upon notification, the department may investigate the incident or report and may assess the adequacy of the corrective action taken by the person responsible for the discharge. If the department finds that the corrective actions taken are inadequate to protect the environment or the public health or safety, the department may prescribe additional actions to be taken and the time in which such actions must be taken.

(c) Any person who fails to report an unlawful discharge or who fails to execute corrective actions as prescribed by the department shall be subject to a fine for each day in which the violation occurs in an amount necessary for the cleanup expenses, but in no event shall such fine exceed \$10,000 for each day of violation. Legal interest shall accrue from the first day of violation.]”

SECTION 14. Section 342F-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person who violates this chapter, any rule adopted pursuant to this chapter, other than vehicular noise control rules, or any permit or variance issued pursuant to this chapter[,], shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular noise control rules, shall be considered a civil action.”

SECTION 15. Section 342H-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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“(a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each 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 16. Section 342J-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each 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 17. Section 342L-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each tank for each day of violation. Each day of each violation shall constitute a separate offense. Any person who fails to comply with an order issued under this chapter within the time specified in the order[,] shall be fined not more than \$25,000 for each day of continued noncompliance. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 18. Section 342N-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each 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 19. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 20. This Act shall take effect on July 1, 1991.

(Approved May 23, 1991.)

ACT 158

H.B. NO. 937

A Bill for an Act Relating to the Department of Health.

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

SECTION 1. Section 321-1, Hawaii Revised Statutes, is amended to read as follows:

“§321-1 General powers of the department. (a) The department of health shall have general charge, oversight, and care of the health and lives of the people of the State.

[It] (b) The department 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.

(c) When it is determined that there is imminent danger of epidemic or serious outbreak of communicable disease, [it] the department may refuse, modify, or limit attendance at any school in the State.

(d) When in the judgment of [its] the director, there is deemed to be a potential health hazard, the department, through [its] the 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.

(e) 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 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,]

(f) The department may establish charges and collect fees for any of its services; provided that the department shall not refuse to provide services to any person due to the person's inability to pay the fee for the service. The department, through [its] the director, shall make an annual report to the governor, showing in detail all its expenditures and transactions, and such other information regarding the public health as [it] the department may deem of special interest.

(g) The department [shall also], during the prevalence of any severe pestilence or epidemic, shall publish a weekly report of the public health.”

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 23, 1991.)

ACT 159

H.B. NO. 964

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Chapter 329, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§329- Clinics. (a)¹ Registration as a clinic is required when an outpatient medical facility maintains centralized ordering, storage, and record keeping of controlled substances to be administered and/or dispensed to patients. Registration of a clinic requires that:

- (1) Each location where controlled substances are stocked be registered by name, location, and designated principal practitioner or affiliated pharmacy. The principal practitioner or affiliated pharmacy shall be responsible for the accurate maintenance of records which document all controlled substances ordered, received, administered, and dispensed within the clinic;
- (2) Controlled substances stocked at a clinic under the clinic State of Hawaii and Drug Enforcement Administration registration numbers be administered to clinic patients by licensed or registered health care professionals under the supervision of the treating practitioner;
- (3) Controlled substances stocked at a clinic under the clinic State of Hawaii and Drug Enforcement Administration registration numbers be dispensed to clinic patients only by the treating practitioner for emergency and urgent care, when a written prescription would not be practical;
- (4) A centralized record signed and dated by the treating practitioner which indicates the patient, controlled substance, date and time of administration and/or dispensing be maintained and stored with the current controlled substance inventory, ordering, and receipt records. These records shall be maintained for two years; and
- (5) A clinic practitioner who individually maintains a personal stock of controlled substances does so under the practitioner's individual State and Drug Enforcement Administration registration number. These controlled substances must be kept separate from clinic stock and cannot be accessed by other practitioners.

The term "affiliated pharmacy" as used in this section means a licensed pharmacy which supplies and monitors the controlled substances stocked in a registered clinic.

The term "clinic" as used in this section means an out-patient medical facility owned and operated by a legal entity that employs individual practitioners for the treatment of patients and which may or may not provide after-hours emergency or urgent care.

The term "principal physician" means the practitioner in a clinic whose signature appears on the clinic's State of Hawaii and Drug Enforcement Administration registrations, and who is responsible for the proper maintenance, storage, and record keeping of the controlled substances ordered and centrally stocked in the clinic using the clinic Drug Enforcement Administration registration number."

SECTION 2. Chapter 329, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§329- Prohibited acts related to visits to more than one practitioner to obtain controlled substance prescriptions. (a) It is unlawful for any person knowingly or intentionally to visit more than one practitioner and withhold information regarding previous practitioner visits for the purpose of obtaining one or more controlled substance prescriptions for quantities that:

- (1) Exceed what any single practitioner would have prescribed or dispensed for the time period and legitimate medical purpose represented; and
- (2) Would constitute an offense pursuant to part IV of chapter 712.

(b) Any person who violates this section is guilty of a crime which is of the grade and class identical to that imposed under part IV of chapter 712 for the same type and equivalent quantity of controlled substance."

SECTION 3. Section 329-1, Hawaii Revised Statutes, is amended by amending the definition of “administer” to read as follows:

““Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (1) A practitioner (or, in the [practitioner’s] practitioner’s presence or at the practitioner’s direction, by a licensed or registered health care professional acting as the practitioner’s authorized agent), or
- (2) The patient or research subject at the direction [and] or in the presence of the practitioner.”

SECTION 4. Section 329-1, Hawaii Revised Statutes, is amended by deleting the definition of “anabolic steroid”.

[““Anabolic steroid” includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

- (1) Clostebol;
- (2) Danazol;
- (3) Dromostanolone;
- (4) Oxymesteron;
- (5) Oxymetholone;
- (6) Ethylestrenol;
- (7) Mesterolone;
- (8) Methenolone;
- (9) Methandrostenolone;
- (10) Stanozolol;
- (11) Nandrolone phenpropionate;
- (12) Nandrolone decanoate;
- (13) Norethandrolone;
- (14) Testosterone (in aqueoue suspension);
- (15) Testosterone propionate (in oil);
- (16) Testosterone enanthate (in oil);
- (17) Testosterone cypionate (in oil);
- (18) Methyltestosterone;
- (19) Dehydrochlormethyl testosterone; and
- (20) Fluoxymesterone.”]

SECTION 5. Section 329-1, Hawaii Revised Statutes, is amended by amending the definition of “dispense” to read as follows:

““Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. A controlled substance is dispensed when:

- (1) It is compounded, prepared, labeled and packaged pursuant to the lawful order of a practitioner by a licensed pharmacist acting in the usual course of his professional practice and who is either registered individually or employed in a registered pharmacy or by a registered institutional practitioner, for delivery to the ultimate user;
- (2) It is compounded, prepared, labeled and packaged for delivery to the ultimate user by a practitioner acting in the usual course of his professional practice;

- (3) It is prepared, labeled, and packaged pursuant to the lawful order of a practitioner by a registered health care professional acting as an agent of the practitioner for delivery to the ultimate user by the practitioner; or
- (4) It is prepackaged by a pharmacist for use in an emergency facility for delivery to the ultimate user by a licensed or registered health care professional pursuant to the order of a physician.”

SECTION 6. Section 329-1, Hawaii Revised Statutes, is amended by amending the definition of “practitioner” to read as follows:

““Practitioner” means:

- (1) A physician, dentist, veterinarian, scientific investigator, or other person licensed[,] and registered[, or otherwise permitted] under section 329-32 to distribute, dispense, or conduct research with respect to [or to administer] a controlled substance in the course of professional practice or research in this State.
- (2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.
- (3) Prescribe means: to direct, designate or order the use of a formula for the preparation of a drug and medicine for a disease or illness and the manner of using them.
- (4) Prescriber means: one who is authorized to issue a prescription.
- (5) Prescription means: an order or formula issued by a licensed practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine, for the compounding or dispensing of drugs.”

SECTION 7. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage form);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Glutethimide¹
- [(10)] (11) Isomethadone;
- [(11)] (12) Levomethorphan;
- [(12)] (13) Levorphanol;
- [(13)] (14) Metazocine;
- [(14)] (15) Methadone;
- [(15)] (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

- [(16)] (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- [(17)] (18) Pethidine;
- [(18)] (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- [(19)] (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- [(20)] (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- [(21)] (22) Phenazocine;
- [(22)] (23) Piminodine;
- [(23)] (24) Racemethorphan;
- [(24)] (25) Racemorphan;
- [(25)] (26) Sufentanil.”

SECTION 8. Section 329-18, Hawaii Revised Statutes, is amended to read as follows:

“§329-18 Schedule III. (a) The controlled substances listed in this section are included in Schedule III.

(b) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including [its] their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation.

- (1) Those compounds, mixtures, or [preparation] preparations in dosage unit form containing any stimulant substance listed in Schedule II, and any other drug of the quantitative composition or which is the same except that it contains a lesser quantity of controlled substances;
- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Mazindol;
- (6) Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;
- (2) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;
- (3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;
- (4) Chlorexadol;
- [(5)] Glutethimide;]
- [(6)] (5) Lysergic acid;
- [(7)] (6) Lysergic acid amide;
- [(8)] (7) Methyprylon;
- [(9)] (8) Sulfondiethylmethane;
- [(10)] (9) Sulfonethylmethane;
- [(11)] (10) Sulfonmethane;
- [(12)] (11) Tiletamine/Zolazepam (Telazol).

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities or any of the following narcotic drugs, or any salts thereof:

- (1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
- (2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
- (4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
- (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;
- (8) Not more than 50 milligrams of morphine or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) The department of public safety may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(g) Any anabolic steroid. The term "anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Chlorotestosterone;
- (3) Clostebol;
- (4) Dehydrochlormethylestosterone;
- (5) Dihydrotestosterone;
- (6) Dromostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone;

- (10) Mesterolone;
- (11) Methandrenone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nandrolone;
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenobolone;
- (28) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

(h) Penalties applied to anabolic steroids as a Schedule III drug are not applicable to anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the United States Food and Drug Administration for such use.”

SECTION 9. Section 329-32, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§329-32**~~]]~~ **Registration requirements.** (a) Every person who manufactures, distributes, prescribes, or dispenses any controlled substance within this State or who proposes to engage in the manufacture, distribution, prescription, or dispensing of any controlled substance within this State, must obtain annually a registration issued by the department of public safety in accordance with its rules. A licensed or registered health care professional acting as the authorized agent of a practitioner who administers controlled substances at the direction of a practitioner is not required to obtain a registration.

(b) Persons registered by the department of public safety under this chapter to manufacture, distribute, prescribe, dispense, store, or conduct research with controlled substances may possess, manufacture, distribute, prescribe, dispense, store, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this part.

(c) Except as otherwise provided, the following persons need not register and may lawfully possess controlled substances under this chapter:

- (1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent’s or employee’s business or employment;
- (2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;
- (3) An ultimate user or person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

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(d) The department of public safety may waive by rule the requirement for registration or filing of certain manufacturers, distributors, prescribers, or dispensers if it is consistent with the public health and safety and if the department of public safety states the specific reasons for such waiver and the time period for which it is to be valid.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, prescribes, or dispenses controlled substances.

(f) The department of public safety may inspect the establishment of a registrant or applicant for registration in accordance with the department's rule."

SECTION 10. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No controlled substance in Schedule II may be dispensed without a written prescription of a practitioner, except:

- (1) In an emergency situation, those drugs may be dispensed upon oral prescription of a practitioner, provided that promptly thereafter the prescription is reduced to writing by the practitioner and filed by the pharmacy; or
- (2) When dispensed directly by a practitioner, other than a pharmacist, to the ultimate user. The practitioner in dispensing a controlled substance in Schedule II shall affix to the package a label showing the date of dispensing, the name, strength, and quantity issued of the drug, the dispensing practitioner's name and address, the name of the patient, the date the potency of the drug expires if that date is available from the manufacturer or principal labeler, directions for use, and cautionary statements, if any, contained in the prescription or as required by law. A complete and accurate record of all Schedule II controlled substances ordered, administered, prescribed, and dispensed shall be maintained for two years. All Schedule II prescriptions shall be written by the practitioner in duplicate. Prescriptions and records of dispensing shall otherwise be retained in conformance with the requirements of section 329-36. No prescription for a controlled substance in Schedule II may be refilled."

SECTION 11. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No controlled substance in Schedule III or IV may be dispensed without a written or oral prescription of a practitioner, except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user. The practitioner in dispensing a controlled substance in Schedule III and IV shall affix to the package a label showing the date of dispensing, the name, strength, and quantity issued of the drug, the dispensing practitioner's name and address, the name of the patient, the date the potency of the drug expires if that date is available from the manufacturer or the principal labeler, directions for use, and cautionary statements, if any, contained in the prescription or as required by law. A complete and accurate record of all Schedule III, IV, and V controlled substances administered, prescribed, and dispensed shall be maintained for two years. Prescriptions and records of dispensing shall otherwise be retained in conformance with the requirements of section 329-36. [Those prescriptions] Prescriptions may not be

filled or refilled more than three months after the date thereof or be refilled more than two times after the date of the prescription unless renewed by the practitioner.”

SECTION 12. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

- (1) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of this section, and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of the law relating to controlled substances[.];
- (2) A prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients[.];
- (3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule for “detoxification treatment” or “maintenance treatment”[.]; and
- (4) An individual practitioner may not prescribe or dispense a substance included in Schedule II, III, or IV for that individual practitioner’s personal use except in a medical emergency.”

SECTION 13. Section 329-40, Hawaii Revised Statutes, is amended to read as follows:

“[[§329-40]] [Administration and dispensing of methadone in registered and approved treatment programs.] Methadone treatment programs.

(a) Notwithstanding any other provision of law to the contrary, methadone may be administered or dispensed or both as part of a State-registered and Federal Food and Drug Administration approved methadone treatment program by a practitioner who is licensed and registered under state and federal law to administer, prescribe, and dispense methadone for patients or by an agent of the practitioner, supervised by and under the order of the practitioner. The agent must be a pharmacist, registered nurse, or licensed practical nurse. The licensed practitioner shall be responsible for the amounts of methadone administered or dispensed in accordance with Federal Food and Drug Administration regulations and shall record, approve, and countersign all changes in dosage schedules.

(b) Registration of a methadone treatment program requires that:

- (1) The methadone treatment program obtain a controlled substance registration from the State of Hawaii and the Drug Enforcement Administration;
- (2) The medical director of a methadone treatment program obtain a controlled substance registration from the State of Hawaii and the Drug Enforcement Administration at the location of the program;

- (3) Admission to a methadone treatment program be limited to the Narcotic Dependent Persons as defined in this chapter;
- (4) Unless otherwise stated in this chapter, admission to a methadone treatment program be in accordance with 21 C.F.R. Part 291;
- (5) All medical orders including initial medication orders, all subsequent medication order changes, all changes in the frequency of take-home medication, and the prescription of additional take-home medication for emergency situations be authorized by a licensed registered physician employed by the program;
- (6) Only the medical director or other designated program physician authorize a patient's admission for treatment in accordance with 21 C.F.R. Part 291; and
- (7) Take-home doses of methadone be dispensed to patients in accordance with 21 C. F. R. Part 291.

The term "methadone treatment program" as used in this section means an organization or a person (including a private physician) that administers or dispenses methadone to a narcotic-dependent person for maintenance or detoxification treatment and who provides the medical and rehabilitative services required by 21 C.F.R. part 291 and is approved to do so by the State and by the United States Food and Drug Administration, and who holds a controlled substance registration as required by this chapter and the United States Drug Enforcement Administration to use methadone for the treatment of narcotic-dependent persons.

The term "narcotic-dependent person" as used in this section means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.

The term "State authority" as used in this section means the agency within the State which exercises the responsibility for governing the treatment of narcotic dependent persons with the narcotic drug methadone."

SECTION 14. Section 329-42, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~329-42] Prohibited acts C-penalties. (a) It is unlawful for any person knowingly or intentionally:

- (1) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by section 329-37;
- (2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
- (3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
- (4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; [or]
- (5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance[.]; or
- (6) To misapply or divert to the person's own use or other unauthorized or illegal use or to take, make away with, or secrete, with intent to

misapply or divert to the person's own use or other unauthorized or illegal use, any controlled substance which shall have come into the person's possession or under the person's care as a registrant or as an employee of a registrant who is authorized to possess controlled substances or has access to controlled substances by virtue of the person's employment.

(b) Any person who violates this section is guilty of a [crime and upon conviction may be imprisoned for not more than five years, or fined not more than \$5,000, or both.] class C felony."

SECTION 15. Section 329-45, Hawaii Revised Statutes is repealed.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 17. This Act shall take effect upon its approval.

(Approved May 23, 1991.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 160

H.B. NO. 971

A Bill for an Act Relating to Aquatic Resources.

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

SECTION 1. Section 187A-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Fishing” or “to fish” means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, or harvest aquatic life, by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be caught, taken, or harvested, shall be deemed to be fishing.”

SECTION 2. Chapter 187A is amended by adding a new section to be appropriately designated and to read as follows:

“§187A- Applicability of statutes and rules. This subtitle and any rules under this subtitle relating to fishing which are applicable to state marine waters shall also apply to the following persons in waters outside state marine waters but within the federal conservation zone:

- (1) Residents of the state;
- (2) Any commercial marine licensee; and
- (3) Any permittee or licensee under this subtitle.”

SECTION 3. Section 187A-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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(b) Notwithstanding the provisions of any other law, the department may issue permits to any person to [take] fish [aquatic life] or possess or use fishing gear otherwise prohibited by law, 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.”

SECTION 4. Section 187A-1, Hawaii Revised Statutes, is amended by deleting the definition of “take”.

[“Take” means to fish, trap, hook, net, spear, harvest, pick, or withdraw aquatic life from the water.”]

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 23, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 161

H.B. NO. 972

A Bill for an Act Relating to Longline Fishing.

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

SECTION 1. Chapter 189, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§189- Longline fishing; description; prohibition. (a) For the purpose of this section, longline fishing means fishing conducted with gear consisting of at least one mainline over one nautical mile in length, to which is attached a number of branchlines with baited hooks and which is suspended below the surface of the ocean by floatlines attached to surface floats.

(b) It is unlawful to engage in longline fishing or to sell or offer for sale, any marine life taken with longline fishing gear within the boundaries of the State’s territorial sea.

(c) Pursuant to and in cooperation with the joint federal-state Western Pacific Regional Fishery Management Council (WPRFMC also known as WESPAC), of which Hawaii is a member, the State adopts and incorporates by reference the rules adopted by WPRFMC through the National Oceanic and Atmospheric Administration (NOAA) for the management and regulation of longline fishing activities.

(1) Accordingly, it is unlawful for any person to possess, land, sell, or offer for sale any marine life taken by longline fishing gear which is prohibited by or in violation of rules properly adopted by WPRFMC through NOAA, which by incorporation and acceptance are also the law of Hawaii.

(2) Any person or any fishing vessel fishing with gear of at least one mainline over one nautical mile in length within the area prohibited by rules properly adopted by WPRFMC through NOAA and incorporated by the State shall be in violation of this section.

(d) The State shall have authority to enforce this section and the rules adopted by WPRFMC through NOAA and incorporated by reference into State law within:

- (1) The State's marine waters as defined in section 189-1.5; and
- (2) Those areas under WPRFMC's jurisdiction where properly adopted rules have been established to govern, regulate, and manage longline fishing activities; provided that WPRFMC shall have accepted and entered into a mutual working agreement with the State to carry out these rules, including the joint deputizing of law enforcement officials.

(e) The commercial marine license of any person convicted of violating this section shall be revoked and penalties pursuant to section 199-7, including equipment and gear seizure and forfeiture, shall be assessed. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of one year from the date of revocation."

SECTION 2. New statutory material is underscored.¹

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

(Approved May 23, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 162

H.B. NO. 981

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- University of Hawaii alumni revolving fund. There is established a revolving fund to be known as the University of Hawaii alumni revolving fund, into which shall be deposited funds and proceeds received by the university from alumni activities and donations from alumni. Funds deposited into this account may be expended by the university to carry out alumni activities and programs.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 23, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Education.

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

SECTION 1. Section 40-58, Hawaii Revised Statutes, is amended to read as follows:

“§40-58 In favor of assignees. No assignment of moneys by a person to whom the State is directly indebted shall be effective unless the assignment is first approved by the comptroller[.] or, in the case of the University of Hawaii and the department of education, by their respective chief financial officers. The comptroller or the chief financial officers of the University of Hawaii and the department of education may prescribe the form for an assignment, and may approve the assignment within a reasonable time period if, in [the comptroller’s] their respective discretion, the rights or obligations of the State, the University of Hawaii, or the department of education under any contract or other undertaking or under any law, rule, or order by a competent authority will not be prejudiced thereby. Upon approval of the assignment, the comptroller or the respective chief financial officers of the University of Hawaii and the department of education shall draw a warrant payable to the assignee. Except as to contracts encumbered by the comptroller, the University of Hawaii, or the department of education, each expending agency, upon notification of the comptroller’s approval of an assignment, shall prepare a claim for payment in accordance with the terms of the assignment.”

SECTION 2. Section 103-39, Hawaii Revised Statutes, is amended to read as follows:

“§103-39 Contract not binding unless appropriation available. (a) No such contract shall be binding or of any force unless the comptroller of the State [or], the director of finance of the county, or the chief financial officers of the University of Hawaii and the department of education, as the case may be, indorses thereon [the comptroller’s or director’s] a certificate that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract; provided that this section shall not apply to any price-term, open-end, or requirements contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded.

Notwithstanding the requirement for certification set forth above, certification of a portion of the total funds required for a contract may be permitted in the following instances:

- (1) When an immediate call for tenders will result in significantly more favorable contract terms and conditions to the state or county agency than a call for tenders made at a later date; or
- (2) When an extension of the contract period beyond the period permitted by currently available funds will (i) significantly reduce the amounts of the periodic payments to be made by a state or county agency, or (ii) result in significantly more favorable contract terms and conditions to the state or county agency, or (iii) promote competition among qualified bidders and attract qualified bidders who otherwise may be precluded from bidding[.];

[Provided such] provided that certification for partial funding shall be permitted only if the comptroller of the State [or], the director of finance of a county, or the chief financial officers of the University of Hawaii and the department of education, as the case may be, certifies either that there exists substantial assurance that the necessary funds will be available for the payments set forth in the contract or that special fund revenues will be sufficient to cover the cost of the contract.

(b) In all cases of certification for partial funding, the contract and the certificate shall state that availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available.

In any contract involving not only local funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price involved in the contract as is payable out of local funds. As to such portion of the contract price as is expressed in the contract to be payable out of federal funds, [such] the contract shall be construed to be an agreement to pay [such] the portion to the contractor, only out of federal funds to be received from the federal government when the federal funds are so received, and shall not be construed as a general agreement to pay [such] the portion at all events out of any funds other than those which are received from the federal government. This paragraph shall be liberally construed so as not to hinder or impede the State or any county in contracting for any project involving financial aid from the federal government.”

SECTION 3. Act 371, Session Laws of Hawaii 1989, is amended by amending section 7 to read as follows:

“SECTION 7. Act 321, Session Laws of Hawaii 1986, as amended by section 69 of Act 283, Session Laws of Hawaii 1987, is amended by amending section 12 to read as follows:

“SECTION 12. This Act shall take effect on July 1, 1986, and be repealed as of June 30, 1994; provided that on repeal sections 40-1, 40-2, 40-4, 40-6, 40-81, and 103-23, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986[.]”, and sections 40-58 and 103-39, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1991.”

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

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved May 23, 1991.)

ACT 164

H.B. NO. 992

A Bill for an Act Relating to Personal Care Services.

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

SECTION 1. Act 209, Session Laws of Hawaii 1988, is amended by amending section 5 to read as follows:

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“SECTION 5. This Act shall take effect on July 1, 1988; provided that on June 30, [1991,] 1995, section 2 shall be repealed, and section 346-64, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 2. Section 346-64, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A ceiling shall be placed on the personal care services program expenditures, limiting total expenditures to not more than [seventy-five per cent of the annual medical assistance cost to maintain recipients in the program caseload at their appropriate level of institutional care. The medical assistance cost which shall be the basis for the expenditure ceiling shall be determined by the department of human services.] the amount authorized by the federal Health Care Financing Administration. A recipient who is not eligible for medical assistance may receive personal care services and shall make payment for these services based on a sliding fee system based on income, assets, and family size as established by the department. 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. The plan of care shall be, to the extent possible, developed to reflect the desires of the recipient, or the recipient’s legal representative, and may provide for differential levels of case management.”

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

SECTION 4. This Act shall take effect on June 29, 1991.

(Approved May 23, 1991.)

ACT 165

H.B. NO. 1003

A Bill for an Act Relating to Workers’ Compensation Insurance.

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

SECTION 1. Section 386-153, Hawaii Revised Statutes, is amended to read as follows:

“**§386-153 Levy on insurers of employers insured under section 386-121(a)(1).** For the calendar year 1974 and for each calendar year thereafter insurers of employers, as defined in section 386-1, shall pay a levy determined by the director which shall be based on a percentage on gross premiums, as defined in section [431-318(a),] 431:7-202(a), derived from workers’ compensation insurance issued during the prior year in accordance with chapter 386 and chapter 431, if the levying and collecting of such a levy is required pursuant to section 386-152, which levy shall be collected in the same manner as the tax provided for in section [431-318] 431:7-202 is collected and shall be deposited in the special compensation fund established in section 386-151. This levy shall be in addition to any tax imposed in chapter 431 on gross premiums derived from workers’ compensation insurance.”

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 23, 1991.)

ACT 166

H.B. NO. 1017

A Bill for an Act Relating to Asset Forfeiture.

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

SECTION 1. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§712A-4~~]]~~ **Covered offenses.** [(1)] Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, burglary, money laundering, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law; [and]
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law~~].; and~~

[(2)] (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.”

SECTION 2. Section 712A-7, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) As soon as practicable after seizure for forfeiture, the seizing agency shall conduct an inventory and estimate the value of the property seized. Within twenty days after seizure for forfeiture the seizing agency shall make reasonable efforts to [provide] give notice of seizure for forfeiture in the manner provided in section 712A-8(a) or 712A-8(b) to all parties known to have an interest in the seized property.”

SECTION 3. Section 712A-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§712A-8~~]]~~ **Notice of [pending forfeiture.] forfeiture proceedings.**¹ [Whenever notice of pending forfeiture] Unless otherwise provided, whenever notice is required under this chapter it shall be given [or provided] in one of the following ways:

- (a) If the owner’s or interest-holder’s name and current address are known:

- (i) By personal service; or
- (ii) [[By]] [mailing a copy of the notice to the address;] mail;
- (b) If the owner's or interest-holder's interest is required by law to be on record with a state or federal agency in order to perfect an interest in the property, but the person's current address is not known, by mailing a copy of the notice by certified mail to any address on the record; or
- (c) If the owner's or interest-holder's address is not known, and is not on record pursuant to [[paragraph]] (b), or if the person's interest is not known, by publication in one issue of a newspaper of general circulation in the county in which the seizure occurs."

SECTION 4. Section 712A-9, Hawaii Revised Statutes, is amended to read as follows:

“[[§712A-9]] Commencement of proceedings. (1) The prosecuting attorney shall determine whether it is probable that the property is subject to forfeiture and, if so, [may cause the initiation of administrative or judicial proceedings against the property.] shall initiate administrative or judicial proceedings against the property within forty-five days of receipt of a written request for forfeiture from a seizing agency. If, on inquiry and examination, the prosecuting attorney determines, with sole discretion, that the proceedings probably cannot be sustained or that justice does not require the institution of [such] proceedings, the prosecuting attorney shall notify the seizing agency, and as soon as practicable authorize the release of the seizure for forfeiture on the property or on any specified interests in it. A determination by the prosecuting attorney to forego initiation of proceedings shall not be a bar to initiation of proceedings against the same property based on the same circumstances at a later time.

(2) If the property sought to be forfeited is real property, including fixtures, the prosecuting attorney shall file a lis pendens with respect to the property[,] but shall not be required to pay a filing fee.”

SECTION 5. Section 712A-10, Hawaii Revised Statutes, is amended to read as follows:

“[[§712A-10]] Administrative forfeiture. The prosecuting attorney may initiate administrative forfeiture of property other than real property, the estimated value of which is less than \$100,000, or of any vehicle or conveyance, regardless of value[, in the following manner:]. Administrative forfeiture shall be processed in the following manner:

- [(1) If the prosecuting attorney initiates administrative forfeiture, the prosecuting attorney shall provide notice of pending forfeiture by giving notice within thirty days after receiving written request for seizure for forfeiture from the seizing agency as provided in section 712A-8 to persons known to have an interest who have not previously received notice;
- (2) Administrative forfeiture shall be initiated by filing a petition with the attorney general, who may promulgate rules and regulations to effectuate the purposes of this section;
- (3) The attorney general may forfeit property administratively as follows:
 - (a) The attorney general shall provide notice of intention to forfeit property administratively by publication in a local newspaper of general circulation;

- (b) In addition, to the extent practicable the attorney general shall provide notice of intent to forfeit the property administratively to all persons known to have an interest in the property seized;
- (c) Notice by publication or by mail shall include:
 - (i) A description of the property;
 - (ii) The estimated value of the property;
 - (iii) The date and place of seizure;
 - (iv) The violation of law alleged which authorizes forfeiture of the subject property;
 - (v) Instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation; and
 - (vi) Notice that the property will be forfeited to the State if a petition for remission or mitigation or a claim and cost or in pauperis bond has not been timely filed.]
- (1) The prosecuting attorney shall file a petition with the attorney general, pursuant to rules adopted by the attorney general;
- (2) The prosecuting attorney shall give notice of pending forfeiture by making reasonable efforts to serve a copy of the petition in a manner provided in section 712A- 8(a) or 712A-8(b) on all persons known to have an interest in the property, together with instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation;
- (3) The attorney general shall give notice of intention to forfeit the property administratively by publication in the manner provided in section 712A-8(c). Notice by publication shall include:
 - (a) A description of the property;
 - (b) The estimated value of the property;
 - (c) The date and place of the seizure;
 - (d) The offense for which the property is subject to forfeiture;
 - (e) Instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation; and
 - (f) Notice that the property will be forfeited to the State if a claim and cost or in pauperis bond or petition for remission or mitigation is not filed in substantial compliance with this section.
- (4) Persons claiming an interest in the property may file either a petition for remission or mitigation of forfeiture, or a claim and cost or in pauperis bond, but not both, with the attorney general, within thirty days of [the final] notice by publication or receipt of written notice, whichever is earlier.
- (5) Any person claiming seized property may seek remission or mitigation of the forfeiture by timely filing a petition with the attorney general. A petition for remission or mitigation shall not be used to challenge the sufficiency of the evidence to support the forfeiture or the actions of any government official but shall presume a valid forfeiture and ask the attorney general to invoke the executive power to pardon the property, in whole or in part. The petition shall be signed by the petitioner and sworn on oath before a notary public and shall contain the following:
 - (a) A reasonably complete description of the property;
 - (b) A statement of the interest of the petitioner in the property, as owner or interest-holder which may be supported by bills of sale, contracts, or mortgages, or other documentary evidence; and

- (c) Facts and circumstances sufficient to show whether the petitioner:
 - (i) Owens or holds an interest in the seized property as defined by section 712A-1;
 - (ii) Had any knowledge that the property was or would be involved in any violation of the law;
 - (iii) Had any knowledge of the particular violation which subjected the property to seizure and forfeiture;
 - (iv) Had any knowledge that the user of the property had any record, including arrests, except when the person was acquitted or the charges dismissed due to lack of evidence, for the violation which subjected the property to seizure and forfeiture or for any crime which is similar in nature.
- (6) If the attorney general, with sole discretion, determines that remission is not warranted, the attorney general may discretionarily mitigate the forfeiture where the petitioner has not met the minimum requirements for remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum requirements for remission have been met but the overall circumstances are such that the attorney general determines that complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner which shall be deposited into the criminal forfeiture fund established under section 712A-16. Extenuating circumstances include:
 - (a) Language or culture barrier;
 - (b) Humanitarian factors such as youth or extreme age;
 - (c) Presence of physical or mental disease, disorder or defect;
 - (d) Limited or peripheral criminal culpability;
 - (e) Cooperation with the seizing agency or the prosecuting attorney; and
 - (f) Any contributory error on the part of government officials.
- [(5)] (7) It shall be the duty of the attorney general to inquire into the facts and circumstances [surrounding petitions] alleged in a petition for remission or mitigation of forfeiture. However, no petitioner is entitled to a hearing on the petition for remission or mitigation. Hearings, if any, shall be held at the discretion of the attorney general.
- [(6)] (8) The attorney general shall provide the seizing agency and the petitioner a written decision on each petition for remission or mitigation within sixty days of receipt of [such] the petition unless the circumstances of the case require additional time, in which case the attorney general shall notify the petitioner in writing and with specificity within the sixty day period that the circumstances of the case require additional time and further notify the petitioner of the expected decision date.
- [(7)] (9) Any person claiming seized property may [institute] seek judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a claim and bond to the State in the amount of ten percent of the estimated value of the property or in the sum of \$2,500, whichever is greater, with sureties to be approved by the attorney general, upon condition that [in the case of

the forfeiture the claimant shall pay all costs and expenses of the proceedings.] if the claimant fails to prove that claimant's interest is exempt from forfeiture under section 712A-5, the claimant shall pay the State's costs and expenses, including reasonable attorneys fees incurred in connection with a judicial proceeding. In lieu of a cost bond, a claimant may file[, under penalty of perjury,] an in pauperis bond sworn on oath before a notary public. An in pauperis bond shall be in the form set out in the appendix to the rules of penal procedure. The claim shall be signed [under penalty of perjury] by the claimant and sworn on oath before a notary public and shall comply with the requirements of section 712A-12(5). Upon receipt of the claim and bond, the attorney general shall notify the prosecuting attorney who may discretionarily continue to seek forfeiture by petitioning the circuit court for forfeiture of the property [or may] within forty-five days of receipt of notice that a proper claim and bond has been filed. The prosecuting attorney may also elect to honor the claim in which case the prosecuting attorney shall notify the seizing agency and authorize the release of the seizure for forfeiture on the property or on any specified interest in it. [Any funds received by the attorney general as cost bonds shall be placed in an escrow account pending final disposition of the case.]

- [(8)] (10) If a judicial forfeiture proceeding is instituted subsequent to notice of administrative forfeiture, no duplicate or repetitive notice shall be required. The judicial proceeding, if any, shall adjudicate all timely filed claims.
- [(9)] (11) In the event [no claim and bond is timely filed,] a claim and bond has not been filed in substantial compliance with this section, or if the attorney general, with sole discretion, determines that remission or mitigation is not warranted, the attorney general shall order forfeited all property seized for forfeiture. In the event the attorney general, with sole discretion, determines that remission or mitigation is warranted, the attorney general shall notify the seizing agency and the prosecuting attorney and order the release of the seizure for forfeiture on the property or on any specified interest in it. There shall be no appeal from the attorney general's decision or order of forfeiture or remission [of] or mitigation.
- [(10)] (12)¹ Administrative proceedings and the adoption of rules under this section are exempt from the requirements of chapter 91, the Hawaii administrative procedure act, and are adjudicatory functions for the purposes of applicable sections of the Hawaii Revised Statutes."

SECTION 6. Section 712A-11, Hawaii Revised Statutes, is amended to read as follows:

"[§712A-11] Judicial forfeiture proceedings; general. (1) In any judicial or administrative proceeding pursuant to this chapter, the court, on application of the State, may enter any restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, appraisers, accountants or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this chapter, including a warrant for its seizure, whether before or after the filing of a petition for forfeiture, complaint, or indictment.

(2) If property is seized for forfeiture without a seizure warrant, a prior judicial order of forfeiture, or a hearing pursuant to section 712A-13, a court, on an application filed by an owner or interest-holder within fifteen days after notice of its seizure for forfeiture or actual knowledge of it, whichever is earlier, and complying with the requirements for claims in section 712A-12, may issue an order to show cause to the seizing agency, with thirty days' notice to the prosecuting attorney, for a hearing on the issue of whether probable cause for forfeiture of the applicant's interest then exists, provided that, the order to show cause shall be set aside upon the filing of a petition for either administrative or judicial forfeiture prior to the hearing, in which event forfeiture proceedings shall be in accordance with this chapter.

(3) There shall be a rebuttable presumption that any property of a person is subject to forfeiture under this chapter if the State establishes, by the standard of proof applicable to that proceeding, all of the following:

- (a) That the person has engaged in criminal conduct for which property is subject to forfeiture;
- (b) That the property was acquired by the person during the period of the criminal conduct or within a reasonable time after that period;
and
- (c) That there was no likely source for the property other than the criminal conduct giving rise to forfeiture.

(4) A finding that property is the proceeds of criminal conduct giving rise to forfeiture does not require proof that the property is the proceeds or any particular exchange or transaction.

[(3)] (5) A defendant convicted in any criminal proceeding shall be precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding pursuant to this chapter. For the purposes of this chapter, a conviction may result from a verdict or plea, including a no contest plea, or deferred acceptance of guilty plea, or a no contest plea.

(6) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

[(4)] (7) In any judicial forfeiture proceeding pursuant to this chapter, if a defense is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant or party raising the defense, and it is not necessary to negate the exemption in any petition, application, complaint, or indictment.

(8) For good cause shown, on motion by the prosecuting attorney, the court may stay discovery against the State in civil forfeiture proceedings prior to trial on a criminal complaint or indictment arising from the same conduct and against a claimant who is a defendant in the criminal proceeding after making provision to prevent loss to any party resulting from the delay. The stay provided by this subsection shall not be available pending appeal of any order or judgment in the criminal proceeding.

[(5)] (9) The court shall receive and consider, at any hearing held pursuant to this chapter, except the hearing on claims pursuant to sections 712A-12(4) through (8) and 712A-13(7), evidence and information which would be admissible under the rules of penal procedure relating to preliminary hearings.

[(6)] (10) All property, including all interest in such property, declared forfeited under this chapter vests in this State on the commission of the act or omission giving rise to forfeiture under this chapter together with the proceeds of the property after [such time.] the act or omission. Any [such] property or proceeds [subsequently] transferred to any person after the act or omission are

subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing pursuant to this chapter the showings set out in section 712A-5(2).”

SECTION 7. Section 712A-12, Hawaii Revised Statutes, is amended to read as follows:

“**[§712A-12] Judicial in rem forfeiture proceedings.** (1) If a forfeiture is authorized by law, it shall be ordered by a court on an action in rem brought by the prosecuting attorney on a verified petition for forfeiture filed in the criminal or civil division of the circuit court.

(2) A civil in rem action may be brought in addition to or in lieu of the civil and criminal in personam forfeiture procedures set forth in sections 712A-13 and 712A-14 or the administrative forfeiture as set forth in section 712A-10. Judicial in rem forfeiture proceedings are in the nature of an action in rem and are governed by the rules of civil procedure whether brought in the criminal or civil division of the circuit court, unless a different procedure is provided by law.

(3) On the filing of a civil in rem action by the State in circuit court the clerk of the court in which the action is filed shall [provide, and the attorney for the State may provide, the notice of pending forfeiture required] give, and the attorney for the State may give, notice of the filing of the action in the manner provided by section 712A-8 unless the files of the clerk of the court reflect that [such] notice has previously been [made.] given.

(4) An owner of or interest-holder in the property may file a claim against the property, within thirty days after the notice, for a hearing to adjudicate the validity of the claimed interest in the property. The hearings shall be held by the court without a jury.

(5) The claims shall be signed by the claimant and [notarized under penalty of perjury] sworn on oath before a notary public and shall set forth all the following:

- (a) The name of the claimant;
- (b) The address at which the claimant will accept future mailings from the court or the prosecuting attorney [for the State];
- (c) The nature and extent of the claimant’s interest in the property;
- (d) The time, transferor and circumstances of the claimant’s acquisition of the interest in the property;
- (e) The specific provisions of this chapter relied on in asserting that the property seized for forfeiture is not subject to forfeiture;
- (f) [All facts] Facts supporting each [such] assertion that the property is not subject to forfeiture;
- (g) Any additional facts supporting the claimant’s claim; and
- (h) The precise relief sought.

Copies of the claim shall be mailed to the seizing agency and to the prosecuting attorney. [No extension of time for the filing of a claim may be granted.] One extension of thirty days for filing of the claim may be granted upon a written request demonstrating good cause provided that the request is received within the thirty day period for filing of a claim.

(6) The hearing on the claim, to the extent practicable and consistent with the interest of justice, shall be held within sixty days after the filing of the petition. The court may consolidate the hearing on the claim with a hearing on any other claim concerning the same property.

(7) At the hearing, the claimant may testify, present evidence and witnesses on the claimant’s behalf, and cross-examine witnesses who appear at the

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hearing. The State may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing.

(8) The State has the initial burden of showing the existence of probable cause for seizure of the property. On such a showing by the State, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(9) In accordance with its findings at the hearing, the court shall order an interest in property returned or conveyed to the claimant, if any, who has established by a preponderance of the evidence that the claimant's interest is not subject to forfeiture. The court shall order all other property, including all interests in the property, forfeited to the State and proceed pursuant to sections 712A-15 and 712A-16."

SECTION 8. Section 712A-16, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) There is established in the department of the attorney general a revolving fund to be known as the criminal forfeiture fund, hereinafter referred to as the "fund" in which shall be deposited one-half of the proceeds of a forfeiture[.] and any penalties paid pursuant to section 712A-10(6). All moneys in the fund shall be expended by [[the[]] attorney general and are hereby appropriated for the following purposes:

- (a) The payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant [[to[]] this chapter or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property and such contract services and payments to reimburse any federal, state, or county agency for any expenditures made to perform the foregoing functions;
- (b) The payment of awards for information or assistance leading to a civil or criminal proceeding [under this chapter];
- (c) The payment of supplemental sums to state and county agencies for law enforcement purposes; and
- (d) The payment of expenses arising in connection with programs for training and education of law enforcement officers."

SECTION 9. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§134- Forfeiture of firearms, ammunition, deadly or dangerous weapons, and switchblade knives; when. All firearms, ammunition, deadly or dangerous weapons, and switchblade knives possessed, used in violation of this chapter or the Hawaii penal code shall be forfeited to the State according to the provisions of chapter 712A and shall be destroyed or, if not destroyed, transferred to the chief of police of the county in which the violation took place for use by and under control of the police department."

SECTION 10. Section 134-12, Hawaii Revised Statutes, is repealed.

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 13. This Act shall take effect upon its approval.

(Approved May 23, 1991.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 167

H.B. NO. 1019

A Bill for an Act Relating to the Uniform Information Practices Act (Modified).

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

SECTION 1. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any provision to the contrary notwithstanding, each agency shall also disclose:

- (1) Any government record, if the requesting person has the prior written consent of all individuals to whom the record refers;
- (2) Government records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the [individual] person requesting access;
- (3) Government records pursuant to a showing of compelling circumstances affecting the health or safety of any individual;
- (4) Government records requested pursuant to an order of a court;
- (5) Government records pursuant to a subpoena from either house of the state legislature; and
- (6) Information from the motor vehicle registration files, provided that the person requesting such files shall have a legitimate reason as determined by rules.”

SECTION 2. Section 92F-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each agency shall compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices. The public reports shall be filed with the office of information practices on or before [July 1, 1991.] September 30, 1992. The public reports shall include:

- (1) The name and location of each set of records;
- (2) The authority under which the records are maintained;
- (3) The categories of individuals for whom records are maintained;
- (4) The categories of information or data maintained in the records;
- (5) The categories of sources of information in the records;
- (6) The categories of uses and disclosures made of the records;
- (7) The agencies and categories of persons outside of the agency which routinely use the records;
- (8) The records routinely used by the agency which are maintained by:

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- (A) Another agency; or
 - (B) A person other than an agency;
- (9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;
 - (10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;
 - (11) The agency procedures whereby an individual may request access to records; and
 - (12) The number of written requests for access within the preceding year, the number denied, the number of lawsuits initiated against the agency under this part, and the number of suits in which access was granted.”

SECTION 3. Section 11, Act 192, Session Laws of Hawaii 1989, is amended to read as follows:

“SECTION 11. Each agency, as defined in Chapter 92F, Hawaii Revised Statutes, shall file its public report describing the records it routinely uses or maintains, in accordance with section 92F-18, Hawaii Revised Statutes; provided that each agency shall have filed with the office of information practices twenty-five per cent of its public report forms on or before [September 30, 1990,] December 31, 1991, fifty per cent on or before [December 31, 1990,] March 31, 1992, seventy-five percent on or before [March 31, 1991] July 1, 1992 and one hundred per cent on or before [July 1, 1991.] September 30, 1992.”

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 23, 1991.)

ACT 168

H.B. NO. 1022

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

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

SECTION 1. Section 261-52, Hawaii Revised Statutes, is amended to read as follows:

“**§261-52 Powers.** In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, and without public bidding, enter into a special facility lease or an amendment or supplement thereto whereby the department agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by such other person to a special facility lease.
- (2) With the approval of the governor, issue special facility revenue bonds in such principal amounts as may be necessary to yield the amount of the cost of any construction, acquisition, remodeling,

furnishing, and equipping of any special facility, including the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this paragraph shall not exceed [\$50,000,000;] \$100,000,000; provided that these funds not be expended on nonpublic air facilities.

- (3) Perform and carry out the terms and provisions of any special facility lease.
- (4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease.
- (5) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition.
- (6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by such other person. Neither such undertaking by such other person nor the acceptance by the department of a contract theretofore entered into by such other person therefor, shall be subject to section 103-22."

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 23, 1991.)

ACT 169

H.B. NO. 1039

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 are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1991-1993 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 4:

<u>FUND</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$370,475	\$963,053
Special	\$116,333	\$307,462
Federal	\$37,591	\$93,663
Other	\$8,896	\$25,562

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 are 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 1991-1993 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 4:

<u>FUND</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$130,355	\$334,523
Special	\$5,730	\$16,551

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 that are not expended or encumbered by June 30, 1992, and June 30, 1993, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1991.

(Approved May 23, 1991.)

ACT 170

H.B. NO. 1041

A Bill for an Act Relating to Actuarial Assumptions of 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 [June 30, 1989 and 1990,] June 30, 1991 and 1992, shall be based on 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 23, 1991.)

ACT 171

H.B. NO. 1049

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

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

SECTION 1. Act 50, Session Laws of Hawaii 1979, is amended by Section 7, as amended by section 2 of Act 13, Special Session Laws of 1981, as further amended by Section 1 of Act 224, Session Laws of Hawaii 1984, is amended to read as follows:

“SECTION 7. **Issuance of revenue bond; amount authorized.** Revenue bonds may be issued by the [authority] housing finance and development corporation pursuant to part III, chapter 39, and [part II, chapter 356,] subpart B of part II of chapter 201E, Hawaii Revised Statutes, in an aggregate principal amount not to exceed [\$875,000,000] \$1,275,000,000 at such times and in such amounts as it deems advisable for the purpose of undertaking and maintaining any of its housing loan programs in [part II of chapter 356,] subpart B of part II of chapter 201E, Hawaii Revised Statutes, relating to the funding or purchasing of eligible loans.”

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 23, 1991.)

ACT 172

H.B. NO. 1055

A Bill for an Act Relating to Rental Housing.

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

SECTION 1. The housing finance and development corporation, with the approval of the director of finance and the governor, is authorized to issue revenue bonds in an aggregate principal amount not to exceed \$375,000,000 at such times and in such amounts as it deems advisable for the purpose of financing and refinancing any rental housing projects developed or acquired by the housing finance and development corporation under chapter 201E, Hawaii Revised Statutes. The aforementioned housing revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, and part II of chapter 201E, Hawaii Revised Statutes, as the same may be amended from time to time.

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

(Approved May 23, 1991.)

A Bill for an Act Relating to Industrial Parks.

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

SECTION 1. Section 171-131, Hawaii Revised Statutes, is amended by amending the definition of "eligible lessee" to read:

"Eligible lessee" means a person who is:

- (1) Engaged or proposing to engage in [a business, of which at least ninety per cent of the gross income is derived from] an industrial use; and
- (2) Qualified to lease public lands under this chapter."

SECTION 2. Section 171-135, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§171-135]]~~ **Joint venture[.] or development agreement.** An industrial park may be developed under section 171-134 by the department in partnership or under a development agreement with a federal agency, county, or private party[. The department shall be] subject to a partnership or development agreement executed by the chairperson of the board. At a minimum, the agreement shall provide for:

- (1) A determination by the board that the partnership agreement or the development agreement is for a public purpose;
- (2) Long-term assurance that the public land within the industrial park will be utilized for industrial uses;
- (3) Final approval by the board of the plans and specifications for the industrial park;
- (4) Exclusive authority by the board to issue leases or master leases within the industrial park; and
- (5) Conditions to ensure a public benefit from any state funds expended for the industrial park."

SECTION 3. Section 171-136, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§171-136]]~~ **Disposition of public lands within industrial park.** The board shall dispose of economic units within an industrial park only by lease to eligible lessees or lessees engaged in commercial uses as provided under paragraph (1)(B). The leases shall be issued by the board in accordance with this chapter, subject to the following:

- (1) Only industrial uses shall be allowed on the public lands leased; provided that:
 - (A) The eligible lessee may be allowed to engage in nonindustrial uses and activities ancillary and necessary to the eligible lessee's industrial use; and
 - (B) The board may lease public lands within the industrial park for commercial uses if the uses are necessary or desirable to serve other lessees in the industrial park or their employees;
- (2) Each eligible lessee shall derive a substantial portion of the eligible

- lessee's total annual gross income from the eligible lessee's activities within the industrial park;
- (3) (2) Each eligible lessee shall be subject to a development plan formulated pursuant to section 171-41 and make the improvements to the leased public lands required under the development plan; and
- [(4)] (3) Each eligible lessee shall pay all assessments for improvements of infrastructure or other public or common facilities within the industrial park, if the board requires the improvements or assessments as conditions of the lease."

SECTION 4. Section 171-141, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Notwithstanding any other provision of law to the contrary:
- (1) A parcel of the public lands within an industrial park which had been occupied and used under a permit on the day before the date of designation of that industrial park shall be an economic unit in that industrial park. For the purpose of this section:
- (A) “Date of designation” means the effective date of the resolution or law which designates an industrial park; and
- (B) “Eligible economic unit” means an economic unit referred to under this paragraph;
- (2) A person with a permit to use an eligible economic unit on the day before the date of designation of that industrial park shall be given first preference to lease that unit after the date of designation if the person is an eligible lessee. For the purpose of this section, an “eligible permittee” means a person referred to under this paragraph;
- (3) The board shall issue a lease to an eligible permittee for an eligible economic unit under mutually agreeable terms, conditions, and lease rent. The lease shall be issued through negotiations, without regard to the limitations set forth in section 171-16(c) and section 171-59(a). The terms, conditions, and rent under the lease shall be in conformance with this chapter, and the board shall include lease covenants in each lease for the placement and construction of improvements in accordance with minimum standards established by applicable county building codes; [and]
- (4) The board shall negotiate in good faith with each eligible permittee. If the board and eligible permittee cannot agree to a lease within one hundred eighty days from the date of designation, the board shall have no further obligation to negotiate with or issue a lease to the eligible permittee and may issue a lease for the eligible economic unit to another person after the one hundred eighty-day period; provided that any lease for the eligible economic unit issued subsequent to the termination of the one hundred eighty-day period shall not include terms and conditions which are less restrictive, and a lease rent which is less, than the terms, conditions, and lease rent last offered in writing by the eligible permittee and received by the board[.]; and
- (5) The board, in lieu of issuing a lease under paragraph (3), may issue a master lease to a corporation whose members or shareholders are all eligible permittees of the industrial park through negotiations, without regard to the limitations provided in section 171-16(c) and section 171-59(a). The master lease shall provide for the issuance of

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subleases to eligible permittees and other sublessees approved by the board on terms and conditions approved by the board. The terms and conditions of a master lease concerning the authority to sublease shall supersede any contrary term or condition in a development agreement executed prior to the issuance of the master lease; provided that all other terms and conditions of the development agreement shall be incorporated and made a part of the master lease. All terms, conditions, and rents under the master lease and subleases shall be in conformance with this chapter, and the board shall include lease covenants in the master lease and each sublease for the placement and construction of improvements in accordance with minimum standards established by applicable county building codes. The lessee under the master lease shall assume the responsibility of administering and monitoring permittee compliance with all sublease obligations.”

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 23, 1991.)

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H.B. NO. 1567

A Bill for an Act Relating to Motorcycle and Motor Scooter Insurance.

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

SECTION 1. Section 431:10G-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A temporary insurance binder covering a period of not more than ninety days may be issued to a person who has a valid motorcycle or motor scooter learner’s permit [but has not been able to enroll in, or has not yet passed, a motorcycle education course approved by the department of transportation]. To obtain a temporary binder, a person shall submit proof to the insurer of the person’s [attempt to enroll or actual] enrollment in an approved motorcycle education course. The temporary insurance binder shall be subject to cancellation should the person fail to take, complete, and pass the course for which proof was submitted to the insurer.”

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 23, 1991.)

ACT 175

H.B. NO. 1918

A Bill for an Act Relating to Organized Crime.

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

SECTION 1. Section 842-1, Hawaii Revised Statutes, is amended by amending the definition of “racketeering activity” to read:

“Racketeering activity” means any act or threat involving, but not limited to murder, kidnapping, gambling, [arson,] criminal property damage, robbery, bribery, extortion, [larceny] theft or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year.”

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 23, 1991.)

ACT 176

H.B. NO. 2009

A Bill for an Act Relating to Hunter Education.

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

SECTION 1. Section 183D-28, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The following persons shall not be required to successfully complete the hunter education program provided they meet at least one of the following requirements:

- (1) A person born before January 1, 1972, and who at one time possessed a hunting license issued by the State; provided that the person shows satisfactory proof to the department that the person had possessed the hunting license; and
- (2) A person who has successfully completed a course or program of hunter education [or] and safety [course in another state or any hunter education or safety program] which is approved by the [North American Association of Hunter Safety Coordinators;] Hunter Education Association and meets the requirements of chapter 12 of the United States Fish and Wildlife Service Federal Aid Manual, as revised; provided that the person shows satisfactory proof to the department [of successful completion of the course or program.] in the form of a certificate, wallet card, or other document issued by a state or province agency evidencing successful completion of the course or program.

Upon application and satisfaction of the requirements of either subsection (c)(1) or (c)(2), the department shall issue an exemption which shall be in written form and be valid for the life of the person.”

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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 23, 1991.)

ACT 177

H.B. NO. 2100

A Bill for an Act Relating to Naming of the Office of Hawaiian Affairs as a Defendant in Quiet Title Actions Involving Kuleana Land.

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

SECTION 1. Findings and purpose. The legislature finds that:

- (1) In 1987, the "Kuleana Escheat Act" was enacted as Act 307, Session Laws of Hawaii 1987, and amended in 1988 by Act 141, Session Laws of Hawaii 1988. This provision is codified as section 560:2-105.5, Hawaii Revised Statutes. This section provides that if the owner of an inheritable interest in kuleana lands dies intestate, or partially intestate and the partial intestacy includes the kuleana land, with no taker under article II of the Hawaii uniform probate code, the kuleana land would ultimately pass to the office of Hawaiian affairs.
- (2) There are numerous quiet title actions filed every year in the State of Hawaii involving kuleana lands and that there may be interests involved in such actions which properly should pass to the office of Hawaiian affairs under the terms of the "Kuleana Escheat Act".
- (3) The office of Hawaiian affairs should be notified of and made a party to those quiet title actions involving kuleana lands where an owner of the inheritable interest died intestate, or partially intestate and the partial intestacy includes the kuleana land, and there is or was no taker under article II of the Hawaii uniform probate code.

The purpose of this Act is to require that the office of Hawaiian affairs be made a defendant in any quiet title action involving kuleana lands where an owner of the inheritable interest died intestate, or partially intestate and the partial intestacy includes the kuleana land, and there is or was no taker under article II of the Hawaii uniform probate code.

SECTION 2. Section 669-2, Hawaii Revised Statutes, is amended to read as follows:

"§669-2 Defendants; unknown persons. (a) Any person may be made a defendant in the action who has or claims, or may claim, an interest in the property adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the issues involved therein.

(b) Unknown persons may be made parties as provided by the rules of court, if:

- (1) It shall be shown by the complaint that there are or may be persons unknown, claiming by, through, or under any named person; or

- (2) Other facts shall be shown by the complaint giving rise to an actual controversy between plaintiff and persons unidentified or whose names are unknown.
- (c) In any action brought under section 669-1(b):
- (1) There shall be joined as defendants, in addition to persons known to have an adverse interest, the adjoining owners and occupants so far as known.
- (2) If all persons interested who are known or can be joined as provided by subsection (b) have been made parties, the summons in addition to being directed to such parties, may be directed to unknown persons generally and in such case, after service upon the persons summoned, known and unknown, the court shall have jurisdiction to proceed as though all persons interested were in being and personally served, but any adjudication shall, as regards a defendant served pursuant to section 669-3, affect only the property which is the subject of the action except as provided by section 634-23.
- (d) In any action brought under section 669-1, the State may be joined as a defendant only when:
- (1) It is an adjoining property owner and the same is alleged by the plaintiff[,]; or
- (2) The party asserting the claim can demonstrate, by a title search prepared at the party's own expense by an abstractor, that the State has a clear and specific interest in the subject matter of the suit which is adverse to the plaintiff's claim, and a copy of the title search is furnished to the State without cost, together with the complaint.
- (e) In any action brought under section 669-1, the office of Hawaiian affairs shall be joined as a defendant, by service upon the office of Hawaiian affairs, when:
- (1) The land claimed by the plaintiff is kuleana land; and
- (2) The plaintiff has reason to believe that an owner of an inheritable interest in the kuleana land died intestate or died partially intestate and there is or was no taker under article II of the Hawaii uniform probate code.

For purposes of this subsection, "kuleana land" means that land granted to native tenants pursuant to L 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common people allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and as amended."

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 23, 1991.)

A Bill for an Act Relating to Service Dogs.

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

SECTION 1. Section 347-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Every blind, deaf, or visually or physically handicapped person shall have the right to be accompanied by a guide, signal, or service dog, especially trained for the purpose, in any of the places listed in subsection (a) without being required to pay an extra charge for the guide, signal, or service dog; provided that the blind, deaf, or visually or physically handicapped person shall be liable for any damage done to the premises or facilities by such dog. No such dog shall be considered dangerous merely because it is unmuzzled.”

SECTION 2. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

“§515-3 **Discriminatory practices.** It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because of race, sex, color, religion, marital status, parental status, ancestry, handicapped status, or HIV (human immunodeficiency virus) infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property;
- (6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (8) To refuse to engage in a real estate transaction with a [blind or deaf] person due to handicapped status because the person uses the services of a certified guide [or], signal, or service dog; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:

“Blind” shall be as defined in section 235-1;

“Deaf” shall be as defined in section 235-1;

“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person;

“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in the real estate transaction; as used [herein,] in this chapter, the “reasonableness” of the restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances [as the blind or deaf person]. Depending on the circumstances, a “reasonable restriction” may require the owner of the [certified] service, guide, or signal dog to comply with one or more of the following:

- (A) Provide proof that the animal is a [certified] service dog, guide dog, or signal dog;
- (B) Observe applicable laws including leash laws and pick-up laws;
- (C) Assume responsibility for damage caused by the dog; or
- [(D) Use a harness with a rigid handle on the dog at all times; or
- (E)] (D) Have the housing unit cleaned upon vacating, by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances.

The foregoing list is illustrative only, and neither exhaustive nor mandatory; [and]

“Service dog” means any dog individually trained and certified by a nationally recognized service dog organization to assist a person with a disability in performing essential activities of daily living;

“Signal dog” means any dog [trained to alert a deaf person to intruders or sounds; or] individually trained and certified by a nationally recognized signal dog organization to alert a deaf person to intruders or sounds; or

- (9) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection (HIV), the causative agent of acquired immunodeficiency syndrome (AIDS).”

SECTION 3. Chapter 142, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§142- Guide, signal, or service dogs. Any person with a disability who uses the services of a guide, signal, or service dog, as defined in section 515-3, shall be permitted to reside on site for the duration of quarantine, if housing is available.”

SECTION 4. Section 143-4, Hawaii Revised Statutes, is amended to read as follows:

“§143-4 Issuance of license and tags. Upon the receipt of the license fee the director of finance shall issue to the person paying the fee a license stating the following:

- (1) The name and address of the person to whom the license is issued;
- (2) The year for which the license is paid;
- (3) The date of payment;

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- (4) A description of the dog for which the license is issued;
- (5) The number of the metal tag issued for the dog[.];¹ and
- (6) Any dog approved by the director of finance pursuant to rules established by the director to be a guide, signal, or service dog shall be so designated on the license.

The director of finance shall at the same time issue and deliver to the person a metal tag of such form and design as the director of finance may designate with a serial number and the year for which it is issued plainly inscribed thereon, which tag shall be attached to a collar around the neck of the dog for which the license has been issued. The fee for the tag shall be set by each county council; provided that until and unless provided by ordinance the fee shall be 10 cents.

The director of finance, pursuant to chapter 91, shall adopt rules for the licensing of guide, signal, and service dogs.”

SECTION 5. A physically handicapped person shall have the right to be accompanied by a service dog duly licensed and certified by the Canine Companion for Independence Organization in any of the places listed in subsection 347-13(a) without being required to pay an extra charge for the service dog; provided that the handicapped person shall show the certificate upon request; and provided further that the handicapped person shall be liable for any damage done to the premises or facilities by such dog. No such dog shall be considered dangerous merely because it is unmuzzled.

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; except that section 4 of this Act shall take effect on July 1, 1991 and section 5 of this Act shall be repealed on July 1, 1992.

(Approved May 23, 1991.)

Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 179

S.B. NO. 731

A Bill for an Act Relating to Tax Credits.

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 tenth year in a row and that the legislature is constitutionally required to give a tax credit or a tax refund.

The purpose of this Act is to provide for an income tax credit of \$1 to the people of the State to satisfy constitutionally mandated requirements.

SECTION 2. (a) In addition to the food/excise tax credit allowed under section 235-55.8, 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 235-55.8(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 235-55.8(c), Hawaii Revised Statutes, to which the taxpayer is entitled, regardless of adjusted gross income. Section 235-55.8(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 1991. Sections 235-55.8(e) and (f), Hawaii Revised Statutes, are 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 a period of more than six months of the 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 a period of more than six months of the full taxable year; or (3) any misdemeanant who has been committed to jail and has been physically confined for a period of more than six months of the 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 23, 1991.)

ACT 180

S.B. NO. 1206

A Bill for an Act Relating to Beauty Culture.

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

SECTION 1. Section 439-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Apprentice permit” means a permit issued by the board, upon registration and payment of application and registration fees, to an apprentice who is under the supervision of a licensed beauty operator.”

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2. By amending the definition of “apprentice” to read:

““Apprentice” means a person who is engaged in a beauty shop in learning to be a beauty operator and while so doing assists in any of the practices of cosmetology[.] under the supervision of a licensed beauty operator.”

3. By amending the definition of “temporary permit” to read:

““Temporary permit” means a permit [issued to] allowing a qualified applicant [practicing] to practice as a beauty operator or instructor [until the results of the examination have been published; provided that a temporary permit shall be effective] for [no longer than two years from the] a period of time covering the three consecutive examinations offered by the board after the permit’s date of issuance.”

SECTION 2. Section 439-10, Hawaii Revised Statutes, is amended to read as follows:

“**§439-10 Apprentices.** [All apprentices] An applicant shall [be registered] receive an apprentice permit upon payment of application and registration fees and submission of evidence satisfactory to the board that the applicant [is]:

- (1) [At] Is at least sixteen years of age and [possessed of] possesses an education equivalent to the completion of high school; and
- (2) [In the case of an instructor-trainee, has the required one year of experience as a registered beauty operator.] Will be working in a licensed beauty shop under the supervision of a licensed beauty operator. To satisfy this requirement, the applicant shall identify the name and license numbers of the beauty shop and beauty operator. The beauty operator shall be licensed in an appropriate licensure category.”

SECTION 3. Section 439-16, Hawaii Revised Statutes, is amended to read as follows:

“**§439-16 Temporary permits.** The board may issue a temporary [permits] permit to a qualified [applicants] applicant approved [to be examined] for examination. A temporary permit may be issued upon application for examination and payment of the required fees. The temporary permit shall allow the qualified applicant to practice or teach cosmetology under the supervision of a licensed beauty operator or licensed instructor [until the results of the examination have been published. Applicants who have not successfully passed the examination as prescribed by the board but continue to satisfy the requirements of section 439-14(c) may be issued temporary permits; provided that applicants shall pass the third examination as consecutively scheduled by the board. After failing to pass the third examination, applicants that satisfy], and shall be effective for the period of time covering the three consecutive examinations offered by the board after the permit’s date of issuance. An applicant who fails to pass the third examination but who satisfies the requirements of section 439-14(c) shall continue to qualify for examination and licensure but not for the privilege of a temporary [permits.] permit. [The permits may be issued upon application for examination and payment of the required fees.]”

SECTION 4. Section 439-17, Hawaii Revised Statutes, is amended to read as follows:

“§439-17 Beauty shops. (a) A license for a beauty shop may be secured by filing an application and paying the application and license fees and showing that the shop has been inspected not more than one year before the application was filed and meets the standards of sanitation required by the department of health, that a licensed beauty operator in the appropriate licensure category shall be in charge of the shop, and that it is adequately equipped for the practices in which it engages.

(b) All licenses shall expire on December 31 in each odd-numbered year. Licenses may be renewed by payment of a biennial fee prior to the date of expiration. A lapsed license may be reinstated upon payment of all delinquent fees and a penalty fee.

(c) Nothing in this chapter shall prohibit licensed beauty operators within a beauty shop from teaching any of the practices of cosmetology in which the beauty operator is licensed in the regular course of business; provided that the owners or beauty operators do not hold themselves out as a school, and do not hire or employ or teach, regularly, at any one time, more than one apprentice unless there is one beauty operator regularly employed in the business for each apprentice.

(d) The beauty shop owner shall be responsible for all operations of the shop and shall be responsible to see that only currently licensed individuals are performing cosmetology practices in the shop.

(e) Transfer of ownership, change in beauty shop name, and relocation of a beauty shop shall require filing of an application together with required fees.

(f) The beauty shop shall maintain records of appointments and services offered to clients, as prescribed by the rules of the board, for a period of three years.

(g) All beauty shops shall have equipment and facilities as prescribed by the rules of the board.”

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 23, 1991.)

ACT 181

S.B. NO. 1210

A Bill for an Act Relating to the Insurance Code.

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 article 3 to be appropriately designated and to read as follows:

“§431:3- Redomestication of authorized insurers. (a) The certificate of authority, agent appointments and licenses, rates, and other items allowed by the commissioner, which are in existence at the time an insurer authorized to transact insurance business in this State transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon such transfer if the insurer remains qualified to transact

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insurance business in this State. For purposes of this section, an insurer transferring its corporate domicile to this State remains qualified to transact insurance business in this State if it meets the organization and licensing requirements applicable to the same type of domestic insurer. All outstanding policies of a transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.

(b) Each transferring insurer shall file new policy forms on or before the effective date of the transfer if such forms are required to be approved by the commissioner. The insurer may use existing policy forms with appropriate endorsements if permitted by, and under such conditions as approved by, the commissioner. Every such transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner."

SECTION 2. New statutory material is underscored.¹

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

(Approved May 23, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

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S.B. NO. 1262

A Bill for an Act Relating to Child Support.

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

SECTION 1. Section 576D-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[[§576D-6]]]~~ **Other duties of agency.** (a) The agency shall:

- (1) Establish a state parent locator service;
- (2) Cooperate with other states in:
 - (A) Establishing paternity, if necessary;
 - (B) Locating an absent parent who is present in the State and against whom any action is being taken under a Title IV-D program in any other state; and
 - (C) Securing compliance by such an absent parent with a support order issued by a court of competent jurisdiction in another state;
- (3) Perform periodic checks of whether a debtor parent is collecting unemployment compensation and, if so, to arrange, either through agreement with the debtor parent or by bringing legal process, to have a portion of the compensation withheld, to fulfill the parent's delinquent child support obligations;
- (4) Notify annually each custodial parent, guardian, protective payee, or other person having custody of the child of an Aid to Families with Dependent Children family of the amount of child support collected on behalf of the child in the family. For the purpose of this section,

“Aid to Families with Dependent Children family” means a family which receives financial assistance under the federal Aid to Families with Dependent Children program;

- (5) Establish and utilize procedures which shall require a debtor parent to give security, post bond, or give some other guarantee to secure payment of delinquent child support. The procedures shall apply to all debtor parents of children described under section 576D-3. The procedures shall include advance notice to the debtor parent in full compliance with the State’s procedural due process requirements. The agency shall develop guidelines, which are available to the public, to determine whether the case is inappropriate for application of this requirement;
 - (6) Establish and utilize procedures by which information regarding the amount of delinquent child support owed by a debtor parent residing in the State will be made available to any consumer reporting agency. The procedures shall be effectuated after the delinquency reaches \$1,000, shall be in compliance with the limitations under Title IV-D, and shall include provisions on advance notice to the debtor parent of the procedures, which shall be in full compliance with the State’s procedural due process requirements, to contest the accuracy of the information;
 - (7) Establish and utilize procedures which will impose liens against the real and personal property of a debtor parent who owes overdue support and who resides or owns property in the State. The agency shall further establish guidelines which are available to the public to determine whether the case is inappropriate for application of this paragraph;
 - (8) Establish and utilize procedures for the notification of a custodial parent that any income tax refund setoff under section 231-53 shall be credited to child support debts for past public assistance or foster care maintenance before any other debt;
 - (9) Establish and utilize procedures for prompt reimbursements of overpayments of child support debts from income tax refund setoffs under section 231-53. The procedures shall provide for the reimbursements to be made by the custodial parent or agency; [and]
 - (10) Establish and utilize procedures for periodic review and modification of child support orders in accordance with Title IV-D; and
- [(10)] (11) Perform other duties required under Title IV-D.

(b) The procedures required under paragraphs (5), (6), (7), (8), [and] (9), and (10) shall be established by rule in accordance with chapter 91.”

SECTION 2. Section 576E-6, Hawaii Revised Statutes, is amended to read as follows:

“§576E-6 Request for hearing; how made. [Any] (a) Except as provided in subsection (b), any responsible parent who is aggrieved by the proposed order of the agency may, within ten days of service of a notice [pursuant to] described in section 576E-5, obtain a hearing by sending a written request for hearing to the agency office that issued the notice.

(b) In the case of a proposed order to modify child support resulting from the agency’s periodic review of support orders, a responsible parent aggrieved by the proposed order may request a hearing within thirty days of service of a notice described in section 576E-5.”

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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 23, 1991.)

ACT 183

S.B. NO. 1278

A Bill for an Act Relating to Marine Life Conservation Districts.

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

SECTION 1. Section 190-4.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§190-4.5] Mooring]~~ **Anchoring, boating, and mooring in marine life conservation districts**].; **rules.** (a) The department [of land and natural resources] shall, pursuant to chapter 91, adopt rules for the regulation of anchoring and mooring in each marine life conservation district established under this chapter.

(b) Within its jurisdiction over ocean recreational boating and coastal activities, the department shall adopt rules pursuant to chapter 91 for the regulation of boating in each marine life conservation district established under 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 May 23, 1991.)

ACT 184

S.B. NO. 1279

A Bill for an Act Relating to Marine Resources.

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

SECTION 1. Section 188-40, Hawaii Revised Statutes, is amended to read as follows:

“**§188-40 Minimum sizes of fish.** It shall be unlawful for any person to possess with the intent to sell, or offer for sale, [or for any peddler or dealer in fish to have in the peddler’s or dealer’s possession,] any:

- (1) Aholehole or manini less than five inches in length;
- (2) Mullet, moi, weke, moana, or kumu less than seven inches in length;

- (3) Awa, oio, kala, or opelu kala less than nine inches in length; provided that this section shall not apply to the kala, Naso lituratus;
- (4) Opakapaka, [ulaula,] onaga, uku, ulua or papio, uhu, or [squid] octopus less than one pound in weight;
- (5) Kuahonu crab or Kona crab less than four inches in length or in width across or along its back;
- (6) Clams less than one and one-half inches measured the long way[;] across or along the shell; or
- (7) Ahi less than three pounds in weight.”

SECTION 2. Section 188-44, Hawaii Revised Statutes, is amended to read as follows:

“§188-44 Mullet, catching prohibited, when; exceptions. (a) It is unlawful for any person to willfully fish for, or attempt to take by any means whatsoever, from any of the waters within the jurisdiction of the State, or to sell, offer for sale, or have in possession any mullet, known as amaama, or anaeholo during the months of December, January, or February; provided that any owner or operator of a fish pond, may lawfully catch the young mullet, known as pua, during the closed season, for the purpose of stocking the owner’s or operator’s pond; and provided further that any owner or operator of a fish pond or any commercial marine dealer may lawfully sell pond raised mullet during the closed season after first procuring a license granting privilege.

[Licenses to sell pond raised mullet shall be issued by the department of land and natural resources upon the payment of \$5, but any]

(b) Any commercial marine dealer having more than one market or establishment shall take out a separate license for each market or [wagon] establishment from which mullet are sold. The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section and to set reasonable fees for selling pond raised mullet during the closed season.

(c) All licenses shall expire [on June 30 of each year.] one year from the date of issuance.

[Any licensee who sells, offers for sale, or has in the licensee’s possession any sea mullet shall, on conviction, forfeit the licensee’s license to sell mullet during the closed season. The department may also revoke any license for any infraction of the terms and conditions of the license. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of one year from the date of revocation.]”

SECTION 3. Section 188-57, Hawaii Revised Statutes, is amended to read as follows:

“§188-57 Certain crustaceans protected. (a) It is unlawful for any person to take, kill, sell, or offer for sale, or have in possession any Kona crabs taken from the waters within the jurisdiction of the State during the months of May, June, July, and August, or spiny lobster (ula), or slipper lobster (ula-papapa), taken from the waters within the jurisdiction of the State during the months of June, July, and August. The possession of any Kona crabs, by any person during the months of May, June, July, and August, and the possession of any spiny lobster (ula), or slipper lobster (ula-papapa), by any person during the months of June, July, and August shall be prima facie evidence that the person is guilty of a violation of this section; provided that any commercial marine dealer may sell, or

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any hotel, restaurant, or other public eating house may serve Kona crabs or lobsters lawfully caught during the open season by first procuring a license granting this privilege.

[Licenses to sell or serve Kona crab during May, June, July, and August, or lobster during June, July, and August shall be issued by the department of land and natural resources upon the payment of \$5 by wholesale dealers, \$2.50 by retail markets and \$1 for any hotel or other class of restaurant; provided that each license holder]

(b) Each licensee shall submit a report to the department within five days after the end of each of the months on blanks furnished by the department[, which report shall give the name of the person or firm from whom the Kona crabs or lobsters were purchased, to whom sold, the number and weight bought or sold and the number and weight on hand the first and last day of each month]. The department may adopt rules pursuant to chapter 91 necessary for the purpose of this chapter and to set fees for selling or serving Kona crab and lobster during the closed season.

(c) All licenses shall expire one year from the date of issuance.

[The department may revoke any license for any infraction of the terms and conditions of the license. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of one year from the date of revocation.]”

SECTION 4. Section 188-68, Hawaii Revised Statutes, is amended to read as follows:

“§188-68 Stony coral; rock with marine life attached; taking and selling prohibited. (a) The taking of any rock to which marine life is visibly attached or affixed, or live stony coral of the taxonomic order, Madreporaria, including the Fungidae or Pocilloporidae families, for any reason, is prohibited except with a permit authorized under section 187A-6 or section 183-41[.] or by the department under rules adopted pursuant to chapter 91 necessary for collecting marine life visibly attached to rocks placed in the water for a commercial purpose.

(b) After July 1, 1992, no person shall sell or offer for sale as souvenirs any stony coral of the taxonomic order, Madreporaria, of the species Montipora verrucosa, Fungia scutaria, Pocillopora damicornis, Pocillopora meandrina, Pocillopora eydouxi, Porites compressa, Porites lobata, and Tubastraea coccinea, provided that stony coral souvenirs shall not include coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry or obtained through dredging operations in Hawaii for agricultural or other industrial uses.”

SECTION 5. The fees required by sections 188-44 and 188-57 shall remain in effect until the effective date of the rules required by this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1991.

(Approved May 23, 1991.)

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S.B. NO. 1282

A Bill for an Act Relating to Public Lands

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

SECTION 1. Section 171-20, Hawaii Revised Statutes, is amended to read as follows:

“§171-20 **Notice of breach or default.** Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease[,] or patent[, license, agreement, or other instrument] heretofore or hereafter issued under this chapter, the board of land and natural resources shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease[,] or patent[, license, agreement, or other instrument,] making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease[,] or patent[, license, agreement, or other instrument] heretofore or hereafter issued under this chapter, the written notice shall include a demand upon the party to cure the breach within less than sixty days, but not less than five business days, after receipt of the notice. Upon failure of the party to cure or remedy the breach ~~[[or]]~~ default within the time period provided herein or within such additional period as the board may allow for good cause, the board may, subject to section 171-2] exercise such rights as it may have at law or as set forth in the lease[,] or patent[, license, agreement, or other instrument].”

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 23, 1991.)

ACT 186

S.B. NO. 1335

A Bill for an Act Relating to Revocation of Certificates.

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

SECTION 1. Section 297-3, Hawaii Revised Statutes, is amended to read as follows:

“§297-3 **Certificates; revocation.** The department of education may revoke any certificate after issuance thereof when satisfied that the holder thereof does not possess the qualifications mentioned in section 297-2, but in such case the holder of the certificate shall first be given full opportunity to justify the holding of the certificate.

Upon revocation of the certificate, the department of education is authorized to disclose the name, birthdate, social security number, and any other pertinent

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information about the former holder of the certificate related to the revocation for the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had certificates revoked.”

SECTION 2. New statutory material is underscored.

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

(Approved May 23 1991.)

ACT 187

S.B. NO. 1336

A Bill for an Act Relating to Statewide Center for Students with Hearing and Visual Impairments.

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

SECTION 1. Section 297-47, Hawaii Revised Statutes, is amended to read as follows:

“[[§297-47]] House parents; [Hawaii School for the Deaf and the Blind.] statewide center for students with hearing and visual impairments. All house parents at the [Hawaii School for the Deaf and the Blind] statewide center for students with hearing and visual impairments employed in the department of education shall be employed under chapter 76 and shall have their compensation fixed in accordance with chapter 77, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All house parents shall be employed for twelve months on a full-time basis.”

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 23, 1991.)

ACT 188

S.B. NO. 1337

A Bill for an Act Making an Appropriation for Educational Officer Classification and Compensation Adjustments.

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 \$323,797, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$342,575, or so much thereof as may be necessary for fiscal year 1992-1993, to fund the adjustments made by the educational officer classification/compensation appeals board to the educational officer classification/compensation plan, as provided by section 297-31.3, Hawaii Revised Statutes.

SECTION 2. The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. This Act shall take effect July 1, 1991.

(Approved May 23, 1991.)

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S.B. NO. 1338

A Bill for an Act Relating to Salaries and Classification.

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

SECTION 1. Section 297-31.5, Hawaii Revised Statutes, is amended to read as follows:

“§297-31.5 Salary; assistant superintendents, district superintendents, deputy district superintendents. The salaries of assistant superintendents, district superintendents, and deputy district superintendents shall be set by the board. Effective [January 1, 1989, and] January 1, 1990, the salaries of assistant superintendents and district superintendents shall be not more than [\$74,608 and] \$77,966 a year, [respectively,] and effective July 1, 1991, the salaries of deputy district superintendents shall be not [more] less than [\$62,854 and \$65,683 a year, respectively.] \$65,683 nor more than \$72,886 a year.”

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 23, 1991.)

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S.B. NO. 1366

A Bill for an Act Relating to Vital Records.

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

SECTION 1. Section 338-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall not permit inspection of [the] public health statistics records, or issue a certified copy of [a certificate,] any such record, or part thereof, unless it is satisfied that the applicant [therefor is] has a direct and tangible interest in the record. The following persons shall be considered to have a direct and tangible interest in a public health statistics record: the registrant, the spouse of the registrant, parent of the registrant, a descendant of the registrant, a person having a common ancestor with the registrant, a legal guardian of the registrant, a person or agency acting on behalf of the registrant, a personal representative of the registrant’s estate, or a person whose right to inspect or

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obtain a certified copy of the record is established by an order of a court of competent jurisdiction, [and that the information contained therein is necessary for the determination of personal or property rights.] adoptive parents who have filed a petition for adoption and who need to determine the death of one or more of the prospective adopted child's natural or legal parents, a person who needs to determine the marital status of a former spouse in order to determine the payment of alimony, a person who needs to determine the death of a non-related co-owner of property purchased under a joint tenancy agreement, and a person who needs a death certificate for the determination of payments under a credit insurance policy."

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 23, 1991.)

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S.B. NO. 1399

A Bill for an Act Relating to Land Use.

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

SECTION 1. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) 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, and 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; small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land, provided that such facilities shall not be used as or equipped for use as living quarters or dwellings; 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."

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 23, 1991.)

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S.B. NO. 1424

A Bill for an Act Relating to Prosecuting Attorneys.

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

SECTION 1. Section 76-77, Hawaii Revised Statutes, is amended to read as follows:

“§76-77 Civil service and exemptions. The civil service to which this part applies comprises all positions in the public service of each county, now existing or hereafter established, and embraces all personal services performed for each county, except the following:

- (1) Positions in the office of the mayor, but the positions shall be included in the position classification plan;
- (2) Positions of officers elected by public vote; positions of heads of departments and positions of one first deputy or first assistant of heads of departments;
- (3) Positions of deputy county attorneys, deputy corporation counsel, deputy prosecuting attorneys, and law clerks;
- (4) Positions of members of any board, commission, or agency;
- (5) Positions filled by students; positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973; and employees engaged in special research or demonstration projects approved by the mayor, for which projects federal funds are available;
- (6) Positions of district judges, jurors, and witnesses;
- (7) Positions filled by persons employed by contract where the personnel director has certified and where such certification has received the approval of the commission that the service is special or unique, is essential to the public interest and that, because of the circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (8) Positions of a temporary nature needed in the public interest where the need for the same does not exceed ninety days; but before any person may be employed to render such temporary service the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; provided that the employment of any person for service of a temporary nature may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director, approved by the commission;
- (9) Positions of temporary election clerks in the office of the county clerk employed during election periods;
- (10) Positions specifically exempted from this part by any other state statutes;
- (11) Positions of one private secretary of heads of departments, but such positions shall be included in the position classification plan;
- (12) Positions filled by persons employed on a fee, contract, or piecework basis who may lawfully perform their duties concurrently with

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their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the county and that fact is certified to by the director;

- (13) Positions filled by the severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to safely perform the duties of the positions; [and]
- (14) Positions of the housing and community development office or department of each county; provided that this exemption shall not preclude each county from establishing these positions as civil service positions[.]; and
- (15) Positions in the offices of the prosecuting attorney of the private secretary to the prosecutor, secretary to the first deputy prosecuting attorney, administrative or executive assistants to the prosecuting attorney, but the positions shall be included in the position classification plan.

The director shall determine the applicability of this section to specific positions and the director shall determine whether or not positions excluded by paragraphs (7) and (8) shall be included in the position classification plan.

Nothing in this section shall be deemed to affect the civil service status of any incumbent, private secretary of heads of departments as it existed on May 7, 1977.”

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 23, 1991.)

ACT 193

S.B. NO. 1534

A Bill for an Act Relating to Unemployment Compensation.

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

SECTION 1. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

“§383- Evaluation of fund balance adequacy. The director shall conduct an annual evaluation of the adequacy of the fund balance, taking into account conditions in the State and national economic trends, and submit a report of findings to the legislature no later than twenty days prior to the convening of each regular session.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 1992.

(Approved May 23, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

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S.B. NO. 1634

A Bill for an Act Relating to Landlord Tenant.

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

SECTION 1. Section 521-71, Hawaii Revised Statutes, is amended to read as follows:

“§521-71 Termination of tenancy; landlord’s remedies for holdover tenants. (a) When the tenancy is month-to-month, the landlord [or the tenant] may terminate the rental agreement [upon the landlord’s or the tenant’s] by notifying the [other] tenant, in writing, at least [twenty-eight] forty-five days in advance of the anticipated termination. When the landlord provides notification of termination, the tenant may vacate at any time within the last [twenty-eight] forty-five days of the period between the notification and the termination date, but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.

(b) When the tenancy is month-to-month the tenant may terminate the rental agreement by notifying the landlord, in writing, at least twenty-eight days in advance of the anticipated termination. When the tenant provides notice of termination, the tenant shall be responsible for the payment of rent through the twenty-eighth day.

(c) Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, conversion to a condominium property regime under chapter 514A, or changing the use of the building to transient vacation rentals, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination, and shall comply with the provisions relating to conversions provided in section 514A-105, if applicable. If notice is revoked or amended and reissued, the notice period shall begin from the date it was reissued or amended. Any notice provided, revoked, or amended and reissued shall be in writing.

[(b)] (d) When the tenancy is less than month to month, the landlord or the tenant may terminate the rental agreement [upon the landlord’s or the tenant’s] by notifying the other at least ten days before the anticipated termination.

[(c)] (e) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in subsection (a) [or], (b), (c), or (d)[,] or by the exercise by the landlord of a right to terminate given under this chapter, if the tenant continues in possession after the date of termination without the landlord’s consent, the tenant shall be liable for and shall pay to the landlord a sum not to exceed twice the monthly rent under the previous rental agreement, computed and prorated on a daily basis, for each day the tenant remains in possession. The landlord may bring a summary proceeding for recovery of the possession of the dwelling unit at any time during the first sixty days of holdover. Should the landlord fail to commence summary possession proceedings within the first sixty days of the holdover, in the absence of a rental agreement, a month-to-month tenancy at the monthly rent stipulated in the previous rental agreement shall prevail beginning at the end of the first sixty days of holdover.

[(d)] (f) Any notice of termination initiated for the purposes of evading the obligations of the landlord under subsections 521-21(d) or (e) shall be void.”

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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 23, 1991.)

ACT 195

S.B. NO. 2097

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. Section 514A-96, Hawaii Revised Statutes, is amended to read as follows:

“§514A-96 [Audits.] Board of directors, audits, audited financial statement, transmittal. (a) The association of apartment owners shall require [a yearly] an annual audit of the association financial accounts and no less than one [yearly] annual unannounced verification of the association’s cash balance by a public accountant; provided that if the association is comprised of less than twenty owners, the [yearly] annual audit and the [yearly] annual unannounced cash balance verification may be waived by a majority vote of all apartment owners taken at an association meeting.

(b) The board of directors of the association shall make available a copy of the annual audit to each apartment owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall provide upon all official proxy forms a box wherein the owner may indicate that the owner wishes to obtain either a summary of the annual audit report, or an unabridged copy of the annual audit report. The board shall not be required to submit a summary of the annual audit report or a copy of the annual audit report to the owner if the proxy form is not marked. If the annual audit has not been completed by that date, the board shall make available:

- (1) An unaudited year end financial statement for the fiscal year to each apartment owner at least thirty days prior to the annual meeting; and
- (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, whichever occurs later.

If the association’s fiscal year ends less than two months prior to the convening of the annual meeting, the year to date unaudited financial statement may cover the period from the beginning of the association’s fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.”

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 23, 1991.)

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A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (m) to read as follows:

“(m) Class 12. Hotel licenses. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquors, except alcohol, for consumption on the premises, except that a hotel licensee may, with commission approval, provide off premises catering; provided that such catering activity is directly related to the licensee’s operation as a hotel.

Procedures such as room service, self-service (no-host), minibars or the like in guest rooms, and service at private parties in areas which are the property of and contiguous to the hotel are permitted with commission approval.

Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license.

If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281-59.”

SECTION 2. New statutory material is underscored

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

(Approved May 28, 1991.)

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A Bill for an Act Relating to County Fuel Tax Changes.

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

SECTION 1. Section 243-5, Hawaii Revised Statutes, is amended to read as follows:

“**§243-5 County fuel tax.** The amount of the “county of Hawaii fuel tax”, “city and county of Honolulu fuel tax”, “county of Maui fuel tax”, and “county of Kauai fuel tax”, respectively, shall be determined by resolution of the county or the city council of each county adopted in the manner provided by law relating to resolutions involving the expenditure of public money. The amount fixed by the resolution may be, per gallon, one or more cents or a fraction of a cent or both, or it may be zero. No such resolution shall be adopted until the county or the city council shall conduct a public hearing on the amount of tax proposed. Notice of such hearing shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of hearing. If [such] the resolution is adopted [on or before the fifteenth day of a calendar month], it shall take effect on the first day of the [next month, otherwise on the first day of the] second month[,] following the date of adoption of the

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resolution. The county or the city council shall notify the department of taxation of any county fuel tax changes within ten days after the resolution is adopted.

Until and unless otherwise provided by resolution adopted as above provided, the amount of the "county of Hawaii fuel tax" shall be for the period July 1, 1955, to June 30, 1957, 1 cent per gallon and thereafter zero, the amount of the "city and county of Honolulu fuel tax" shall be 2-1/2 cents per gallon, the amount of the "county of Maui fuel tax" shall be for the period July 1, 1955, to June 30, 1957, 3 cents per gallon and thereafter 2 cents per gallon, and the amount of the "county of Kauai fuel tax" shall be for the period July 1, 1955, to June 30, 1957, 3 cents per gallon and thereafter 2 cents per gallon."

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, 1991.)

ACT 198

H.B. NO. 890

A Bill for an Act Relating to the Year of the Family Celebration.

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

SECTION 1. Act 337, Session Laws of Hawaii 1990, is amended by amending section 9 to read as follows:

"SECTION 9. 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 1990-1991, to carry out the purposes of this Act. The sum appropriated shall be expended by the office of the governor for the purposes of this Act[.]; provided that any remaining balance on June 30, 1991 shall be deposited into the year of the family celebration trust 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 28, 1991.)

ACT 199

H.B. NO. 919

A Bill for an Act Relating to the Waikiki Aquarium.

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

SECTION 1. The purpose of this Act is to create a special fund for operating the Waikiki Aquarium.

SECTION 2. Section 304-32, Hawaii Revised Statutes, is amended to read as follows:

“**§304-32 Aquarium admission fee.** The board of regents may charge the public a fee for admission to the aquarium; provided that:

- (1) [School children] Children under the age of twelve shall be admitted free [if accompanied by a teacher, one day of each and every week, such day to be set by the director of the aquarium,]; and
- (2) Persons over the age of [60] sixty shall be admitted free if on an excursion or tour sponsored by a senior citizens group[, one day of each and every week, such day to be set by the director of the aquarium].

All funds collected from fees charged in accordance with [the provisions of] this section shall [revert to the state general fund.] be deposited in the Waikiki aquarium special fund.”

SECTION 3. Section 304-33, Hawaii Revised Statutes, is amended to read as follows:

“**§304-33 [Disposition of receipts of aquarium.** The board of regents shall pay into the state treasury all receipts of the aquarium and all such moneys are appropriated for the use of the university to be accounted for as provided in section 304-8.] Waikiki aquarium special fund. There is established a special fund into which shall be deposited all revenues derived from concessions and all fees and charges from public agencies and private persons collected in conjunction with the operation of the Waikiki aquarium. Moneys deposited in this fund shall be expended for the operation of the Waikiki aquarium. The special fund shall not be subject to sections 36-27 and 36-30 relating to special fund reimbursements to the state general fund.”

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

SECTION 7.¹ This Act shall take effect upon its approval.

(Approved May 28, 1991.)

Note

1. So in original.

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H.B. NO. 925

A Bill for an Act Relating to Used Oil Transport, Recycling and Disposal.

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

SECTION 1. Section 342N-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person who wilfully or negligently violates this chapter, any rule adopted by the department pursuant to this chapter, or any condition of a permit issued pursuant to this chapter shall be [punished by a fine] subject to a civil penalty of not more than [\$(5,000)] \$10,000 for each day of each violation [or

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imprisonment for not more than one year, or both.] and guilty of a petty misdemeanor. If the conviction is for a violation committed after a first conviction, the violator shall be subject to a [fine] civil penalty of not more than [\$10,000] \$20,000 for each day of each violation[, or by imprisonment for not more than two years, or both.] and guilty of a misdemeanor."

SECTION 2. Section 342N-30, Hawaii Revised Statutes, is amended to read as follows:

"§342N-30 Prohibited acts. (a) No new oil, used oil, or recycled oil shall be discharged or caused or allowed to enter into sewers, drainage systems, surface or ground waters, watercourses, [or] marine waters[.], or onto the ground. The prohibition shall not apply to inadvertent, normal discharges from vehicles and equipment, or maintenance and repair activities associated with the vehicles; provided that appropriate measures are taken to minimize releases. Appropriate measures may include, but are not limited to: use of drip pans; institution of structural catchment systems; use of absorbent materials; and other similar measures.

(b) No used oil transporter shall deliver used oil to any person with the knowledge that the oil will be improperly disposed of in violation of this chapter.

(c) [No new oil, used oil, or recycled oil shall be discharged onto the ground without prior written approval from the department and the landowner.] No person shall accept used oil for transportation without first performing a field screening test which documents that total halogen concentrations are less than one thousand parts per million. If the field screening test indicates that halogen concentrations are greater than one thousand parts per million, the transporter shall inform the owner of the used oil that the used oil is a hazardous waste and must be disposed of as hazardous waste in accordance with the current federal hazardous waste regulations, and the transporter shall submit to the department of health within ten days the following information:

- (1) The name and address of the owner of the used oil;
- (2) The halogen concentration of the used oil;
- (3) The estimated quantity of the used oil; and
- (4) The date of the field screening test.

(d) No person shall market or burn used oil or recycled oil [shall be burned] as specification fuel without an analysis or other written information documenting that the used oil or recycled oil meets the standards for specification fuel as set forth by the director.

(e) No person shall engage, employ, or contract with any other person, except a permitted used oil transporter, for the removal of used oil from that person's premises."

SECTION 3. Section 342N-31, Hawaii Revised Statutes, is amended to read as follows:

"§342N-31 Permit required. No person shall transport, market, or recycle used oil [except specification fuel,] without first obtaining a permit from the department. The director may require any person who generates and burns [their] the person's own used oil as specification fuel to notify the department of [their] the person's activity."

SECTION 4. Chapter 342N-33, Hawaii Revised Statutes, is amended to read as follows:

“§342N-33 Recordkeeping, sampling, and testing requirements. (a) Transporters, marketers, recyclers, and burners of used oil shall keep a [copy] record of each transaction [or] and a copy of each invoice received[.] for three years.

(b) [Any] Each person who [sells] markets or burns used oil as specification fuel in accordance with section 342N-30(d) shall keep a copy of each analysis performed or other written information documenting that the used oil meets the standards for specification fuel as set forth by the director.

(c) Each person who accepts used oil from a used oil transporter in accordance with section 342N-30(c) shall maintain records of the field screening test for three years.

[(c)] (d) The director may require any person who generates and burns the person's own used oil as specification fuel to keep a copy of each analysis performed or other written information documenting that the used oil meets the standards for specification fuel as set forth by the director.

[(d)] (e) The persons described in subsections (a), (b), [and] (c), and (d) shall be required to maintain records relating to used oil which shall be retained for a period of three years and made available to the director upon request.

[(e)] (f) Each used oil transporter shall provide a signed voucher to each person surrendering or accepting the used oil when used oil is picked up or delivered and shall keep a record of each voucher.

[(f)] (g) The department may require persons who generate, transport, market, recycle, or burn used oil or specification fuel or accept used oil for final disposal to conduct sampling and testing and to keep and submit records.”

SECTION 5. 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 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval; provided that the department shall adopt rules for field screening tests and its reporting requirements by January 1, 1993; and provided further that the amendments made to section 342N-30(c) shall be repealed on January 1, 1993 and section 342N-30(c) shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved May 28, 1991.)

ACT 201

H.B. NO. 928

A Bill for an Act Relating to Lead Acid Batteries.

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

SECTION 1. Chapter 342I, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

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“§342I- Disposal of electrolyte; prohibited. No person shall dispose of electrolyte from any used lead acid battery onto the ground or into sewers, drainage systems, surface or ground waters, or ocean waters.

§342I- Recycling. Any person accepting lead acid batteries for disposal shall:

- (1) Transport the lead acid batteries, with the liquid electrolyte intact, to a transfer facility; provided that the facility is in compliance with the accumulation provisions of section 342I-4;
- (2) Transport the lead acid batteries, with the liquid electrolyte intact, to a secondary lead smelter permitted by the United States Environmental Protection Agency; or
- (3) Have the liquid electrolyte neutralized at a facility that is permitted pursuant to chapter 342H; provided that once the liquid electrolyte is neutralized in accordance with the permit issued pursuant to chapter 342H, the batteries may be transported to any secondary lead smelter.

§342I- Recordkeeping. All facilities accepting five or more lead acid batteries per day from an individual shall maintain records for three years that provide, at a minimum, the following information:

- (1) The name, phone number, and address of the person from whom the batteries were received;
- (2) The date of receipt of the lead acid batteries; and
- (3) The record of shipment indicating the ultimate destination of the lead acid batteries and the date of shipment.

§342I- Entry and inspection of records. The director of health may enter and inspect any building or place for the purpose of:

- (1) Investigating an actual or suspected violation of this chapter;
- (2) Conducting reasonable tests;
- (3) Taking samples; and
- (4) Reviewing and copying records.

§342I- Penalties. (a) Civil. Any person who violates this chapter shall be fined not more than \$10,000 for each separate offense; provided that the failure to post the notice required under section 342I-2, following a warning issued by the director of health, shall be subject to a fine of \$2,000 for each separate offense. Each battery improperly disposed of or accepted shall constitute a separate offense. The fines imposed pursuant to this subsection shall be cumulative.

(b) Criminal. Any person who knowingly or wilfully violates this chapter shall be guilty of a misdemeanor.

§342I- Disposition of collected fines and penalties. Fines and penalties collected under this chapter shall be deposited into the environmental response revolving fund, established by section 128D-2.”

SECTION 2. Section 342I-1, Hawaii Revised Statutes, is amended to read as follows:

“[§342I-1] Lead acid batteries; [land] disposal prohibited. (a) No person may [place];

- (1) Place a used lead acid battery in mixed municipal solid waste[, discard,]; or
- (2) Discard or otherwise dispose of a lead acid battery, except by delivery to [an automotive];
 - (A) A lead acid battery retailer or wholesaler[, to an authorized];
 - (B) A collection or recycling facility[,] permitted under chapter 342H; or [to a]
 - (C) A secondary lead smelter permitted by the United States Environmental Protection Agency.

[(b) No automotive battery retailer shall dispose of a used lead acid battery except by delivery to the agent of a battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by the United States Environmental Protection Agency, or to an authorized collection or recycling facility, or to a secondary lead smelter permitted by the United States Environmental Protection Agency.

(c) Each battery improperly disposed of shall constitute a separate violation.

(d) For each violation of this section a violator shall be subject to the penalty provided under subsection (e) of section 342-11.]

(b) No lead acid battery retailer or wholesaler, or authorized collection or recycling facility, shall accept for disposal any lead acid batteries that have had their electrolyte removed, unless cracks in the battery shell due to aging or accident are in evidence to indicate passive leaking of the electrolyte."

SECTION 3. Section 342I-3, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~342I-3] Inspection of [automotive battery retailers.] lead acid battery facilities. The department of health shall produce, print, and distribute the notices required by section 342I-2 to all places where lead acid batteries are offered for sale at retail. In performing its duties under this [section] chapter, the department may inspect any place, building, or premise governed by [section 343I-2.] this chapter. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirement of [those sections. Failure to post the required notice following warning shall subject the establishment to a fine of \$2,000 per day.] this chapter."

SECTION 4. Section 342I-4, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~342I-4] Lead acid battery wholesalers. Any person selling new lead acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased, used lead acid batteries from customers, if offered by customers. [A] Except as otherwise provided at the discretion of the director, a person accepting batteries in transfer from an automotive battery retailer shall be allowed a period not to exceed ninety days to remove batteries from the retail point of collection."

SECTION 5. 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.

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SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved May 28, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 202

H.B. NO. 949

A Bill for an Act Relating to Rights of Inspection.

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

SECTION 1. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§187A- **Rights of inspection of catch.** Any agent of the department upon whom the board has conferred powers of police officers or any other enforcement officer of the State shall have the authority to conduct examinations and searches of:

- (1) The contents of any bag or container of any kind used to carry aquatic life; or
- (2) Any vehicle or conveyance used to transport aquatic life;

if such agent or officer has probable cause, as provided by law, to believe that such bag, container, vehicle, or conveyance contains evidence of a violation of the fishing laws of the State. No person shall refuse any enforcement officer of the department or any other enforcement officer of the State such examination and search.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 28, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 203

H.B. NO. 1038

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 are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the

fiscal biennium 1991-1993 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 3:

<u>FUND</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$7,006,172	\$17,795,496
Special	\$1,832,893	\$4,754,334
Federal	\$562,811	\$1,411,271
Other	\$160,836	\$408,518

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 are 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 1991-1993 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 3:

<u>FUND</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$1,302,421	\$3,347,153
Special	\$59,176	\$149,435

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 that are not expended or encumbered by June 30, 1992, and June 30, 1993, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1991.

(Approved May 28, 1991.)

ACT 204

S.B. NO. 248

A Bill for an Act Making an Appropriation for the Installation of Energy Efficient Lighting.

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

SECTION 1. Energy efficiency and conservation are major goals of state government in Hawaii. Considering the fact that oil is a nonreusable resource, wind and geothermal energy have not been fully developed, and the cost of energy

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is relatively high, energy efficiency and conservation is appealing as well as sensible.

Making full use of energy saving technology available for lighting could cut America's lighting costs by up to ninety-two per cent and save a quarter of all the electricity now used in the United States. The savings could begin with something as simple as replacing energy guzzling incandescent light bulbs with energy efficient fluorescent bulbs. Fluorescent bulbs produce better lighting than incandescent bulbs at a lower cost per energy watt.

State government should set an example by utilizing every means possible in making use of energy efficient devices such as fluorescent lighting devices. Aside from conserving energy, this has the added benefit of saving taxpayer dollars without jeopardizing the quality of service.

The purpose of this Act is to appropriate funds to purchase and install energy efficient lights in state office buildings selected by the department of accounting and general services.

SECTION 2. 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 1991-1992, to purchase and install high efficiency fluorescent lamps, ballasts, and fixtures, and H.I.D. high efficiency lamps, ballasts, and fixtures in existing state buildings as replacements for (1) less efficient fluorescent lamps, ballasts, and fixtures; (2) incandescent lamps and fixtures; or (3) obsolete mercury lamps and fixtures.

SECTION 3. The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved May 28, 1991.)

ACT 205

S.B. NO. 1286

A Bill for an Act Relating to Public Officers and Employees.

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

SECTION 1. The legislature finds that there are occasions when the State encounters severe recruitment difficulties for certain positions which are essential to the needs of the public or in a shortage category. A limited labor market is often a major cause of such difficulties. Further, present civil service laws do not provide adequate recruitment flexibility to respond to these difficulties. Thus, the State's ability to compete for persons with the requisite skills and qualifications within such a highly competitive labor market is at present severely restricted.

The purpose of this Act is to provide the director of personnel services and state agency appointing authorities with the authority to provide incentives to help overcome recruitment difficulties for certain positions which are essential to the needs of the public or in a shortage category.

SECTION 2. Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§76- **Travel and transportation expenses.** Appointing authorities, with the prior approval of the director, may pay travel and transportation expenses to enhance the recruitment of persons employed or appointed to positions in a class declared to be in a shortage category and on continuous recruitment.”

SECTION 3. Chapter 77, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§77- **Recruitment incentives.** Appointing authorities, with the prior approval of the director, may provide a monetary incentive to enhance the recruitment of persons employed or appointed to positions in a class declared to be in a shortage category and on continuous recruitment; provided that:

- (1) The incentive shall not exceed one month's salary computed at the first step of the appropriate salary range or rate and paid in installments over an agreed period of time;
- (2) If the contract is terminated prior to the total payment of the incentive, the unpaid balance shall be forfeited or disposed of as otherwise provided by rule; and
- (3) The incentive shall not be used to compute cash payments for overtime work.

The director may adopt rules to carry out the requirements of this section.”

SECTION 4. New statutory material is underscored.¹

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

(Approved May 28, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5

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S.B. NO. 1297

A Bill for an Act Relating to Liquor.

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

SECTION 1. The legislature finds that Act 342, Session Laws of Hawaii 1986, as amended by Act 283, Session Laws of Hawaii 1987, raised Hawaii's minimum drinking age from eighteen to twenty-one. The reasons for raising the minimum drinking age were to:

- (1) Reduce the number of traffic accidents involving young adults;
- (2) Mitigate other social problems such as juvenile crime and poor school performance; and
- (3) Prevent the loss of federal highway funds for the State as a consequence of Public Law 98-363.

As a result of the expected reduction in traffic injuries and fatalities, reduced motor vehicle insurance costs were anticipated as an added benefit.

The legislature further finds that the provisions of Act 342 are scheduled to be repealed effective September 30, 1991. The primary reasons for the repeal clause were to evaluate the effectiveness of the Act in reducing the number of traffic accidents, injuries, and fatalities caused by driving under the influence of

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intoxicating liquor and to await the outcome of the State's challenge of the constitutionality and rationale of Public Law 98-363.

The legislature also finds that the U.S. Supreme Court, in South Dakota v. Dole, 483 U.S. 203, 97 L.Ed.2d 171, 107 S.Ct. 2793 (1987), upheld the constitutionality of Public Law 98-363.

The legislature finds that the minimum drinking age should remain at twenty-one until the department of transportation study is available to the legislature as provided in this Act. The purpose of this Act is to amend Act 342, Session Laws of Hawaii 1986, as amended by Act 283, Session Laws of Hawaii 1987, to delete the repeal date of September 30, 1991 and replace it with the repeal date of September 30, 1992.

SECTION 2. Act 342, Session Laws of Hawaii 1986, is amended by amending section 9, as amended by section 70 of Act 283, Session Laws of Hawaii 1987, to read as follows:

“SECTION 9. This Act shall take effect on October 1, 1986, and shall be repealed as of September 30, [1991] 1992; provided that on repeal sections 281-1, 281-78, 294-13, 712-1250.5, and 712-1252, Hawaii Revised Statutes, are reenacted in the form in which they read on September 30, 1986.”

SECTION 3. The director of the state department of transportation shall submit to the legislature a study evaluating the effectiveness of this Act. The report shall be submitted no later than twenty-five days before the convening of the regular legislative session of 1992. This study shall evaluate the effectiveness of Act 342, 1986, and shall include, but not be limited to, information and recommendations relating to the extent to which Act 342, 1986, has reduced accidents, injuries, and fatalities caused by driving under the influence of intoxicating liquor, and the extent to which compliance has been achieved with Act 342, 1986.

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, 1991.)

ACT 207

H.B. NO. 1855

A Bill for an Act Relating to Income Tax.

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

SECTION 1. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) 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[.]; or
- (3) A taxpayer (or the taxpayer's spouse if the old residence and the new residence are each used by the taxpayer and the taxpayer's spouse as their principal residence) who, while serving on extended active duty with the armed forces of the United States, purchased a residence in Hawaii and later sold the residence."

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

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1990.

(Approved May 30, 1991.)

ACT 208

S.B. NO. 1130

A Bill for an Act Relating to Tax Relief for Deployed Military Personnel.

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

SECTION 1. The legislature finds that a large number of Hawaii's sons and daughters have been deployed to the Persian Gulf over the past five months. In addition to the personal sacrifice and commitment offered by these members of the forces of the Army, Navy, Air Force, Coast Guard, and Marine Corps, the legislature is aware of the emotional, economic, and personal hardship experienced by their families as a result of long absences and the imminent perils of their assignments.

On January 21, 1991, President George Bush, by Executive Order, officially designated the Persian Gulf as a combat zone for federal income tax purposes. The effect of this designation is to (1) suspend the tax obligations of military personnel as long as they remain in a combat zone; (2) provide for a one hundred eighty-day period after leaving a combat zone during which to fulfill their tax obligations; (3) exclude certain amounts of military pay from federal income tax; and (4) forgive tax liability in cases where a soldier dies while serving in a combat zone.

In addition to these tax relief measures, Congress has adopted legislation signed into law by President Bush as Public Law 102-2.

The purpose of this Act is to provide similar state tax relief for those deployed military personnel and their families. This bill would also conform to section 7508 of the Internal Revenue Code and Public Law 102-2 which will permit individuals serving with or in support of U.S. armed forces in operation desert shield and storm deployment areas (and their spouses) to defer (1) filing tax returns; (2) paying estimated taxes; (3) filing a claim for credit or refund of tax; and (4) other actions associated with income tax requirements. This deferral would be permitted during the period of service or associated hospitalization inside or outside the United States, and for an additional 180 days.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§231- Time for performing certain acts postponed by reason of service in combat zone. (a) This section shall apply to state tax laws set forth in this title 14 that provide for the filing with the director of taxation of a return or statement of the tax or payment of the amount taxable.

(b) This section applies to any individual serving in the armed forces of the United States, or serving in support of the armed forces, in an area designated by the President of the United States by Executive Order as a combat zone for purposes of section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended, at any time during the periods designated by the President by Executive order as the periods of combatant activities in the zone for the purposes of section 112, or hospitalized as a result of injury received while serving in such an area during such time.

The period of service in the zone, plus the period of continuous qualified hospitalization attributable to the injury, and the next one hundred eighty days thereafter, shall be disregarded in determining in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of the individual:

- (1) Whether any of the following acts was performed within the time prescribed therefor:
 - (A) Filing any tax return (except income tax withheld at source);
 - (B) Payment of any tax (except income tax withheld at source) or any installment thereof or any other liability to the State in respect of such tax;
 - (C) Filing a tax appeal pursuant to chapter 232 or an action to recover moneys paid under protest pursuant to section 40-35(b) if the payment was for tax liability imposed pursuant to this title 14;
 - (D) Allowance of a credit or refund of any tax;
 - (E) Filing a claim for credit or refund of any tax;
 - (F) Bringing suit upon any claim for credit or refund;
 - (G) Assessment of any tax;
 - (H) Giving or making any notice or demand for the payment of any tax or with respect to any liability to the State in respect of any tax;
 - (I) Collection by the director, by levy or otherwise, of the amount of any liability in respect of any tax;
 - (J) Bringing suit by the State or any representative of the State on its behalf in respect of any liability in respect of any tax; and
 - (K) Any other act required or permitted under the tax or revenue laws of the State pursuant to rules adopted by the director.
- (2) The amount of any credit or refund.

(c) This section shall apply to the spouse of any individual entitled to the benefits of this section. The preceding sentence shall not cause this section to apply for any spouse for any taxable year beginning more than two years after the date designated under section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended, as the date of termination of combatant activities in a combat zone.

(d) The period of service in a designated combat zone shall include the period during which an individual entitled to benefits under this section is in a missing status, within the meaning of section 6013(f)(3) (with respect to joint return where an individual is in missing status) of the federal Internal Revenue Code of 1986, as amended.

(e) Notwithstanding subsection (b), any action or proceeding authorized by section 231-24 (regardless of the taxable year for which the tax arose) as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the director determines that collection of the amount of any assessment would be jeopardized by delay, subsection (b) shall not operate to stay collection of the amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this subsection the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (b). In any case to which this subsection relates, if the director is required to give any notice to or make any demand upon any person, the requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of the person last known to the director is in an area for which United States post offices under instructions of the Postmaster General, by reason of the combatant activities, are not accepting mail for delivery at the time the notice or demand is signed. In this case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(f) The assessment or collection of any tax or of any liability to the State in respect of any tax or any action or proceeding by or on behalf of the State in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to subsection (b), unless prior to the assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (b).

(g) Treatment of individuals performing Desert Shield services:

(1) Any individual who performed Desert Shield services (and the spouse of the individual) shall be entitled to the benefits of this section in the same manner as if the services were services referred to in subsection (b).

(2) For purposes of this subsection, "Desert Shield services" means any services in the armed forces of the United States or in support of the armed forces if these services are performed in the area designated by the President as the "Persian Gulf Desert Shield area" and the services are performed during the period beginning on August 2, 1990, and ending on the date on which any portion of the Persian Gulf Desert Shield area is designated by the President as a combat zone pursuant to section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended.

(h) For purposes of this section, "qualified hospitalization" means any hospitalization outside the United States and any hospitalization inside the United States, except that not more than five years of hospitalization inside the United States may be taken into account under this subsection. The five-year period of qualified hospitalization inside the United States shall not apply for purposes of applying this section with respect to the spouse of an individual entitled to the benefits of subsection (b).

(i) If an individual is entitled to the benefits of this section with respect to any return and the return is timely filed (determined after the application of subsection (b)) section 231-23(d)(1) with respect to the limitations for computing interest shall not apply and interest shall be paid from the due date of the return regardless of when the return is filed.

(j) If an individual is entitled to the benefits of subsection (b), then, with respect to claiming any credit pursuant to state tax laws set forth in this title 14 and any general credit enacted pursuant to Article VII, section 6, of the State

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Constitution, the limitation period prescribed for such claims shall be determined after the application of subsection (b).”

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- **Abatement of income taxes of members of armed forces on death.** Section 692 (with respect to income taxes of members of armed forces on death) of the Internal Revenue Code shall be operative for the purposes of this chapter and the department shall have the authority to abate income taxes as provided in section 692.

For the purposes of this section “member of the Armed Forces of the United States” shall have the same meaning as provided by section 7701(a)(15) of the Internal Revenue Code.”

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act, upon its approval, shall take effect retroactive to August 2, 1990.

(Approved May 30, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 209

S.B. NO. 955

A Bill for an Act Relating to Military Affairs.

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

SECTION 1. Notwithstanding any statute, rule, ordinance, or provision to the contrary, the chief justice, the governor, and the mayors of the respective counties are hereby authorized to extend through December 31, 1991 any deadline for the filing of forms, applications, renewals, or other such documents, whether formal or informal, including any fees payable therewith, otherwise required by law to be filed prior to December 31, 1991 by military personnel returning from service abroad in Operation Desert Shield/Desert Storm.

SECTION 2. This Act shall take effect on August 7, 1990.

(Approved May 30, 1991.)

ACT 210

S.B. NO. 1088

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 291-31.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall knowingly 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: (1) county law enforcement vehicles authorized and approved by the chief of police of the county in which the vehicle is operated[.]; or (2) department of public safety law enforcement vehicles authorized and approved by the director of public safety. This prohibition shall not apply to factory-installed instrument illumination.”

SECTION 2. Chapter 249, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§249- **Special number plates; military service.** (a) In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance shall provide for a fee, one set of special number plates upon the receipt of an application together with specific proof that the applicant was awarded the Purple Heart by the United States Department of Defense for wounds received in military or naval combat against an armed enemy of the United States, or certification that the applicant is a veteran.

(b) The design of the plates for purple heart recipients shall include the words “COMBAT WOUNDED” and the design of the plates for veterans shall include the word “VETERAN.” These designations shall be imprinted on the left side of the license plates in a manner similar to congressional and honorary consul license plates.

(c) Registration certificates and license plates issued under this section shall not be transferable to any other person and shall be limited to only one vehicle for each qualified applicant. Prior to the transfer of the ownership of the qualified person’s vehicle to another party, the special license plates shall be surrendered to the director of finance as a condition to the issuance of replacement license plates, provided that the director of finance shall allow the survivor of the qualified person, upon request, to retain the front special license plate as a memorial.

(d) The director of finance shall authorize the design of a license plate that is readily identifiable and distinguishable under actual traffic conditions and shall adopt rules pursuant to chapter 91 to carry out this section.”

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; provided that SECTION 2 shall take effect on January 1, 1992.

(Approved May 30, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Homeless.

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

SECTION 1. Section 5 of Act 307, Session Laws of Hawaii 1990, is amended to read as follows:

“SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 1990-1991, for the department of human services to establish an emergency loan and grant program for the homeless.”

SECTION 2. New statutory material is underscored.

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

(Approved May 31, 1991.)

A Bill for an Act Relating to Assistance to Homeless Families.

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
HOMELESS FAMILIES ASSISTANCE ACT**

§ -1 **Title.** This chapter shall be known as the Homeless Families Assistance Act.

§ -2 **Purposes.** The purposes of this chapter are to:

- (1) Provide a timely and appropriate response to homelessness;
- (2) Respond to the growing number of homeless families who are unable to find affordable units to rent; and
- (3) Establish and govern the services and benefits that the director may provide for the homeless through homeless facilities.

§ -3 **Definitions.** As used in this chapter:

“Conventional home” means a customary dwelling unit.

“Department” means the department of human services.

“Director” means the director of human services.

“Donor” means any individual, partnership, corporation, joint-stock company, unincorporated organization, foundation, estate, trust, or any other person or firm that donates money, real property, goods, or services to a homeless facility, or any other program for the homeless authorized by this chapter, including board members, trustees, officers, partners, principals, stockholders, members,

managers, employees, contractors, agents of these entities, or any person who was involved with the donation.

“Emergency shelter” means a shelter facility designed to provide emergency shelter and appropriate and available services to the homeless for up to six weeks.

“Homeless family” means a household with at least one dependent child under 18 years of age that does not have a conventional home or is at risk of becoming homeless and has been determined eligible for shelter, or any other program for the homeless authorized by this chapter, pursuant to standards and criteria established by rule for eligibility, need, and priority; provided that the director may establish by rule exceptions to these eligibility requirements based on special circumstances; and that:

- (1) Is receiving assistance through any state or federal assistance program;
- (2) Is unable to find an affordable unit to rent; or
- (3) Has a sponsoring human service agency or provider agency that states verbally or in writing that the household does not have a conventional home or is at risk of becoming homeless.

“Homeless facility” means a development designed to provide shelter for homeless families pursuant to this chapter, or to facilitate any other homeless program authorized by this chapter, and may include emergency, transitional, or permanent shelters.

“Permanent shelter” means a housing development designed to provide long-term shelter to households.

“Provider agency” means an organization, including its board and officers and any employees, contractors, or agents, contracted by the director to provide labor and services to any homeless facility, or any other program for the homeless authorized by this chapter, that has been:

- (1) Qualified as a charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and
- (2) Qualified by the director to operate and manage a homeless facility, or any other program for the homeless authorized by this chapter, pursuant to standards and criteria established by duly adopted rules for eligibility and classification.

“Transitional shelter” means a shelter facility designed to provide transitional shelter and appropriate and available services to homeless families for up to eighteen months, pursuant to rule.

§ -4 Administration. The director shall administer this chapter through the department. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except for the power to adopt rules.

§ -5 Duties; rules. (a) In addition to any other power or duty prescribed by law, the director shall administer and operate homeless facilities and any other program for the homeless authorized by this chapter; enter into agreements with other state agencies or private providers necessary to assist the homeless; establish programs for the homeless; and take any other actions necessary to effectuate the purposes of this chapter.

(b) The director shall adopt rules pursuant to chapter 91 for the purposes of this chapter; provided these rules, or any rules relating directly to homelessness authorized by any statute, shall be exempt from the public notice and public

hearing requirements of chapter 91, and shall take effect immediately upon filing with the office of the lieutenant governor.

§ -6 Exception to liability for donors. (a) Any donor who gives money to a provider agency, homeless facility, or for any other program for the homeless authorized by this chapter, shall not be liable for any civil damages resulting from the donation.

(b) Any donor who gives land and improvements, or who leases land and improvements at a nominal consideration, to a provider agency, homeless facility, or for any other program for the homeless authorized by this chapter, shall not be liable for any civil damages resulting from the donation except as may result from the donor's gross negligence or wanton acts or omissions; provided that, if the donor at the time of donation gave the director a full accounting of all the dangers concerning the land and improvements known to the donor, then the donor shall not be liable for any civil damages resulting from the donation.

(c) Any donor who provides services or materials used to build and construct a homeless facility shall not be liable for any civil damages resulting from the donor's acts or omissions, except for damages resulting from the donor's gross negligence relating to the donation.

(d) The director shall be responsible for inspecting, reviewing, analyzing, qualifying, and determining that the land, structures, materials, or services donated for the homeless facilities, or other programs for the homeless, are reasonably safe for public use.

§ -7 Contract or conveyance to provider agencies. (a) A state agency holding lands and improvements suitable for use or development for use as a homeless facility provided for under this chapter, may contract or otherwise convey such land and improvements, or the management, operation, and administrative responsibility over the land and improvements, to a provider agency subject to terms authorized by this section, but only if petitioned to do so by the director.

(b) Notwithstanding any other law to the contrary, the board of land and natural resources or other state agency holding such lands and improvements may contract or otherwise convey at a nominal consideration, by direct negotiation and without recourse to public auction, the land and improvements, or the management, operation, and administrative responsibility over the land and improvements, to a provider agency. The land and improvements shall be used by the provider agency for homeless facilities, or for any other program for the homeless authorized by this chapter.

(c) The terms of any of the contract or conveyance shall allow for cancellation of the contract or conveyance should the director find the provider agency in default on any homeless services contract.

§ -8 Program administration. To the extent that appropriations are made available, the director shall contract one or more provider agencies to administer homeless facilities, or any other program for the homeless created by this chapter. Shelter, or assistance through any other program for the homeless authorized by this chapter, shall be available only in areas where there is a provider agency, qualified by the director, available and willing to manage and operate an available homeless facility, or any other program for the homeless authorized under this chapter.

§ -9 Time limits. To the extent that appropriations are made available, a provider agency shall provide shelter or any other program assistance autho-

rized by this chapter to eligible homeless families not later than two days, or such time as is set by rule which shall not be later than seven days, after they apply for the shelter or other program assistance.

§ -10 **Determination of eligibility and need.** (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this chapter, shall be responsible for deciding if an applicant is eligible for shelter or other services at the homeless facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) The provider agency shall determine the degree of need for each homeless family, and in its determination shall consider the resources available and the number of potential eligible applicants in the area served by the provider agency.

§ -11 **Abuse of assistance.** (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this chapter, shall be responsible for deciding if a participant is no longer eligible for shelter or other services at the homeless facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) Pursuant to rule and the right of due process, provider agencies and the director may act collectively in barring homeless families from participating further in any homeless facility, or through any other program for the homeless authorized by this chapter, and take such other actions as provided by rule.

(c) Any person who enters or remains unlawfully in or upon the premises or living quarters of any homeless facility, or any other program for the homeless authorized by this chapter, after reasonable warning or request to leave by that provider agency's authorities or a police officer, shall be guilty of a misdemeanor. A warning or request shall only be issued if the person has engaged in unlawful conduct or has violated house rules and regulations; provided that the warning or request for violation of house rules and regulations shall be issued only if that provider agency has filed a copy of its current rules and regulations governing tenancy or participation at the shelter, facility, or program, and any changes thereto, with the director of commerce and consumer affairs. The rules and regulations shall be reasonable and a copy shall be provided to each tenant or participant. The warning or request shall supersede any invitation by a tenant or participant at the shelter, facility, or program to that person to visit the premises or living quarters.

§ -12 **Exemptions.** (a) Any compensation received by a provider agency for services rendered to homeless families or in operating or managing a homeless facility authorized by this chapter is exempt from taxes under chapter 237.

(b) Any county mayor may exempt by executive order, donors and homeless provider agencies from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate the exemptions granted by this subsection.

(c) Any provider agency operating or managing a homeless facility, or any other program for the homeless authorized by this chapter, is exempt from any requirements contained in part VIII of chapter 346, chapter 467, and chapter 521.

§ -13 **Emergency/transitional shelter volunteers exempted.** (a) For the purposes of this section, "emergency/transitional shelter volunteer" means an

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individual who:

- (1) Is a tenant at an emergency or transitional shelter administered pursuant to this chapter;
- (2) Is not an employee of the provider agency operating or managing the shelter;
- (3) Is under the direction of the provider agency operating or managing the shelter and not the director or State; and
- (4) Provides up to eighty hours of volunteer labor or services per month to the provider agency operating or managing the shelter, notwithstanding payment of stipends or credits for such labor and services.

(b) Provider agencies may accept labor and services from emergency/transitional shelter volunteers.

(c) In addition to any exemptions granted to nonpaid labor, emergency/transitional shelter volunteers who acknowledge in writing that they are emergency/transitional shelter volunteers, shall not be construed to be in the employ of the provider agency operating or managing the shelter. The volunteers' labor and services provided to the provider agency operating or managing the shelter shall not be construed to constitute employment, and the volunteers shall not be construed to be employees of the provider agency operating or managing the shelter, under title 21 or any other labor law.

§ -14 Annual program audits. (a) The director shall ensure that a compliance audit, paid for by the department, by an independent auditing agency is carried out expeditiously for each fiscal year during which any provider agency dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this chapter. The audit shall address all provider agencies for that type of facility or program and shall include recommendations to address any problems found. The auditing agency shall include a representative number of interviews with recipients of the shelter or other form of assistance as part of its compliance audit.

(b) Copies of each audit shall be submitted to the director, the director of finance, the president of the senate, and the speaker of the house of representatives.

(c) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this chapter shall contain a requirement that the provider agency shall address the recommendations made by the auditing agency, subject to exceptions as set by the director.

(d) Failure to carry out the recommendations made by the auditing agency may be grounds for the director to bar a provider agency from further contracts for programs authorized by this chapter until the barred provider agency has addressed all deficiencies.

§ -15 Provider agency and donor cooperation are not in restraint of trade. No provider agency or agencies, or donor or donors, or method or act thereof that complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily, or the creation of a combination or pool, or to accomplish any improper or illegal purpose. Any cooperation or agreement established pursuant to rule shall not be considered as illegal, in restraint of trade, or as part of a conspiracy or combination to accomplish an illegal purpose or act.

§ -16 Construction of chapter. If there is any conflict between this chapter and any other law, the provisions of this chapter shall control."

SECTION 2. Section 46-1.5, Hawaii Revised Statutes, is amended to read as follows:

“§46-1.5 General powers and limitation of the counties. Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government, which shall establish the county executive, administrative, and legislative structure and organization, including, but not limited to, the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office.
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures which may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property.
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law.
- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer.
- (5) Each county shall have the power to maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; and to remove from the channels, and from the shores and beaches, any debris which is likely to create an unsanitary condition or to otherwise become a public nuisance; provided that to the extent any of the foregoing work is a private responsibility the responsibility may be enforced by the county in lieu of the work being done at public expense. Counties shall also have the power to construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded, and to enact zoning ordinances providing that lands deemed subject to seasonable or periodic, or occasional flooding shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof, as required by the Federal Flood Insurance Act of 1956 (chapter 1025, Public Law 1016).
- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so.
- (7) Each county shall have the power to exercise such regulatory powers over business activity as are assigned to them by chapter 445, or other general law.
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for.
- (9) Each county shall have the power to provide by ordinance for the improvement or maintenance assessments of districts within the county.

- (10) Except as otherwise provided, each county shall have the power to, in any manner, give or loan credit to, or in aid of, any person or corporation, and any indebtedness or liability incurred contrary to this paragraph shall be void.
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend such rules as the county deems necessary for the public convenience and necessity.
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove nuisances, and compel the clearing of refuse and uncultivated undergrowth from unoccupied lots, and in these connections impose and enforce liens upon the property for the cost to the county of completing the necessary work where the owners fail after reasonable notice to comply with the ordinances.
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute, provided also that the [statute] ordinance does not disclose or express an implied intent that the [statute] ordinance shall be exclusive or uniform throughout the State.
- (14) Each county shall have the power to make and enforce within the limits of the county all necessary ordinances covering: all local police matters [and]; all matters of sanitation[.]; all matters of inspection of buildings[.]; all matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues[, and]; all matters of the collection and disposition of rubbish and garbage[.]; and to provide exemptions for homeless facilities, and any other program for the homeless authorized by chapter _____, for all matters under this paragraph; and to appoint county physicians and such sanitary and other inspectors as may be necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to such limitations as may be placed on them by the terms and conditions of their appointments[.]; and to fix a penalty for the violations of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law.
- (15) Each county shall have the power to provide public pounds, to regulate the impounding of stray animals and fowl, and their disposition, and to provide for the appointment, powers, duties, and fees of animal control officers.
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that any property held for school purposes may not be disposed of without the consent of the superintendent of education, that no property bordering the ocean shall be sold or otherwise disposed of, and that all proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes.

- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State.
- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of community promotion and public celebrations, the entertainment of such distinguished persons as may from time to time visit the county, for the entertainment of other distinguished persons as well as public officials when deemed to be in the best interest of the community, and the rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance.
- (19) Each county shall have the power to:
 - (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, water works, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings and manage, regulate, and control the same;
 - (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic, and telegraphic service to the county;
 - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways and for flushing the sewers; and
 - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways.
- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance.
- (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military civil disaster.
- (22) Each county shall have the power to sue and be sued in its corporate name.
- (23) Each county shall have the power to establish and maintain water works and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing water works systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same.
- (24) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any civil fine may be administratively imposed after an opportunity for a hearing under chapter 91. Such a

[[]proceeding[[]] shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court.

- (25) Any law to the contrary notwithstanding, any county mayor may exempt by executive order donors, provider agencies, homeless facilities, and any other program for the homeless under chapter _____, from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant the exemptions granted by this paragraph.”

SECTION 3. Section 171-43.1, Hawaii Revised Statutes, is amended to read as follows:

“§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified [by the director of taxation] to be tax exempt under [section 235-9(a)(2).] sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for [charitable, religious, or educational purposes. If the eleemosynary organization has been chartered by the United States Congress for fraternal, patriotic, historical, and educational purposes, the lands shall be used for the purposes for which the congressional charter was issued.] the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.”

SECTION 4. Section 237-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- (a) This chapter shall not apply to the following persons:
- (1) Banks taxable under chapter 241;
 - (2) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;
 - (3) Public utilities owned and operated by the State or any county or other political subdivision thereof;
 - (4) Insurance companies which pay the State a tax upon their gross premiums under chapter 431;
 - (5) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of such societies, orders, or associations, and to their dependents;
 - (6) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended [by the Housing Act of 1961, the Senior Citizens Housing Act of 1962, the Housing Act of 1964, and the Housing and Urban Development Act of 1965], as well as that of operating a prepaid

- legal services plan[;], as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under chapter ;
- (7) Business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
 - (8) Hospitals, infirmaries, and sanitararia;
 - (9) Cooperative associations incorporated under chapter 421 or 422 or Code section 521 cooperatives which fully meet the requirements of section 421-23 or 422-33, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
 - (A) The exemption shall apply only to the gross income derived from activities which are pursuant to purposes and powers authorized by chapter 421 or 422, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
 - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable; and
 - (C) As used in this paragraph, "section 521 cooperatives" mean associations which qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
 - (10) Building and loan associations taxable under chapter 241;
 - (11) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
 - (12) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of such persons);
 - (13) Financial services loan companies taxable under chapter 241; provided that the exemption shall apply only to the gross income derived from the "engaging in the business of a financial services loan company" as defined in section 408-2;
 - (14) Development companies taxable under chapter 241; provided that the exemption shall apply only to gross income derived from interest on loans made to borrowers as provided by Title V of the federal Small Business Investment Act of 1958, Public Law 699, as amended;
 - (15) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations;
 - (16) Small business investment companies taxable under chapter 241; provided that the exemption shall apply only to the gross income

derived from activities engaged in as provided by the federal Small Business Investment Act of 1958, Public Law 699, as amended; provided further that the exemption shall not apply to gross income derived from consulting and advisory services engaged in under the first sentence of section 308(b) of Public Law 699; and

- (17) Financial corporations taxable under chapter 241; provided that the exemption shall apply only to interest, discount, points, loan fees, loan origination charges, and finance charges which are part of the computed annual percentage rate of interest and which are contracted and received for the use of money; provided further that in the case of financial corporations acting as interbank brokers taxable under chapter 241, the exemption shall apply only to gross income derived from brokerage services. As used in this paragraph, "finance charge" and "annual percentage rate" have the same meaning as defined in the federal Truth in Lending Act (15 U.S.C. 1601 et seq.)."

SECTION 5. Section 346-152, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Nothing in this part shall be construed to include:

- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;
- (2) A person, group of persons, or facility caring for a child less than six hours a week;
- (3) A kindergarten, school, or program licensed by the department of education;
- (4) A program which provides exclusively for a specialized training or skill development for children, 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 multiservice 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; [and]
- (6) Programs for children four years and older, which operate for no more than two consecutive calendar weeks in a three-month period[.]; and
- (7) A provider agency operating or managing a homeless facility, or any other program for the homeless authorized under chapter _____."

SECTION 6. 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 salesperson 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 salesperson with reference to such real estate; provided that the term "owner" as used in this 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 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 the person is the custodian or caretaker;
- (4) To any person who manages, rents, or operates a hotel[.]; or
- (5) To any provider agency owning, leasing, operating or managing a homeless facility, or any other program for the homeless authorized under chapter _____.”

SECTION 7. Section 480-11, Hawaii Revised Statutes, is amended to read as follows:

“§480-11 Exemption of certain cooperative organizations; insurance transactions; approved mergers of federally regulated companies[.]; homeless facility and program donors and provider agencies. (a) Nothing in this chapter shall be construed to forbid the existence and operation of fishery, agricultural, or consumer cooperative organizations or associations instituted for the purpose of mutual help, and which are organized and operated under chapter 421, 422, or 421C, or which conform and continue to conform to the requirements of the Capper-Volstead Act (7 U.S.C. 291 and 292); provided that if any such organization or association monopolizes or restrains trade or commerce in any section of this State to such an extent that the price of any fishery, agricultural, or consumer product is unduly enhanced by reason thereof this chapter shall apply to such acts.

(b) This chapter shall not apply to any transaction in the business of insurance which is in violation of any section of this chapter if the transaction is expressly permitted by the insurance laws of this State; and provided further that nothing in this section shall render this chapter inapplicable to any agreement to boycott, coerce, or intimidate or act of boycott, coercion, or intimidation.

(c) This chapter shall not apply to mergers of companies where such mergers are approved by the federal regulatory agency which has jurisdiction and control over such mergers.

(d) This chapter shall not apply to:

- (1) Any provider agencies or donors under chapter _____ ;
- (2) Any provider agency or donor method or act that complies with chapter _____ ; or
- (3) Any cooperation or agreement authorized pursuant to rule under chapter _____.”

SECTION 8. Section 521-7, Hawaii Revised Statutes, is amended to read as follows:

“§521-7 Exclusions from application of chapter. Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services[.];
- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii[.];
- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser[.];
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization[.];
- (5) Transient occupancy on a day to day basis in a hotel or motel[.];
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon such employment or by a pensioner of the owner or landlord[.];
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease[.];
- (8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner’s rights[.]; or
- (9) [Except as provided in section 521-69.5, occupancy in a project for temporary or transitional housing for homeless persons operated by a nonprofit corporation; provided that the nonprofit corporation operating the project has filed a copy of its current rules and regulations governing tenancy at the project, and any changes thereto, with the director of commerce and consumer affairs, which rules and regulations shall be reasonable and a copy of which shall have been provided to each tenant.] Occupancy in a homeless facility, or any other program for the homeless authorized under chapter _____.”

SECTION 9. Section 521-8, Hawaii Revised Statutes, is amended by:

1. Deleting the definition of “homeless person”.

[“Homeless person” means a person who does not reside within a dwelling unit.”]

2. Deleting the definition of “nonprofit corporations”.

[“Nonprofit corporations” means organizations incorporated under chapter 415B.”]

3. Deleting the definition of “temporary housing for the homeless”.

[“Temporary housing for the homeless” means a shelter which provides short-term housing for homeless persons.”]

4. Deleting the definition of “transitional housing for the homeless”.

[““Transitional housing for the homeless” means a shelter which provides housing and social programs for homeless persons with the goal of assisting such persons to move into dwelling units.”]

SECTION 10. Section 521-69.5, Hawaii Revised Statutes, is repealed.

SECTION 11. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

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

(Approved May 31, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 213

S.B. NO. 1383

A Bill for an Act Relating to Homeless Programs.

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

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Homeless shelter stipends. (a) As used in this section, unless the context requires otherwise:

“Emergency shelter” means a shelter facility designed to provide emergency shelter, and appropriate and available services to the homeless for up to six weeks.

“Homeless shelter stipend” means a payment on behalf of a homeless household to assist with shelter and service payment to a provider agency.

“Provider agency” means an organization, including its board and officers and any employees, contractors, or agents, contracted by the director to provide labor and services to any homeless facility, or any other program for the homeless authorized by this chapter, that has been:

- (1) Qualified as a charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and
- (2) Qualified by the director to operate and manage a homeless facility, or any other program for the homeless authorized by this chapter, pursuant to standards and criteria established by duly adopted rules for eligibility and classification.

“Transitional shelter” means a shelter facility designed to provide transitional shelter, and appropriate and available services to homeless families for up to eighteen months, pursuant to rule.

(b) Prior to July 1, 1992, homeless shelter stipends at transitional shelters shall not exceed \$350 per household unit of four members per month. Prior to July 1, 1992, the stipend for emergency shelters shall not exceed \$10 per person per night. The stipend limits shall be adjusted by the director on July 1, 1992, and each July 1st thereafter, based on the change in the consumer price index for Honolulu for the preceding calendar year, rounded off to the nearest dollar. The director may adopt rules pursuant to chapter 91 to establish exceptions to the stipend limits, based on special circumstances.

(c) The director may make or may contract to make homeless shelter stipend payments on behalf of one or more homeless families to a provider agency operating or managing an emergency or transitional shelter in such amounts and under such circumstances as provided by rule.

(d) In making homeless shelter stipend payments to a provider agency, the director may establish minimal services to be provided by the provider agency to homeless families at the agency's shelter. The director may also direct provider agencies to establish and manage a savings account program as described in subsection (e). Additionally, the director may direct provider agencies to subcontract for outreach services from other private agencies specializing in programs for the unsheltered homeless.

(e) Provider agencies may establish and collect shelter and services payments from homeless families in excess of the amount received in homeless shelter stipend payments pursuant to rule. Provider agencies may also set aside a portion of the payments in a savings account to be made available to homeless families when these families vacate the shelter.

(f) Selection of provider agencies to receive homeless shelter stipends shall not be subject to chapters 42, 102, or 103; provided that the selection of provider agencies receiving homeless shelter stipends shall be subject to rules adopted pursuant to chapter 91, which ensure compliance with Article VII, Section 4 of the Constitution of the State of Hawaii."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved May 31, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5

ACT 214

H.B. NO. 73

A Bill for an Act Relating to the Hawaii Penal Code.

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

SECTION 1. Section 707-733, Hawaii Revised Statutes, is amended to read as follows:

"§707-733 Sexual assault in the fourth degree. (1) A person commits the offense of sexual assault in the fourth degree if:

- (a) The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion; [or]
- (b) The person knowingly exposes the person's genitals to another person [to whom the actor is not married] under circumstances in which the actor's conduct is likely to [place] alarm the other person or put the other person in fear of bodily injury[.]; or
- (c) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.

(2) Sexual assault in the fourth degree is a misdemeanor.

(3) Whenever a court sentences a defendant for an offense under this section, the court may order the defendant to submit to a pre-sentence mental and medical examination pursuant to section 706-603.”

SECTION 2. Section 707-734, Hawaii Revised Statutes, is amended to read as follows:

“§707-734 [Sexual assault in the fifth degree.] Indecent exposure. (1) A person commits the offense of [sexual assault in the fifth degree] indecent exposure if, the person intentionally exposes the person’s genitals to a person to whom the person is not married under circumstances in which the [person’s] actor’s conduct is likely to cause affront [or alarm].

(2) [Sexual assault in the fifth degree] Indecent exposure is a petty misdemeanor.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that 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 June 6, 1991.)

ACT 215

H.B. NO. 363

A Bill for an Act Relating to Domestic Violence.

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

SECTION 1. Purpose. The legislature finds that while the police currently have authority to order a domestic abuser to stay away from the premises of the victim for up to twelve hours, this period of time is inadequate for the victim to find a safe place to move to and to properly collect belongings. The purpose of this Act is to give the police authority to order the domestic abuser to stay away from the victim’s residence for up to twenty-four hours to give the victim more time to move out without again becoming an abused family or household member.

SECTION 2. Section 709-906, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) Any police officer [may], with or without a warrant, may 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 person upon a family or household member, whether or not such physical abuse or harm occurred in the officer’s presence:

- (a) The police officer may make reasonable inquiry of the 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 person upon a family or household member, the police officer may lawfully order [such] the person to leave the premises for a cooling off period of [twelve] ~~twenty-four~~ hours; [and] ~~provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects.~~
- (c) Where the police officer makes the finding referred to in subsection (b) and the incident occurs after 4:30 p.m. on any Friday, or on any Saturday, Sunday or legal holiday, the order to leave the premises shall commence immediately and be in full force but the twenty-four hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- [(c)] (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person; and
- [(d)] (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of [twelve hours] the cooling off period, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member.”

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

SECTION 4. This Act shall take effect upon its approval; provided that on June 30, 1993, this Act shall be repealed and subsection 4 of section 709-906, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 6, 1991.)

ACT 216

H.B. NO. 621

A Bill for an Act Relating to Child Support.

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

SECTION 1. Section 576D-7, Hawaii Revised Statutes, is amended to read as follows:

“§576D-7 Guidelines in establishing amount of child support. (a) The family court, in consultation with the agency, shall establish guidelines to establish the amount of child support when an order for support is sought or being modified under this chapter. The guidelines shall be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

The guidelines may include consideration of the following:

- (1) All earnings, income, and resources of both parents; provided that earnings be the net amount, after deductions for taxes, and social security. Overtime and cost of living allowance may be deducted where appropriate;
- (2) The earning potential, reasonable necessities, and borrowing capacity of both parents;
- (3) The needs of the child for whom support is sought;
- (4) The amount of public assistance which would be paid for the child under the full standard of need as established by the department;
- (5) The existence of other dependents of the obligor parent;
- (6) To foster incentives for both parents to work;
- (7) To balance the standard of living of both parents and child and avoid placing any below the poverty level whenever possible;
- (8) To avoid extreme and inequitable changes in either parent's income depending on custody; and
- (9) If any obligee parent (with a school age child or children in school), who is mentally and physically able to work, remains at home and does not work, thirty (or less) hours of weekly earnings at the minimum wage may be imputed to that parent's income.

(b) The guidelines shall be:

- (1) Applied statewide;
- (2) To simplify the calculations as much as practicable;
- (3) Applied to ensure, at a minimum, that the child for whom support is sought benefits from the income and resources of the obligor parent on an equitable basis in comparison with any other minor child of the obligor parent;
- (4) Established by October 1, 1986; and
- (5) Transmitted to the agency and all family court judges when available or updated, and shall be considered by the judges in the establishment of each child support order.

(c) The family court, in consultation with the agency, may update the guidelines when the family court deems it necessary.

(d) The adoption of any substantive modifications made to the guidelines set forth in this section may constitute a change in circumstances sufficient to permit review of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation."

SECTION 2. Section 576E-14, Hawaii Revised Statutes, is amended to read as follows:

"§576E-14 Modification, suspension, or termination of court and administrative orders. (a) The responsible parent, the agency, or the person having custody of the dependent child may file a request for suspension, termination, or modification of the child support provisions of a Hawaii court or administrative order with the agency. Such request shall be in writing, shall set forth the reasons for suspension, termination, or modification, including the change in circumstances since the date of the entry of the order, and shall state the address of the requesting party. The agency shall thereafter commence administrative proceedings pursuant to sections 576E-5 through 576E-9.

(b) Only payments accruing subsequent to service of the request on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The agency shall not be stayed from enforcement of the existing order pending the outcome of the hearing on the request to modify.

(c) The adoption of any substantive modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.

[(c)] (d) Upon satisfaction of a responsible parent's support obligation toward the dependent child and the State, the agency or hearings officer without application of any party may issue an order terminating child support and may concurrently, if applicable, issue an order terminating existing assignments against the responsible parent's income and income withholding orders."

SECTION 3. Section 576E-15, Hawaii Revised Statutes, is amended to read as follows:

"§576E-15 Guidelines to be followed. When an administrative order establishes or modifies the amount of child support required to be paid by a responsible parent, the guidelines established under section 576D-7 shall be applied, except when exceptional circumstances warrant departure. The most current guidelines shall be used to calculate the amount of the child support obligation."

SECTION 4. Section 580-47, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) No order entered under the authority of subsection (a) [of this section] or entered thereafter revising so much of such an order as provides for the support, maintenance, and education of the children of the parties shall impair the power of the court from time to time to revise its orders providing for the support, maintenance, and education of the children of the parties upon a showing of a change in the circumstances of either party or any child of the parties since the entry of any prior order relating to such support, maintenance, and education. The adoption of any substantive modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.

(d) Upon the motion of either party supported by an affidavit setting forth in particular a material change in the physical or financial circumstances of either party, or upon a showing of other good cause, the moving party [may], in the discretion of the court, and upon adequate notice to the other party, may be granted a hearing. The fact that the moving party is in default or arrears in the performance of any act or payment of any sums theretofore ordered to be done or paid by [him or her] the party shall not necessarily constitute a bar to the granting of the hearing. The court, upon such hearing, for good cause shown may amend or revise any order and shall consider all proper circumstances in determining the amount of the allowance, if any, which shall thereafter be ordered."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect ninety days after its approval by the Governor.

(Approved June 6, 1991.)

ACT 217

H.B. NO. 734

A Bill for an Act Relating to Medical Services Excise Tax Credit.

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

SECTION 1. Section 235-55.9, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) This section shall not be effective after December 31, [1991.] 1996.”

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 6, 1991.)

ACT 218

H.B. NO. 851

A Bill for an Act Relating to the State Capitol Tour and Information Program.

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

SECTION 1. The state capitol tour service function of the legislature is hereby transferred to the office of information in the office of the governor until the state capitol renovation project is completed.

The two employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act. No employee so transferred shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the legislature relating to the functions transferred to the office of information shall be transferred with the functions to which they relate.

SECTION 2. Upon the transfer of the state capitol tour service function, the office of information shall formulate a plan for the implementation of a permanent capitol district tour and information program to be effective upon the completion of the state capitol renovation project. The plan shall be formulated in accordance with the recommendations offered by the capitol tour and information services advisory committee in its 1991 report to the legislature.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$240,000, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$209,500, or so much thereof as may be necessary for fiscal year 1992-1993, for four tour service personnel; the purchase

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of supplies, equipment, and furniture; and the contracting of appropriate agencies or individuals for program development. The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 6, 1991.)

ACT 219

H.B. NO. 923

A Bill for an Act Relating to Asbestos.

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 ASBESTOS

PART I. DEFINITIONS AND GENERAL PROVISIONS

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

“Asbestos” means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite - grunerite (amosite), anthophyllite, actinolite, and tremolite.

“Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted or issued pursuant to this chapter.

“Department” means the department of health.

“Director” means the director of health or a duly authorized agent, officer, or inspector.

“Emission” means the act of releasing or discharging asbestos into the ambient air from any source.

“Facility” means any institutional, commercial, public, private, or industrial structure, installation or building.

“Party” means each person or agency named as a party or properly entitled to be a party in any court or agency proceeding.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Renovation” means altering in any way one or more facilities or structural components of a facility.

“Repair” means the restoration of asbestos-containing material that has been damaged to seal exposed areas where asbestos fibers may be released, including the repair of enclosures around asbestos-containing materials. The term, as it relates to the repair of previously encapsulated asbestos-containing materials, includes filling damaged areas with asbestos substitute and re-encapsulating.

§ -2 **Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable

and proper for the effective administration of this chapter, except the power to make rules.

§ **-3 Duties, rules, powers, appointment of hearings officers.** (a) In addition to any other power or duty prescribed by law and in this chapter, the director shall provide for the review of asbestos abatement plans and the inspection of abatement projects within the State.

(b) The director may make, amend, and repeal state rules controlling and prohibiting asbestos pollution and regulating asbestos abatement. All rules shall be adopted pursuant to chapter 91. Any person heard at a public hearing to adopt these rules shall be given written notice of the action taken by the department with respect to the same.

(c) The director, without regard to chapters 76 and 77, may appoint hearings officers to conduct public participation activities, including public hearings and public informational meetings.

§ **-4 Inspection of premises.** The director, in accordance with any law, may enter and inspect any building or place to investigate an actual or suspected source, use, or presence of asbestos to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, any permit or other approval granted by the department pursuant to this chapter, or any order issued by the department pursuant to this chapter, and to make reasonable tests in connection therewith.

No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of asbestos, shall be disclosed by the official or employee except as it relates directly to asbestos and then only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

§ **-5 Enforcement.** (a) If the director determines that any person is in violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which the person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports;
- (2) May require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice to answer the charges complained of; and
- (3) May impose penalties as provided in part II by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, after having been served notice of the violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring the person to submit a written schedule within thirty days specifying the measures to be taken and the time within which the measures will be taken to bring the person into

compliance with this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit issued pursuant to this chapter;

- (2) Shall accept or modify the submitted schedule within sixty days of receipt of the schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director;
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time as the director accepts the written schedule; or
- (4) May impose penalties as provided in part II by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing the nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless, not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served, unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice to answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case in accordance with chapter 91. If, after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed, modify or affirm the order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved or the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty, which shall be a government realization.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

§ **-6 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by an emission of asbestos, that requires immediate action, the director, with the approval of the governor and without a public hearing, may order any person causing or contributing to the emission to immediately reduce or stop the emission or may take any and all other actions as may be necessary. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power that the governor or any other officer may have to declare an emergency or to act on the basis of such a declaration, if the power is conferred by statute or constitutional provision or inheres in the office.

PART II. PENALTIES

§ **-20 Civil penalties.** (a) Any person who violates this chapter, any rule adopted by the department under this chapter, or any condition in a permit issued under this chapter, shall be fined not more than \$10,000 for each separate offense. Each day of each 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.

(b) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building or place that the officer or employee is authorized to enter and inspect, shall be fined not more than \$5,000. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

§ **-21 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter or rules adopted under this chapter, the director may impose by order the penalties specified in section -20. Factors to be considered in imposing an administrative penalty shall include the nature and history of the violation and any prior violations, and the opportunity, difficulty, and history of corrective action. It shall be presumed that the violator's economic and financial conditions allow payment of the penalty; the burden of proof to the contrary shall be on the violator. In any judicial proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

§ **-22 Negligent violations.** Any person who negligently violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter, shall be fined not less than \$2,500 nor more than \$25,000 per day for each violation or imprisoned for not more than one year, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this section, punishment shall be a fine of not more than \$50,000 per day for each violation or imprisonment of not more than two years, or both.

§ **-23 Criminal penalties.** Any person who knowingly violates this chapter or any condition in a permit issued under this chapter, shall be fined not less than \$5,000 nor more than \$50,000 per day for each violation or imprisoned for not more than three years, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this section, the person

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shall be fined not more than \$100,000 per day for each violation or imprisoned for not more than six years, or both.

§ -24 Knowing endangerment. (a) Any person who knowingly violates this chapter or any condition in a permit issued under this chapter, and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury, upon conviction, shall be fined not more than \$250,000 or imprisoned for not more than fifteen years, or both.

(b) A person that is an organization, upon conviction of violating this section, shall be fined not more than \$1,000,000.

(c) For the purpose of this section, in determining whether a defendant who is an individual knew that the individual's conduct placed another person in imminent danger of death or serious bodily injury:

- (1) The person shall be responsible only for actual awareness or actual belief that the person possessed; and
- (2) Knowledge possessed by a person other than the defendant but not by the defendant, may not be attributed to the defendant, except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(d) It shall be an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

- (1) An occupation, a business, or a profession; or
- (2) Medical treatment or medical or scientific experimentation conducted by professionally-approved methods and the other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this section by a preponderance of the evidence.

(e) As used in this section:

"Organization" means a legal entity, other than a government, established or organized for any purpose. The term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

§ -25 False statements. (a) Any person who knowingly makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a misdemeanor.

(b) A person that is an organization, upon conviction of violating this section, shall be fined not more than \$20,000.

§ -26 Injunctive relief. The director may institute a civil action for injunctive relief in any court of competent jurisdiction to prevent the violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior

revocation of the permit or variance. The court may grant relief in accordance with the Hawaii rules of civil procedure.

§ **-27 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

§ **-28 Fees.** The director may establish reasonable fees for the issuance of notifications, certificates, and licenses to cover the cost of issuance thereof, and for the implementation and enforcement of the terms and conditions of permits, not including court costs or other costs associated with any formal enforcement action. The fees shall be deposited to the credit of the general fund.

§ **-29 Public records; confidential information; penalties.** Asbestos abatement applications and reports on emissions submitted to the department shall be made available for inspection by the public during established office hours unless the reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department, acquiring confidential information from the inspection authorized by section -4, who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or any rule or standard adopted pursuant to this chapter, shall be fined not more than \$1,000.

§ **-30 Other action not barred.** No existing civil or criminal remedy for any wrongful action that is in violation of any statute or any rule of the department or ordinance of any county, shall be excluded or impaired by this chapter.

§ **-31 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules, orders, and permits of the department.

§ **-32 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

§ **-33 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to asbestos control that are not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to asbestos control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

§ **-34 Priority in courts.** All actions brought pursuant to this chapter, the rules adopted under this chapter, or the conditions of a permit issued under this chapter, at the discretion of the court, shall receive priority in the courts of the State.

PART III. ASBESTOS EMISSION CONTROL

§ **-40 Prohibition.** No person, including any public body, shall engage in any activity that causes an emission.

§ **-41 Powers and duties; specific.** The director may:

- (1) Establish emission standards for the State as a whole or for any part thereof, including an indoor nonoccupational exposure standard;
- (2) Establish a model accreditation program; and
- (3) Establish standards and notification requirements for the demolition and renovation of facilities containing asbestos.

§ **-42 Recordkeeping and monitoring requirements.** The director may require the owner or operator of any asbestos abatement activity to:

- (1) Establish and maintain such records;
- (2) Make such reports;
- (3) Install, use, and maintain such monitoring equipment or methods;
- (4) Sample such emissions; and
- (5) Provide such other information; as the department may require.

§ **-43 Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints on asbestos pollution, hold hearings in connection with asbestos pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of asbestos pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings.

§ **-44 Research, education, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, hazards, or means to monitor or abate sources of asbestos pollution;
- (2) With the approval of the governor, cooperate with, and receive money from, the federal government, or any political subdivision of the State, or private sources, for the study and control of asbestos pollution; and
- (3) Conduct and supervise statewide educational and training programs on asbestos pollution prevention, control, and abatement, including the preparation and distribution of information relating to asbestos pollution."

SECTION 2. All acts passed by the legislature during this Regular Session of 1991, whether enacted before or after the effective date of this Act, shall be amended to conform with this Act unless such acts specifically provide that this Act is being amended.

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

(Approved June 6, 1991.)

ACT 220

H.B. NO. 966

A Bill for an Act Making an Appropriation for Compensation of Criminal Injuries.

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 \$568,486.91, or so much thereof as may be necessary for fiscal year 1991-1992, for the purpose of compensating certain persons or their providers of services pursuant to chapter 351, Hawaii Revised Statutes.

SECTION 2. The sum appropriated shall be deposited in the criminal injuries compensation fund to be used for payments as authorized by the criminal injuries compensation commission. The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 3. This Act shall take effect July 1, 1991.

(Approved June 6, 1991.)

ACT 221

H.B. NO. 1007

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. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$3,183,109.45 or 0.12 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 2. 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 entities, such claims being against the State for overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

REFUND OF TAXES: Amount

None

JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:

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Ahnee v. State of Hawaii Civil No. 88-0401(1), Second Circuit Amount of Settlement: No interest	\$150,000.00
Auyong v. State of Hawaii Civil No. 89-0988-04, First Circuit Amount of Settlement: No interest	\$ 18,000.00
Cuizon v. State of Hawaii Civil No. 2658, Fifth Circuit Amount of Settlement: No interest	\$ 82,500.00
Dagger v. State of Hawaii, et al. Civil No. 86-322, Third Circuit Amount of Settlement: No interest	\$300,000.00
Duldulao v. Hilo Hospital, et al. Civil No. 89-185, Third Circuit Amount of Settlement: No interest	\$ 55,000.00
Elliott v. State of Hawaii Civil No. 89-0933-03, First Circuit Amount of Settlement: No interest	\$ 95,000.00
Espino v. State of Hawaii Civil No. 88-0056(2)/88-0103(2), Second Circuit Amount of Settlement: No interest	\$168,930.00
Flazer v. State of Hawaii Civil No. 90-1010-04, First Circuit Amount of Judgment: Interest at 4% from 12/24/90:	\$ 29,019.71 \$ 28,430.84 \$ 588.87
Fogarty v. State of Hawaii Civil No. 78424, First Circuit Amount of Settlement: No interest	\$ 31,462.36
Galloway v. State of Hawaii Civil No. 88-3158-10, First Circuit Amount of Settlement: No interest	\$ 80,000.00

Gellar v. Shimoda, et al. Civil No. 88-2861-09, First Circuit Amount of Settlement: No interest	\$125,000.00
Hardy v. State of Hawaii Department of Taxation Civil No. 88-1579-05, First Circuit Amount of Settlement: Interest at 4% from 9/1/90:	\$ 71,856.44 \$ 70,000.00 \$ 1,856.44
Hosaki v. Danielson, et al. Civil No. 86-3545, First Circuit Amount of Settlement: No interest	\$300,000.00
Kamaka v. Gomes, et al. Civil No. 89-0168-01, First Circuit Amount of Settlement: No interest	\$ 85,000.00
Kayser v. Yacapin, et al. Civil No. 84-2002, First Circuit Amount of Settlement: No interest	\$ 25,000.00
Kupihea v. State of Hawaii, et al. Civil No. 90-1494-05, First Circuit Amount of Settlement: No interest	\$ 45,000.00
Lindsey v. State of Hawaii Civil No. 89-403, Third Circuit Amount of Settlement: No interest	\$ 45,000.00
Loa v. State of Hawaii, et al. Civil No. 89-3946-12, First Circuit Amount of Settlement: No interest	\$ 25,000.00
Makue, et al. v. Reid, et al. Civil No. 86-3311, First Circuit Amount of Settlement: No interest	\$200,000.00
Reid v. General Motors Corp., et al. Civil No. 88-2002-07, First Circuit Amount of Settlement: No Interest (Consolidated case)	\$ 50,000.00

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Nagao v. State of Hawaii Civil No. 89-167, Fifth Circuit Amount of Judgment: Interest at 4% from 9/4/90:	\$ 23,756.16 \$ 23,000.00 \$ 756.16
Nakamoto v. State of Hawaii, et al. Civil No. 88-0882-03, First Circuit Amount of Settlement: No interest	\$ 35,000.00
Pierce v. State of Hawaii, et al. Civil No. 85-3973, First Circuit Amount of Settlement: No interest	\$100,000.00
Redmyer v. State of Hawaii Civil No. 87-0123, Fifth Circuit Amount of Settlement: No interest	\$ 35,000.00
Smith v. Uohara, et al. Civil No. 86-057(H), Third Circuit Amount of Settlement: No interest	\$ 75,000.00
Tafoya v. State of Hawaii Civil No. 88-0204, Fifth Circuit Amount of Settlement: No interest	\$ 90,000.00
Tualo, et al. v. Solmirin, et al. Civil No. 88-0418-02, First Circuit Amount of Settlement: No interest	\$ 25,000.00
Von Blohn v. Stein, et al. Civil No. 89-00244-HMF, U.S.D.C. Amount of Settlement: No interest	\$ 50,000.00
Wiggins v. State of Hawaii Civil No. 90-1339-05, First Circuit Amount of Settlement: No interest	\$ 90,000.00
Young v. University of Hawaii, et al. Civil No. 88-3121-10, First Circuit No. AB 87-319, Labor and Industrial Relations Appeals Board Civil No. 89-1349-05, First Circuit Amount of Settlement: No interest	\$ 20,000.00

Yuen v. Deem, et al.
 Civil No. 88-105K and
 Yeaman v. Deem, et al.
 Civil No. 88-193K, Third Circuit
 Amount of Settlement: \$625,000.00
 No interest

Zimmerman v. Nakatani
 Civil No. 88-00488 ACK, U.S.D.C. \$ 32,402.86
 Amount of Settlement: \$ 30,000.00
 Interest at 7.88%
 from 7/1/90 to 7/31/91: \$ 2,402.86

MISCELLANEOUS CLAIMS:

Florence M. Hayslip
 Amount of Claim: \$ 181.92

SECTION 3. The sums hereinabove appropriated shall be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in the several amounts hereinabove set forth upon warrants issued by the comptroller of the State: (1) upon vouchers approved by the director of taxation as to claims for refunds of taxes, and (2) upon vouchers approved by the attorney general as to all other claims.

SECTION 4. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State and settlements of claims, payment of interest, at any rate stated above, shall be limited to the period from the date of judgment or settlement, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases where judgment or settlement was based on chapter 662, Hawaii Revised Statutes.

SECTION 5. All unexpended and unencumbered balances of the appropriations made by section 1 of this Act as of the close of business on June 30, 1992, shall lapse into the general fund of the State.

SECTION 6. If any provision of this Act or the application thereof to any person, or entity 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 7. This Act shall take effect upon its approval.

(Approved June 6, 1991.)

ACT 222

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 are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1991-1993, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

<u>FUND</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$808,527	\$1,980,654
Special	\$130,143	\$331,967
Federal	\$30,639	\$77,420
Other	\$6,268	\$15,466

SECTION 2. Funds appropriated or authorized by this part shall be expended by the director of finance in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are 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 1991-1993, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for officers and employees excluded from collective bargaining:

<u>FUND</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$54,710	\$112,763
Special	\$1,868	\$4,149

SECTION 4. The sums appropriated or authorized by this part shall be expended by the chief justice in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are 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 the fiscal year 1991-1992, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees in these agencies excluded from collective bargaining:

	<u>FY 1991-92</u>
Office of the Legislative Auditor	\$6,250
Ethics Commission	\$2,076
Legislative Reference Bureau	\$18,138
Ombudsman	\$7,250

SECTION 6. The sums appropriated by this part shall be expended by the respective heads of the legislative agencies.

PART IV

SECTION 7. Pursuant to this part, the administrator of the office of Hawaiian affairs is authorized to make adjustments in the compensation, hours, terms, and conditions of employment, amounts of contributions by the office of Hawaiian affairs to the Hawaii public employees health fund, and other benefits for public officers and employees who are excluded from collective bargaining coverage under chapter 89. The administrator of the office of Hawaiian affairs shall determine the adjustments to be made and which excluded officers or employees are to be granted adjustments.

SECTION 8. There are appropriated or authorized from the sources of funding indicated below to the office of Hawaiian affairs, the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1991-1993, the salary increases and other cost adjustments authorized by this part, for officers and employees excluded from collective bargaining:

<u>FUND</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$49,184	\$114,677
Special	\$49,184	\$114,677

SECTION 9. The sums appropriated or authorized by this part shall be expended by the administrator of the office of Hawaiian affairs.

PART V

SECTION 10. 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 11. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 1992, and June 30, 1993, of the respective fiscal years, shall lapse as of those dates.

SECTION 12. This Act shall take effect on July 1, 1991.

(Approved June 6, 1991.)

ACT 223

H.B. NO. 1317

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Chapter 710, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§710- Destroying or defacing official notices; penalty. (a) Any person who intentionally or knowingly removes, destroys or defaces any notice

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posted in compliance with any statute, rule, order of court, or order of the department of health, before the expiration date of the notice, shall be guilty of a violation subject to a fine of not more than \$100.

(b) Any such notice shall prominently include the expiration date and a statement, "THE DESTRUCTION, REMOVAL, OR DEFACEMENT OF THIS NOTICE PRIOR TO THE EXPIRATION DATE IS PROHIBITED BY LAW AND PUNISHABLE BY FINE."

SECTION 2. Section 710-1010, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) Obstruction of government operations is a [petty] misdemeanor."

SECTION 3. Chapter 95, Hawaii Revised Statutes, is repealed.

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. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 1991.

(Approved June 6, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 224

H.B. NO. 1891

A Bill for an Act Relating to Parentage.

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

SECTION 1. Section 584-6, Hawaii Revised Statutes, is amended to read as follows:

"**[§584-6] Determination of father and child relationship; who may bring action; when action may be brought; process, warrant, bond, etc.** (a) A child, or [personal representative] guardian ad litem of the child, the child's natural mother, [including a mother who is an unmarried woman or a mother who is a married woman who was separated from and was not living with her husband prior to and at the time the child was conceived,] whether married or unmarried at the time the child was conceived, or her personal representative or parent if the mother has died; or a man alleged or alleging himself to be the natural father, or his personal representative or parent if the father has died; or a presumed father as defined in section 584-4, or his personal representative or parent if the presumed father has died; or the child support enforcement agency [if the department of human services is providing or has provided public assistance for the support or maintenance of the child under chapter 346], may bring an action for the purpose of declaring the existence or nonexistence of the father and child relationship within the following time periods:

- (1) If the child is the subject of an adoption proceeding,
 - (A) Within thirty days after the date of the child's birth in any case when the mother relinquishes the child for adoption during the thirty-day period; or
 - (B) Any time prior to the date of execution by the mother of a valid consent to the child's adoption, or prior to placement of the child with adoptive parents, but in no event later than three years after the [child's birth; or] child reaches the age of majority; or
- (2) If the child has not become the subject of an adoption proceeding, within three years after the [child's birth;] child reaches the age of majority; provided that any period of time during which the man alleged or alleging himself to be the natural father of the child is absent from the State or is openly cohabitating with the mother of the child or is contributing to the support of the child, shall not be computed.
- (3) Section 584-6 shall not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.
- (4) A personal representative in this Section 584-6 may be appointed by the court upon a filing of an ex parte motion by one of the parties entitled to file a paternity action. Probate requirements need not be met. However, appointment of the personal representative in this section is limited to representation in Chapter 584 proceedings.

(b) When an action is brought under this section, process shall issue in the form of a summons and an order directed to the alleged or presumed father, the mother or both, requiring each to appear and to show cause why the action should not be brought.

If, at any stage of the proceedings, there appears probable cause to believe that the alleged or presumed father, the mother, or both, will evade the service of process, or will fail to appear in response thereto, or will flee the jurisdiction of the court, the court may issue a warrant directed to the sheriff, deputy sheriff, or any police officer within the circuit, requiring the alleged or presumed father, the mother, or both, to be arrested and brought for pre-trial proceedings before the family court. Upon such pre-trial proceedings, the court may require the alleged or presumed father, the mother, or both, to enter into bond with good sureties to the State in a sum to be fixed by the court for each person's appearance and the trial of the proceeding in the family court. If the alleged or presumed father, the mother, or both, fails to give the bond required, the court may forthwith commit that person to the custody of the chief of police of the county, there to remain until that person enters into the required bond or otherwise is discharged by due process of law. If the alleged or presumed father, the mother, or both, fails to appear in any proceeding under this chapter, any bond for that person's appearance shall be forfeited; but the trial of, or other proceedings in, the action shall, nevertheless, proceed as though that person were present; and upon the findings of the court it shall make such orders as it deems proper as though that person were in court.

In case of forfeiture of any appearance bond, the money collected upon the forfeiture shall be applied in payment of the judgment against the parent whose parent-child relationship is established under this chapter.

(c) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 584-13(b), between the alleged or

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presumed father and the mother or child, shall not bar an action under this section.

(d) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

(e) Subject to the requirements of 584-4(b), where a married woman has not had sexual contact with her spouse or resided in the same house with the spouse for at least three hundred days prior to the birth of the child and the spouse cannot be contacted after due diligence, the court may accept an affidavit by the married woman, attesting to her diligent efforts to contact her spouse and providing clear and convincing evidence to rebut the presumption of his paternity of the subject child, and upon the court's satisfaction, notice to the spouse may be waived and the spouse need not be made a party in the paternity proceedings. The court, after receiving evidence, may also enter a finding of non-paternity of the spouse."

SECTION 2. Section 584-9, Hawaii Revised Statutes, is amended to read as follows:

“[[§584-9]] Parties; guardian ad litem for minor presumed or alleged father; county attorney or corporation counsel to represent custodial parent or agency; notice to parents. (a) The child may be made a party to the action and may be represented by the child's general guardian or a guardian ad litem appointed by the court. The child's mother or father shall not represent the child as guardian or otherwise. Subject to the provisions in section 584-6(e), [The] the natural mother, each man presumed to be the father under section 584-4, and each man alleged to be the natural father, shall be made parties, or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.

(b) If it appears to the satisfaction of the court that a man alleged or presumed to be the father is a minor, the court shall cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the legal parents or guardian of the minor and may appoint a guardian ad litem to represent the minor in the proceedings. If the legal parents or guardian of any such minor cannot be found, the notice may be served in such manner as the court may direct pursuant to sections 634-21 to 634-24. The court may align the parties.

(c) The county attorney or corporation counsel shall represent the child's custodial parent, or the custodial parent's personal representative or parent if the custodial parent has died, or any agency authorized to seek the determination and establishment of paternity or maternity under chapter 346, if an application for services is made. Fees may be charged of the applicant as provided for by the provisions of chapter 346.”

SECTION 3. Section 584-7, Hawaii Revised Statutes is repealed.

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

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

(Approved June 6, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 225

H.B. NO. 1955

A Bill for an Act Making an Appropriation for a Cooperative Study Between the State Department of Land and Natural Resources and the United States Geological Survey for the Purpose of Conducting an Analysis of the Statewide Water Resources Monitoring Program.

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

SECTION 1. The legislature finds that an analysis of the existing statewide water resource monitoring program is necessary in order to identify program objectives and recommendations for the purpose of implementing the State Water Code, Hawaii Revised Statutes, chapter 174C.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1991-1992, for a cooperative study between the state department of land and natural resources and the United States Geological survey for the purpose of conducting an analysis of the statewide water resources monitoring program.

SECTION 3. The sum appropriated shall be expended by the department of land and natural resources through a contract with the United States Geological Survey for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 6, 1991.)

ACT 226

H.B. NO. 2210

A Bill for an Act Relating to Lost and Stolen Pets.

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

SECTION 1. Chapter 142, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§142- Lost or rescued animals; penalty. (a) Except as otherwise provided in section 143-10, any person who exerts control over a lost animal shall immediately notify the owner of the animal, if known, or an animal control officer of the local humane society chapter of the county in which the animal is found and release the animal to the owner, animal control officer, or humane society chapter. For purposes of this section, “exert control” means any act which constrains an animal including leashing, chaining, or otherwise confining an animal.

(b) Any person who violates this section shall be fined not more than \$500.”

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.

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SECTION 3. New statutory material is underscored.¹

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

(Approved June 6, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 227

S.B. NO. 348

A Bill for an Act Relating to Collision Insurance for Rented Motor Vehicles.

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

SECTION 1. Section 437D-8.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§437D-8.5]] Commissions. No lessor or officer, employee, agent, or other representative of the lessor shall pay or receive a commission for selling collision damage waivers. Any violation of this section shall be an unfair or deceptive act or practice as provided in section 480-2. As used in this section, “commission for selling collision damage waivers” includes any compensation, bonus, award, or remuneration, whether direct, indirect, or otherwise, which is calculated by means of a formula, process, evaluation, or other mechanisms which considers sales of collision damage waivers as a factor in any manner. “Commission for selling collision damage waivers” also includes any performance evaluation which could be used in determining promotions, raises, or other personnel decisions, or any other device which serves to encourage the sale of collision damage waivers.”

SECTION 2. Section 437D-8.6, Hawaii Revised Statutes, is amended to read as follows:

“[[§437D-8.6]] Collision [waiver] damage waiver statistics. Lessors shall submit data or information to the director regarding their sale of collision damage waivers in a given year and amounts expended to repair damage to rental vehicles caused while the vehicles are subject to the collision damage waiver. Lessors shall maintain all records reflecting these statistics. Neither the director, nor any other employee of the department of commerce and consumer affairs, nor any other person appointed by the director as provided by law, shall release or divulge any of the information or data required by this section, except as may be required or allowed by rules adopted pursuant to section 437D-18.”

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

SECTION 4. This Act shall take effect ninety days after its approval.

(Approved June 6, 1991.)

ACT 228

S.B. NO. 712

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. (a) 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 which is engaged primarily in the business of transporting persons between harbors or wharves of the various counties for interisland cruises within the State; provided that such exemption shall be applicable for the period July 1, 1981, to June 30, [1991.] 1996.

(b) Any contract carrier and related partners, if any, claiming an exemption under subsection (a) shall submit an annual financial report, prepared by an independent certified public accountant, to the department of taxation and to the department of business, economic development, and tourism on or before the fifteenth day of the fifth month following the close of each taxable year for which the exemption is being claimed; provided that in addition to reports in 1992, 1993, 1994, and 1995, an annual financial report shall be due on or before March 1, 1996. The annual financial report, prepared in a form approved by the director of taxation, shall include but not be limited to:

- (1) A balance sheet of assets and liabilities;
- (2) A statement of income and expenses;
- (3) Supplementary information to financial statements;
- (4) A summary of financial condition; and
- (5) An apportionment of income and expenses of the contract carrier and related partners, if any, within and without the State.

Within thirty days of the receipt of the financial report from the contract carrier and related partners, if any, the director of taxation shall submit relevant financial data to the legislature. Failure to comply with this subsection by the contract carrier or related partners, if any, as determined by the director of taxation, shall constitute a waiver of the right to claim the exemption.”

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 6, 1991.)

ACT 229

S.B. NO. 1224

A Bill for an Act Relating to Taxation of County Transportation Systems Under the General Excise Tax.

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

SECTION 1. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

“[[§237-24.7]] Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to amounts received by [the operator]:

- (1) The operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this [section:] paragraph:

“Employee” means employees directly engaged in the day to day operation of the hotel and employed by the operator.

“Hotel” means an operation licensed under section 445-92.

“Owner” means the fee owner or lessee under a recorded lease of a hotel.

“Operator” means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

- (2) The operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

“County transportation system” means a mass transit system of motorized buses providing regularly scheduled transportation within a county;

“Operating contract” or “contract” means a contract to operate and manage a political subdivision’s county transportation system, which provides that:

- (A) The political subdivision shall exercise substantial control over all aspects of the operator’s operation;
(B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and
(C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

“Operator” means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

“Owner” means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system. (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.) and that owns all revenues derived therefrom.”

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

SECTION 3. This Act, upon its approval, shall take effect retroactive to January 1, 1991.

(Approved June 6, 1991.)

ACT 230

S.B. NO. 1812

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 244D-4.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The adjustment of liquor tax rates, but not the collection of liquor tax information under section 244D-6, shall be suspended for the period beginning on June 7, 1989, and ending on June 30, [1991.] 1993. The liquor tax rates in effect on June 7, 1989, shall remain in effect during this suspension period and until the liquor tax rates are next adjusted. Upon termination of the suspension period, the first increase or decrease of the liquor tax rates under this section after June 30, [1991.] 1993, shall take place on July 1, [1992.] 1994, and shall be based upon a comparison of the twelve-month reporting periods, January 1, [1990.] 1992, through December 31, [1990.] 1992, and January 1, [1991.] 1993, through December 31, [1991.] 1993. The operation of this section shall thereafter compare reporting periods as required by subsection (a)[,] with any consequent increases or decreases effective on January 1 or July 1 as the case may be.”

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

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 6, 1991.)

ACT 231

S.B. NO. 1839

A Bill for an Act Relating to Blood and Saliva Testing.

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

SECTION 1. The legislature finds that there is a compelling need to develop and maintain accurate and complete identification information for those classes of offenders most likely to repeat and escalate their offenses: sex and violent offenders. While law enforcement officials maintain records of the fingerprints and photographs of offenders, these offenders frequently do not leave fingerprints at the scene of their crimes and their victims often are too traumatized to review or make an identification from photographs. The legislature also finds that the increased likelihood of identification of these offenders by comparison of a known DNA profile obtained from their blood, and the DNA profile of bodily fluids and tissues frequently deposited at the scene of a crime is likely to deter commission of additional offenses. The legislature further finds that the limited intrusion caused by the taking of a sample of saliva and blood represents a reasonable means of assisting in the identification of the defendant and is consistent both with the rules of discovery, which permit the testing and examination of defendants for identification purposes, and the diminished expectation of privacy enjoyed by convicted defendants. Accordingly, it is the purpose of this Act to permit the taking of a sample of saliva and two samples of blood from certain

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convicted defendants for the purpose of secretor status, blood type, and DNA analysis that will assist law enforcement officials in the identification of reoffenders by comparison of their DNA profile to that obtained from bodily fluids or tissues deposited at the scene of a crime.

SECTION 2. Section 706-603, Hawaii Revised Statutes, is amended to read as follows:

“§706-603 Pre-sentence mental and medical examination. (a) Before imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to mental or other medical observation and examination for a period not exceeding sixty days or [such] a longer period, not to exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. [The defendant may be remanded for this purpose to any available clinic or hospital, intake service center, or community correctional center and, in] In addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists, physicians, or licensed psychologists to make the examination. The three examiners shall be appointed from a list of certified sanity examiners as determined by the state department of health. The report of the examination shall be submitted to the court. As used in this section, the term “licensed psychologist” includes psychologists exempted from licensure by section 465-3(a)(3).

(b) After entry of a plea of guilty or no contest or return of a verdict of guilty, the court shall order a defendant who has been convicted of an offense, including attempts, under section 707-701, 707-701.5, 707-730, 707-731, 707-732, 707-733, 707-741, or 707-750 to provide a sample of saliva and two samples of blood for the purpose of secretor status, blood type, and DNA analysis. Blood shall be withdrawn only by a person authorized to withdraw blood under section 286-152. The arresting agency shall arrange for the sample to be collected and analyzed. The results shall be recorded, preserved, and disseminated in a manner established by the Hawaii criminal justice data center in a manner consistent with the requirements of chapter 846.

(c) For the purposes of this section, the defendant may be remanded to any available clinic or hospital, intake service center, community correctional center, or state or county health department facility.”

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

SECTION 4. This Act shall take effect on July 1, 1992.

(Approved June 6, 1991.)

ACT 232

S.B. NO. 1850

A Bill for an Act Relating to Public Concessions.

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

SECTION 1. Section 102-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services at airports;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 298-21.5;
- (5) For operations of concessions set aside without any charge;
- (6) For operation of concessions by handicapped persons, or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 298-21.5;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued unless the premises covered therein shall no longer be used for the existing purposes and that the permit is issued as a temporary use of the premises until the governmental agency proceeds to apply the premises for the new use thereof; and provided further that no permits shall be issued for more than one year[.];
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beach-boy tradition, incorporated as a non-profit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law; and
- (9) For operation of concessions at county zoos or botanic parks, by support groups that are incorporated as non-profit corporations in accordance with state law, for purposes of supporting county aims and goals of the zoo and botanic parks.”

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 6, 1991.)

ACT 233

S.B. NO. 2099

A Bill for an Act Making an Appropriation for One Secretary Position and Two Fifteen Passenger Vans for Storefront, Wahiawa, Oahu.

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 \$79,440, or so much thereof as may be necessary for fiscal year 1991-1992, to provide the following for the Storefront program:

One secretary position	\$ 19,440
Two 15 passenger vans	\$ 60,000

SECTION 2. The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. This Act shall take effect July 1, 1991.

(Approved June 6, 1991.)

ACT 234

H.B. NO. 362

A Bill for an Act Relating to Spouses.

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

SECTION 1. The common law upon which early American jurisprudence is based considered the husband and wife to be one legal unity. The practical effect of this notion was to deprive married women of valuable personal rights, such as the right to own property, to enter into contracts, and to bring legal actions. Changes in American social order gradually brought about the abolition of the theory that husbands and wives formed one legal unit, and laws were enacted giving women the right to own property and to bring legal actions by themselves. However, the latter right was limited by prohibiting actions by one spouse against the other on the belief that allowing such suits would destroy marital harmony. This prohibition was called the interspousal tort immunity rule.

Today, most states have either abolished or limited the interspousal tort immunity rule, in recognition of the fact that in many cases in which one spouse would wish to sue the other, such as in instances of domestic violence, marital harmony has already reached a crashing discord. In those cases, the interspousal tort immunity rule merely serves as a bar to legitimate claims for compensation for injuries.

Additionally, the interspousal tort immunity rule adversely affects spouses by denying them the right to sue in a situation in which both spouses want the suit to be brought. For instance, if a spouse causes an accident in which another person is injured, the victim can sue the offending spouse and receive compensation for medical, psychological, and other necessary expenses from the spouse's insurance company. If, however, a spouse causes an accident in which the other spouse is injured, the interspousal tort immunity rule prohibits an action so that the injured spouse cannot be compensated from the insurance policy and thus is denied a benefit available to any other injured party.

However, removal of the interspousal tort immunity rule could adversely impact other matters such as insurance collusion, estate and trust, interspousal evidentiary privileges, and negligence actions. Because of this, the legislature finds that there is a need to study the broader implications of repealing the interspousal tort immunity law.

The purpose of this Act is to appropriate funds to be expended by the judiciary to investigate the effects of repealing the interspousal tort immunity law on other areas of law.

SECTION 2. 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 1991-1992, for a study of the effects of repealing the interspousal tort immunity law in Hawaii. The judiciary shall report its findings and recommendations to the legislature at least twenty calendar days prior to the convening of the regular session of 1992.

SECTION 3. The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 235

H.B. NO. 364

A Bill for an Act Relating to Protective Orders.

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

SECTION 1. The legislature finds that domestic violence is a serious problem in Hawaii today. The majority of injuries suffered by women are caused by their spouses or partners. On Oahu, arrests for domestic violence have increased from 128 in 1986 to 1,400 in 1988. Correspondingly, the number of restraining orders issued by the family court on Oahu increased from 164 in 1980 to 918 in 1988. Most women who have restraining orders continue to be harassed or threatened by their abusers for several years. The current six month duration of protective orders is insufficient to protect women from the danger they often continue to face from their abusers. The purpose of this Act is to extend the protective order duration from six months to three years in order to increase and ensure the protective order's effectiveness.

SECTION 2. Section 586-5.5, Hawaii Revised Statutes, is amended to read as follows:

“§586-5.5 Protective order. If after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for such further period as the court deems appropriate, not to exceed [one hundred-eighty days] three years from the date the protective order is granted. [However, if the court has ordered a party to participate in treatment or counseling services, the court may extend the term of the protective order for an additional one hundred-eighty days to enforce the order for treatment or counseling.] However, the court may terminate the protective order at anytime with the mutual consent of the parties.”

The protective order may include all orders stated in the temporary restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation with regard to minor children of the parties and orders to either or both parties to participate in treatment or counseling services. If the court finds that the party meets the requirements under section 334-59(a)(2), the court may further order that the party be taken to the nearest facility for emergency examination and treatment.”

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, 1991.)

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. The legislature finds that the intoxication of drivers leaving a liquor establishment can adversely affect pedestrians, motorists, as well as the users of nearby public facilities. To promote an environment in which alcohol-imbibing patrons do not interfere with minors or other citizens, it is the intent of the legislature to discourage the establishment of new liquor establishments near schools or playgrounds utilized extensively by minors.

SECTION 2. Chapter 281, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§281- Liquor license prohibited; where. (a) The liquor commission or agency of each county may deny or restrict the issuance of a liquor license for on-site sale and consumption by the drink to any applicant whose establishment is or would be located within five hundred feet of a public or private elementary, intermediate, or high school, or public playground utilized extensively by minors, as determined by the liquor commission of each county. The distance of five hundred feet shall be measured from the boundary of the school or public playground to the boundary of the applicant’s establishment. Public or private beaches, and public or private day care centers located in or adjacent to commercial areas shall not be deemed schools or public playgrounds for purposes of this section. The provisions of this section shall not apply to establishments located within areas designated by the appropriate counties for resort purposes, or to hotel liquor license applicants.

(b) This section shall apply only to the issuance of new liquor licenses for on-site sale and consumption by the drink and not to any renewal of such licenses.”

SECTION 3. Section 281-32.5, Hawaii Revised Statutes, is amended to read as follows:

“§281-32.5 Permits for trade shows or other exhibitions. Notwithstanding any other provision to the contrary, any trade exhibitor, trade organization or other exhibitor [may] shall apply to the liquor commission or agency administrator [and be issued] for the issuance of a permit, without hearings, fees, notarizing of documents, submission of floor plans, and other requirements, to receive liquor from within or outside the State for display and sampling on a not-for-sale basis at trade exhibitions, shows or other exhibitions, subject to such terms and conditions as may be set by the commission.”

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. 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 12, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 237

H.B. NO. 544

A Bill for an Act Relating to Nursing.

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

SECTION 1. Act 212, Session Laws of Hawaii 1988, as amended by Act 182, Session Laws of Hawaii 1989, is amended by adding a new section to read as follows:

“SECTION 3A. Rules; adoption. The department of health may adopt rules pursuant to chapter 91 to implement this Act.”

SECTION 2. Act 212, Session laws of Hawaii 1988, as amended by Act 182, Session Laws of Hawaii 1989, is amended by amending sections 1, 2, and 3 to read as follows:

“SECTION 1. There is growing evidence that the supply of licensed nurses working in the State does not meet the present demand. As of February 1987 there were over five hundred vacancies in health care agencies throughout the State, and it [had] has been estimated that the number of vacancies would increase to [eight hundred by 1988 and nine hundred in 1989.] thirteen hundred by 1991.

Serious implications arise due to the shortage of nurses in the State. Insufficient staffing together with increased patient acuity and occupancy has a detrimental effect on the quality of nursing care. Long working hours for existing nurses affect their stamina and performance. One major hospital in Hawaii has had to close a substantial number of its surgical beds due in part to a lack of nursing staff. It is expected that other hospitals will face similar closures if the nursing shortage is not corrected. To compensate for the shortage, hospitals have found it necessary to ask nurses to work overtime and to recruit short-term contract nurses from the mainland. [Such] These actions translate to increased medical care costs but with a detrimental effect in the quality of care for the people of Hawaii. All indications are that this shortage will continue in virtually all medical care areas where nurses are needed.

Hawaii’s rapidly growing population requires that something be done to alleviate [Hawaii’s] the State’s growing nursing shortage. By [1990,] the year 2000, the department of business [and], economic development, and tourism projects that the resident population in our State will increase to [1,138,400] 1,285,100 with [another eleven] a twelve per cent increase to [1,267,800] 1,435,500 by the year [2000.] 2010. The elderly population is also showing significant growth. This group is known to utilize the health care system more than any other age group. The United States Bureau of the Census predicts that the number of frail and elderly persons eighty-five years and older will grow from 2.7 million in 1985 to 4.9 million [in] by the year 2000. By then, fifty per cent of direct care in-hospital facilities will be devoted to caring for the elderly. In

Hawaii, a projected total of [168,900] 206,200 individuals will be sixty years [and] or older by the year [1990.] 2000. In fact, the people of the State of Hawaii are known to have the longest life expectancy in the [country.] United States.

Recognizing this pressing nursing shortage, the legislature finds that there is a need for a program [which] that would immediately increase the number of licensed nurses in the State. There are many graduate nurses in Hawaii working as licensed practical nurses, nurses aides, ward clerks, doctor's secretaries, and in other similar nursing related work, who have not yet passed [the written examination required by the commission on graduates of foreign nursing schools, or] the written examination required by the state board of nursing[, or both]. The time demands of their [occupation] occupations and other socioeconomic pressures prevent them from otherwise being able to prepare adequately for the licensing [examinations.] examination. With some concerted assistance from the private sector and the State, these graduate nurses may be able to pass the written [examinations] examination and become licensed nurses. Certain hospitals in the State have indicated a willingness to assist and accommodate their qualified employees by maintaining their employment status and salary while participating in a program operated by the State to improve test taking skills and to prepare them for the nursing license [examinations.] examination. These hospitals, along with state government-operated hospitals, could serve as valuable resources in the planning and development of a nursing license preparation program by the State.

[The legislature therefore finds that it is desirable to establish and to test the effectiveness of a program designed to improve test taking skills of graduate nurses to enable them to pass the required written examinations. Review and training courses are to be held for four to six months and shall commence four to six months prior to the dates that the nursing license examinations are to be offered.]

The legislature finds that since the inception of the "Operation Nightingale" program in October 1988, a total of fifty-four students have completed the nursing license examination preparation program. Of these fifty-four students, twenty-nine have since gone on to pass the National Council Licensure Examination for Nursing (NCLEX-RN) and earn the title of "registered nurse". In addition, the legislature finds that more than one hundred twenty applicants preparing to take the NCLEX-RN examination have attended free "community review" classes offered by "Operation Nightingale" since the program's inception.

The legislature declares that it is in the public interest that the State extend the duration of its program to enable graduate nurses to pass the required written examination through content reviews, acculturation, and improvement of test taking skills.

The purpose of this Act is to [provide for the continuation and expansion of] establish as a four-year state program the "Operation Nightingale" program being operated by the department of health, which shall include the provision of classroom facilities, books and review material, instructors, and [such] any other equipment and personnel necessary and accessory for the program.

SECTION 2. Nursing license examination preparation program; established. There is established within the department of health a four-year program to be called "Operation Nightingale" [. The department of health], the purpose of which shall be to design and operate [a] review and training [course] courses to enable graduates of nursing schools to pass [the written examination required for the commission on graduates of foreign nursing schools, or] the written examination required by the state board of nursing[, or both].

Review and training courses shall be held for four to six months and shall

commence four to six months prior to the dates that the nursing license examination is to be offered.

The department of health shall provide or contract for the provision of review and training courses for:

- (1) Registered nurses who have not recently been employed as nurses to facilitate their return to active participation in the nursing profession;
- (2) Graduates of nursing schools preparing for the examination required by the state board of nursing; and
- (3) Graduates of foreign nursing schools preparing for the examination required by the state board of nursing [and the examination required by the commission on graduates of foreign nursing schools].

The department of health shall provide or contract for the provision of other alternative programs that the director of health finds necessary to assist residents of the State seeking to enter the field of nursing.

The department of health shall develop or contract for the development of refresher courses and specialty programs for nurses wishing to work in shortage areas such as obstetrics, surgery, intensive care, and emergency room care.

These programs shall provide instruction to qualified individuals. Classes may be provided at times that the director of health finds necessary, including evenings or weekends. The duration of each course may be tailored to meet the needs of the community as well as the needs of health care providers. Classes may be held at [Leahi Hospital or at such other] those sites [as] the department of health [may deem] deems appropriate.

[Additionally, the] The department of health shall establish requirements and procedures for the selection of candidates for the program[.] and for appeal by candidates not selected for the program.

Candidate selection and an appeals process for candidates not selected shall be conducted by a committee consisting of the director of health or a designated representative, the president of the University of Hawaii or a designated representative, a representative of the Hawaii nurses association, and a representative selected by the director of health from each of the medical facilities participating in the program. Any vacancy on the committee shall be filled in the same manner in which the original position was filled.

Members of the committee shall serve without compensation [and] but shall be reimbursed for necessary expenses incurred in the performance of their duties.

SECTION 3. Duration of program; reporting requirement. The [nursing license examination preparation] “Operation Nightingale” program shall operate through fiscal year [1990-1991.] 1994-1995. The department of health shall submit to the legislature not [later] less than twenty days prior to the convening of the regular sessions of [1990 and 1991] 1992, 1993, 1994, 1995, and 1996 a report [of] on the performance of the “Operation Nightingale” program and any other [matter] matters [which] that may be relevant[.] to the implementation of this Act.”

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

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 238

H.B. NO. 589

A Bill for an Act Relating to Lobbyists Law Statement of Expenditures.

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

SECTION 1. Section 97-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The following persons shall file a statement of expenditures with the state ethics commission on [June 30 and December 31] March 31 and January 31 of each year:

- (1) Each lobbyist.
- (2) Each person who spends \$275 or more of the person's or any other person's money in any six-month period for the purpose of attempting to influence legislative or administrative action or a ballot issue by communicating or urging others to communicate with public officials.
- (3) Each person who employs or contracts for the services of one or more lobbyists, whether independently or jointly with other persons. If the person is an industry, trade, or professional association, only the association is the employer of the lobbyist.

(b) [The June 30 report shall cover the period from December 15 of the preceding calendar year through June 15 of the year of the report; and the December 31 report shall cover the period from June 16 through December 14 of the same year.] The March 31 report shall cover the period from January 1 through the last day of February. The January 31 report shall cover the period from March 1 through December 31 of the same year.”

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

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 239

H.B. NO. 640

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds to Assist an Industrial Enterprise.

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

SECTION 1. The legislature finds that relatively low prices in the past for oil and gas have contributed to an alarming lack of concern for the development of alternative energy resources. The legislature further finds that the development of these resources must occur before the world's petroleum resources are significantly depleted within the next twenty to twenty-five years based on current prices and technology. Alternate energy development must proceed before political or military conflicts involving the oil producing nations result in the escalation of prices to exorbitant levels or in the curtailment of the supply of oil from these nations.

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. 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 in one or more series special purpose revenue bonds in a total amount not to exceed \$10,000,000, for the purpose of assisting the Island Power Company, a Hawaii corporation, in the construction and operation of the Lower Wailua Hydroelectric Project and related facilities on the Wailua River in the county of Kauai. The entire output of the plant shall be made available for use by members of the general public by sale to the Kauai Electric Division of Citizens Utilities Company. The legislature finds and determines that the activity and facilities of Island Power Company constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and that the financing thereof is assistance to an industrial enterprise.

SECTION 3. 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 4. This Act shall take effect upon its approval.

(Approved June 12, 1991.)

ACT 240

H.B. NO. 760

A Bill for an Act Relating to Activity Providers.

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

SECTION 1. Act 214, Session Laws of Hawaii 1990, is amended by amending Section 1 to read as follows:

“SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER ACTIVITY PROVIDERS AND ACTIVITY DESKS

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Activity desk” means [an individual, firm, corporation, association, partnership, or any group of persons, whether incorporated or not, which,] 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[, sells, contracts for, arranges, or advertises] to sell, contract for, arrange, or advertise that it can or will arrange, or has arranged, activities which are furnished by an activity provider.

“Activity provider” means an individual, firm, corporation, association, partnership, or any group of persons, whether incorporated or not, which provides

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specialized air, land, or sea tour excursions and activities[.], but does not mean sellers of airline coupons or tickets.

§ **-2 Prohibited acts.** No activity desk shall engage in any of the following practices:

- (1) Covering, concealing or obscuring the name, address, or telephone number of an activity provider in any card or brochure; [and]
- (2) Placing a telephone number, address, or other information on any card, brochure or other advertising material produced or published by an activity provider, whether by decal, sticker, stamp or otherwise, without identifying the activity desk by name[.] and address;
- (3) Using a promotional card or brochure that does not clearly display the name and telephone number of the activity provider whose activity is being sold or booked when the activity is located in this state;
or
- (4) Withdrawing any funds of a consumer from a client trust account, other than a sales commission up to a maximum of fifteen per cent or to make a refund to the consumer, until the activity provider has been paid.

§ **-3 Payment provision.** Unless the express written contract has a provision to the contrary, payment is due and payable forty-five days from the date of invoice.

§ **-4 Legal rate; computation.** Except as otherwise permitted by existing written contract, any activity desk who directly or indirectly receives any interest on the payment due to the activity provider, shall remit the interest and the payment due to the activity provider; provided that if the interest and payment due are not remitted within forty-five days from the date of invoice, interest on the unpaid balance of the interest and payment due shall accrue at the rate of one per cent per month from the due date.

§ **-5 Injunctive relief; suits.** (a) Any activity provider [is entitled to injunctive relief] may bring suit to enjoin any violation of this chapter and may sue in [any] the circuit court [of] in the [state in the] circuit in which the defendant resides or has an agent[.] or in which the violation has occurred.

[(b) If the court determines that the action was brought frivolously, for purposes for harassment, or in implementation of any scheme in restraint in trade, it may award court costs, reasonable attorneys fees.]

(b) Any activity providers association may bring suit to enjoin any violation of this chapter and may sue in the circuit court in the circuit in which the defendant resides or has an agent or in which the violation has occurred. The relief available to an activity providers association is limited to injunctive and declarative relief and does not include a right to damages. As used in this section, "activity providers association" means a bona fide trade association of activity providers.

(c) The prevailing party, in a civil action brought under the provisions of this chapter, shall be entitled to recover the [cost] costs of [defending the] suit, including [a] reasonable attorney's [fee.] fees.

§ **-6 Action for damages.** Any activity desk shall be liable to the activity provider for a violation of this chapter for any damages which result from such violation [and in no event for an amount less than \$1,000.00 for each

violation]. Damages shall be awarded at the rate of no less than \$1,000 for each violation. Violations shall be calculated by the following formula:

- (1) For violations of section -2(1), (2), or (3), by multiplying the number of days the violations occurred by the number of locations of an activity desk where the violations occurred; or
- (2) For violations of section -2(4), by counting the number of days where the client trust account held funds insufficient to meet the requirements of section -2(4).
- (3) Notwithstanding the above formula, not more than \$10,000 shall be awarded if the activity desk has not previously been required to pay damages to an activity provider pursuant to this section.

§ -7 [Exemptions. This chapter shall not apply to any person whose principal business is the sale of travel services as a travel agency, as defined in chapter 468K, or any travel agency appointed to do business as a travel agency by the Airlines Reporting Corporation, nor shall it apply when an activity provider performs activity desk operations for its own excursions or activities.] **Requirements for offering discounts.** When a discount offered for any activity is contingent upon any requirement that the recipient of the discount first attend a sales presentation of any kind, the activity desk shall disclose such requirement in writing to the recipient of the discount before any payment is made. Failure to do so shall constitute a false and deceptive business practice subject to a civil fine of not less than \$1,000 per day for each occurrence.

§ -8 **Client trust accounts; maintenance of and withdrawal from such accounts.** (a) Within three business days of receipt, an activity desk shall deposit all sums received from a consumer, for excursions or activities offered by the activity desk in a trust account maintained in a federally insured financial institution located in Hawaii.

(b) The trust account required by this section shall be established and maintained for the benefit of the consumers paying money to the activity desk. The activity desk shall not in any manner encumber the amounts in trust and shall not withdraw money therefrom except: (1) in partial or full payment for excursion or activities to the activity provider directly providing the services; or (2) to make refunds as required by this chapter.

(c) This section shall not prevent the withdrawal from the trust account of: (1) the amount of the sales commission, up to a maximum of fifteen per cent; (2) any interest earned and credited to the trust account; (3) refunds; or (4) remaining funds of a consumer once all excursion or activities have been provided or once tickets or other similar documentation binding upon the ultimate provider of the activity have been provided.

(d) At the time of registration, the activity desk shall file with the department the account number and the name of the financial institution at which the trust account is held. The activity desk shall notify the department of any change in the account number or location within one business day of the change.

(e) The director may, by rule, allow for the use of other types of funds or accounts provided that the protection for consumers is no less than that provided by this section.

§ -9 **Violations; fraud.** Any violations by an activity desk of any law relating to client trust accounts shall constitute a prima facie showing of fraud on the part of the activity desk and may not be dischargeable as a debt to a consumer or an activity provider in any bankruptcy proceeding.”

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SECTION 2. Act 214, Session Laws of Hawaii 1990, is amended by amending Section 2 to read as follows:

“SECTION 2. This Act shall take effect upon its approval, and shall be repealed June 30, [1991] 1993.”

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

SECTION 4. This Act shall take effect upon its approval, and shall be repealed on June 30, 1993.

(Approved June 12, 1991.)

ACT 241

H.B. NO. 844

A Bill for an Act Making an Appropriation for Improving the Statewide Rainfall and Flood Information System.

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 \$100,000, or so much thereof as may be necessary for fiscal year 1991-1992, to initiate a program to improve the statewide rainfall and flood information system whereby selected potential flood area rain gauges can be queried to provide county and state civil defense with rainfall information. This will be accomplished on a phased basis on each island by:

- (1) Establishing the capability to provide high priority rainfall information into each county emergency operations center; and
- (2) Initially programming access to telemetered rainfall information in one or two flood prone valleys in each county.

SECTION 2. The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 242

H.B. NO. 865

A Bill for an Act Relating to Low-interest Loans to Disaster Victims and Making an Appropriation Therefor.

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

SECTION 1. The purpose of this Act is to provide low-interest loans to the residents and citizens of Hawaii who have suffered the loss of their homes and lands to the devastating effects of the continued volcanic eruptions on the island of Hawaii. Under current law, chapters 127, 171, and 209, Hawaii Revised Statutes, some of Kilauea lava flow victims do not qualify for existing disaster

recovery loans. Some Kilauea lava flow residents and citizens do not have sufficient income to qualify for loan assistance to purchase replacement land and build a home. These residents and citizens may be in need of a one-time public relief program with specific requirements for the repayment of low-interest loans to assist in rebuilding their homes in an area of lesser volcanic risk.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,750,000, or so much thereof as may be necessary for fiscal year 1991-1992, to provide low-interest land acquisition, home construction, and mortgage loans of up to \$35,000 each to residents and citizens of Hawaii who have been dispossessed of their homes and lands as a result of the continued volcanic eruptions on the island of Hawaii which began on January 3, 1983; provided that the rate of interest on loans pursuant to this Act shall not exceed three per cent per annum and interest earnings on loans made pursuant to this Act may be used for administrative and other expenses necessary for administering the loan program. Guidelines shall be established by the housing finance and development corporation with respect to loan terms and loan qualification criteria. Moneys appropriated for the purposes of this Act shall be deposited into the housing finance revolving fund; provided that upon fulfillment of the purposes of this Act, all unencumbered moneys shall lapse into the state general fund.

SECTION 3. The housing finance and development corporation shall administer the loans for the purposes of this Act, and shall adopt rules pursuant to chapter 91 to carry out the purposes of this Act.

SECTION 4. The sum appropriated shall be expended by the housing finance and development corporation for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 243

H.B. NO. 953

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. Chapter 334, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§334- Mental health and substance abuse special fund; established. (a) There is established a special fund to be known as the mental health and substance abuse special fund into which shall be deposited all revenues and other moneys collected from treatment services rendered by the mental health and substance abuse programs operated by the State. Notwithstanding any other law to the contrary, the department is authorized to establish separate accounts within the special fund for depositing moneys received from each mental health and substance abuse program. Moneys deposited into the respective accounts of each program shall be used for the payment of the operating expenses of the respective program.

(b) The director shall submit a report to the legislature, not later than

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twenty days prior to the convening of each regular session, which identifies for each account in the special fund, the account balance and ceiling increase, any transfers and expenditures made, and the purposes of the expenditures.”

SECTION 2. Section 334-6, Hawaii Revised Statutes, is amended to read as follows:

“**§334-6 Fees; payment of expenses [of patients.] for treatment services.** (a) [The] Pursuant to chapter 91, the director shall establish reasonable charges for [outpatient professional and other personal] treatment services [rendered to patients] and may make collections on such charges. In making the collections on such charges the director shall take into consideration the financial circumstances of the patient and his family, and no collections shall be made where in the judgment of the director, such collections would tend to make the patient or his family a public charge or deprive the patient and his family of necessary support.

(b) Every person [not indigent or medically indigent] hospitalized at a psychiatric facility or receiving treatment services through a community mental health center under the jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State, shall be liable for the expenses attending [his] their reception, maintenance, and treatment [at the facility], and any property not exempt from execution belonging to the person shall be subject to sequestration for the payment of the expenses. Every [nonindigent] parent or legal guardian of a patient who is a minor and every [nonindigent] spouse of a patient shall be liable for the expenses attending the reception, maintenance, and treatment of [his] that minor child or spouse who is hospitalized at a psychiatric facility or receiving treatment through a community mental health center under the jurisdiction of the State or a county, or at a psychiatric facility or through a community mental health center which derives more than fifty per cent of its revenues from the general fund of the State. [The director may adjust the amount of the liability, taking into consideration the financial circumstances of the patient and his family, so that the charges imposed will not tend to make the patient or his family a public charge or deprive them of necessary support.

(c) The director may defray the hospital expenses of indigent or medically indigent persons needing hospital treatment for mental illness, drug addiction, or alcoholism.

(d) The director may furnish medicines and other supplies with or without charge to any medically indigent patient as deemed appropriate by him.

(e) The director may pay the expenses of transportation of a medically indigent person who is mentally ill or who is habituated to the excessive use of drugs or alcohol, and of the accompanying attendant, from anywhere within and without the State to and from any psychiatric facility within or without the State.]”

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 12, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 244

H.B. NO. 1012

A Bill for an Act Relating to Investigations by the Attorney General and the County Prosecuting Attorneys.

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

SECTION 1. Section 28-2.5, Hawaii Revised Statutes, is amended to read as follows:

“§28-2.5 Investigations. (a) The attorney general shall investigate alleged violations of the law when directed to do so by the governor, or when the attorney general determines that an investigation would be in the public interest.

(b) The attorney general, when conducting a civil, administrative, or criminal investigation, or the county prosecuting attorneys, when conducting a criminal investigation in their respective jurisdictions, may, subject to the privileges enjoyed by all witnesses in this State, subpoena witnesses, examine them under oath, and require the production of any books, papers, documents, or other objects designated therein or any other record however maintained, including those electronically stored, which are relevant or material to the investigation.

(c) A subpoena issued under subsection (b):

- (1) Shall state the name of the issuing authority and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein, and may also command the person to whom it is directed to produce books, papers, documents, or other objects specifically designated therein;
- (2) May be served by any police officer or by any employee of the issuing authority who [is not less than eighteen years of age] has the powers of a police officer at any place within the jurisdiction of the issuing authority;
- (3) Shall require attendance of the witness only in the county wherein he is served with the subpoena or at such other place as is agreed upon by the witness and the issuing authority; provided that if the subpoena is served in a county other than that in which the witness resides or is employed or transacts his business in person, the issuing authority shall bear the expense of travel by the witness to and attendance at the place named in the subpoena to the same extent as provided by the rules of court; and
- (4) Shall contain a short, plain statement of the recipient’s rights and the procedure for enforcing and contesting the subpoena.

(d) Upon application by the attorney general or the county prosecuting attorney who issued the subpoena, a circuit court of the county wherein the witness resides or is found may compel obedience to the subpoena; provided that the court, on motion promptly made, may quash or modify the subpoena if compliance would be unreasonable or oppressive or violate any privilege the witness may be entitled to exercise in a court proceeding.

(e) Compliance with a subpoena issued pursuant to this section shall not give rise to a civil action for damages by an individual or entity as to whom testimony has been given or documents or other things provided in compliance with the subpoena.”

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

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

(Approved June 12, 1991.)

ACT 245

H.B. NO. 1116

A Bill for an Act Making an Appropriation to Review the Laws Relating to Financial Institutions.

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

SECTION 1. In adopting Act 128, Session Laws of Hawaii 1990, the legislature found that the State's laws relating to financial institutions have been amended in piecemeal fashion and that some of them have been rendered obsolete by changes to federal regulations. Further, because of deregulation and technological changes, there has been a lessening of the distinction among various types of financial institutions, such as banks and savings and loans, so that the legislature must consider whether to expand the powers of certain financial institutions. However, the desire to modernize our laws must be balanced by the need to protect the public and to preserve public confidence in the health of these institutions.

Accordingly, the purpose of Act 128 was to update, clarify, and strengthen the State's regulatory framework applicable to financial institutions. In order to accomplish this end, the legislature directed the undertaking of a comprehensive study of the issues surrounding deregulation and its consequences, and a review of national and local laws and their possible applicability to Hawaii law. The review includes all laws currently administered by the commissioner of financial institutions, specifically the laws relating to banks, foreign banks, trust companies, savings and loan associations, financial services loan companies, small loan companies, and credit unions, and other related laws and issues. For this purpose the legislature appropriated the sum of \$150,000 for fiscal year 1990-1991.

As originally proposed, the comprehensive review of our laws applicable to financial institutions required a total appropriation of \$300,000 over two fiscal years. The final appropriation was for half the amount for the first fiscal year. Now that the project has commenced, the legislature is better able to estimate its scope and costs.

Furthermore, since the passage of Act 128 there have been major changes in federal law applicable to financial institutions. It is apparent that, shortly, there will be even more sweeping changes to such laws, much of which will affect the laws of our State. These changes will necessitate further research and analysis as part of the project. The legislature finds that the study and recodification of Hawaii's laws applicable to financial institutions will reasonably require an additional appropriation of \$200,000 for fiscal year 1991-1992. Accordingly, the purpose of this Act is to appropriate such sum in order to support, augment, and improve the existing project to update, clarify, and strengthen the regulatory framework for financial institutions and to address related issues.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1991-1992, for the purpose of conducting a comprehensive review of the State's laws relating to financial institutions.

SECTION 3. The review shall include all laws currently administered by the commissioner of financial institutions, specifically the laws relating to banks, foreign banks, trust companies, savings and loan associations, financial services loan companies, small loan companies, and credit unions, and other related laws and issues.

SECTION 4. The commissioner of financial institutions shall submit a status report of the review to the legislature on June 30, 1991. The final report of the commissioner of financial institutions shall be submitted not later than twenty days before the convening of the 1992 regular session.

SECTION 5. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 246

H.B. NO. 1254

A Bill for an Act Relating to Tourism Development.

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

SECTION 1. The legislature finds that it is in the best interests of the State to promote its expertise and leadership in tourism development both regionally and internationally. To assist in this role, the legislature enacted Act 358 in 1989 to establish an international tourism consulting center and clearinghouse within the department of business, economic development, and tourism to promote, assist, plan, and coordinate the provision of tourism-related consulting, training, and research services by private consultants, nonprofit organizations, and educational institutions in Hawaii throughout the Pacific and Asian region. Funds totalling \$135,000 for fiscal year 1989-1990 and \$98,600 for fiscal year 1990-1991 were appropriated to establish and staff the center.

Despite the advantages that such a consulting center can provide in promotion of Hawaii's regional and international leadership, the legislature finds that the department of business, economic development, and tourism did not expend its first-year appropriation. Since 1989, it has become increasingly apparent that Hawaii does have a role to play in marketing its expertise as evidenced by the nomination of the University of Hawaii as one of the World Tourism Organization's international education and training centers. In 1990, the state-sponsored Hawaii Resort Consultants Study Mission to Japan found strong Japanese interest in using Hawaii firms with the experience and expertise to assist in Japanese domestic resort development which is expected to expand dramatically in the next decade. This need will grow as resort and other tourism-related development also increases in the rest of Asia and the Pacific, especially in Southeast Asia. If Hawaii is to benefit from this trend, the State will need to implement the consulting center and clearinghouse to assist Hawaii's firms and educational institutions to position themselves more strategically. The legislature further finds that the implementation of the center and clearinghouse would benefit from administrative support and guidance within an office that has compatible goals and objectives.

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The purpose of this Act is to transfer the responsibility for an international tourism consulting center and clearinghouse from the department of business, economic development, and tourism to the office of international relations within the office of the governor.

SECTION 2. The international tourism consulting center and clearinghouse established by Act 358, Session Laws of Hawaii 1989, is transferred from the department of business, economic development, and tourism to the office of the international relations within the office of the governor for administrative purposes. The office of international relations shall work closely with the department of business, economic development, and tourism in the coordination of the activities associated with the international tourism consulting center and clearinghouse.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$135,000, or so much thereof as may be necessary for fiscal year 1991-1992, and \$100,000, or so much thereof as may be necessary for fiscal year 1992-1993, to continue the operations of the international tourism consulting center and clearinghouse, including the hiring of necessary staff. The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

SECTION 4. All rights, powers, functions, and duties of the international tourism consulting center and clearinghouse of the department of business, economic development, and tourism are transferred to the office of the governor.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 5. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the international tourism consulting center and clearinghouse of the department of business, economic development,

and tourism relating to the functions transferred to the office of the governor shall be transferred with the functions to which they relate.

SECTION 6. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 247

H.B. NO. 1275

A Bill for an Act Relating to Special Purpose Revenue Bonds to Assist the Evangelical Lutheran Good Samaritan Society in Providing a Health Care Facility to 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 refunding special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare. The Pohai Nani Good Samaritan Kauhale, a retirement and health care facility, located in Kaneohe, Oahu, has been providing residential and health care services to the elderly for the past twenty-seven years. The Evangelical Lutheran Good Samaritan Society, a nonprofit corporation, is the owner of the facility.

SECTION 2. The department of budget and finance is 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 Act 14, First Special Session Laws of Hawaii 1981, and Act 226, Session Laws of Hawaii 1984, relating to the authorization of special purpose revenue bonds to assist the Evangelical Lutheran Good Samaritan Society in providing a health care facility to the general public. In making such determination, the department shall comply with federal law relating to the exclusion from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 3. 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 4. The 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 health care facilities to serve the general public.

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

(Approved June 12, 1991.)

ACT 248

H.B. NO. 1998

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:2-209, Hawaii Revised Statutes, is amended by amending subsection (f)¹ to read as follows:

“(f) [Complaints and investigation reports on file with the commissioner shall be protected from discovery, production and disclosure for so long as the commissioner deems prudent.] The following records and reports on file with the commissioner shall be confidential and protected from discovery, production, and disclosure for so long as the commissioner deems prudent:

- (1) Complaints and investigation reports;
- (2) Working papers of examination reports;
- (3) Proprietary information, including trade secrets, commercial information, and business plans, which, if disclosed may result in competitive harm to the person providing said information.

(g) The commissioner shall not disclose any information that is exempt from disclosure by federal or Hawaii state statutes.”

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, 1991.)

Note

1. So in original.

ACT 249

H.B. NO. 2049

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds to Assist Olokele Sugar Company in Improving Its Electrical Power Generation Capability.

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

SECTION 1. The legislature finds that although Olokele Sugar Company, located on the island of Kauai, is one of the smaller sugar plantations in the State, it is considered to be one of the most successful. Because of ideal climactic conditions, Olokele Sugar Company has been able to produce a consistently high yield per acre ratio; however, relying on fair weather and proper variety selection does not guarantee survival. Continued research into operational improvements and alternative income sources is imperative if the Olokele Sugar Company is to survive.

To this end, the legislature further finds that the Olokele Sugar Company has been researching the energy export potential of the Olokele Sugar Factory. Given the crisis in the Persian Gulf and the potential for a continuation of high oil prices, the possibility of generating more electrical power through alternative means would be in the State’s best interests.

If allowed to act upon its research data, the Olokele Sugar Company will be able to provide five megawatts of capacity and 40,000,000 kilowatts of energy

a year for a fixed term to Kauai Electric Company, thus reducing the utilization of fossil fuels for electrical energy and promoting the State's goal of energy self-sufficiency.

SECTION 2. 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 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 \$10,000,000, for the purpose of assisting Olokele Sugar Company in the construction and operation of an upgraded boiler system so that the Olokele Sugar Company will be able to provide more electrical power to the Kauai Electric Division of Citizens Utilities Company. The legislature finds and determines that this activity of the Olokele Sugar Company constitutes a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

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 the industrial enterprises.

SECTION 5. 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 3.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1994.

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

(Approved June 12, 1991.)

ACT 250

S.B. NO. 339

A Bill for an Act Relating to Rent Supplement.

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

SECTION 1. The legislature finds that the State's housing shortage has reached critical proportions, leaving the elderly, disabled, retired, and others on fixed incomes at greater disadvantage than most segments of the population. Despite the availability of rent subsidy programs and the State's rent supplement payments, there is often a five year waiting list for elderly housing. Although rental costs continue to increase statewide, only a limited number of new low-cost rental units are being constructed for low-income families in Hawaii. These factors have made it doubly difficult to find homes for persons receiving federal supplemental security income (SSI). The purpose of this Act is to amend the definition of "qualified tenant" in the rent supplement program to permit persons receiving SSI to receive rent supplements.

ACT 250

SECTION 2. Section 359-121, Hawaii Revised Statutes, is amended to read as follows:

“§359-121 Rent supplements. The Hawaii housing authority is authorized to make, and contract to make, annual payments to a “housing owner” on behalf of a “qualified tenant”, as those terms are defined in this part, in such amounts and under such circumstances as are prescribed in or pursuant to this part. [In no case shall a contract provide for such payments with respect to any housing for a period exceeding forty years.] No payment on behalf of a qualified tenant shall exceed a segregated amount of \$160 a month[; provided that payments on behalf of elders as defined in section 359-51 shall not exceed a segregated amount of \$160 a month].”

SECTION 3. Section 359-123, Hawaii Revised Statutes, is amended to read as follows:

“§359-123 Qualified tenant defined. As used in this part, the term “qualified tenant” [shall not include persons determined to be eligible for aid through the Federal Supplemental Security Income Program or its successor, or persons receiving money payments for public assistance from the department of human services. Otherwise, “qualified tenant”] means:

- (1) Any single person who has attained the age of sixty-two or who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment; or
- (2) Any family;

provided that the single person or family [has], pursuant to criteria and procedures established by the Hawaii housing authority, has been determined to have an income which would qualify the tenant for occupancy in housing provided by section 221(d)(3) of the National Housing Act or to have a lesser income; and provided further that the qualified tenant’s primary place of residence shall be in the State of Hawaii or that the qualified tenant intends to make the State of Hawaii their primary place of residence. The terms “qualified tenant” and “tenant” include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of the member’s membership to the cooperative, will not be reimbursed for more than fifty per cent of any equity increment accumulated through payments under this part. With respect to members of a cooperative, the terms “rental” and “rental charges” mean the charges under the occupancy agreements between [such] the members and the cooperative. The term “qualified tenant” shall not include any person receiving money payments for public assistance from the department of human services; provided that the term “public assistance” shall exclude aid provided through the federal Supplemental Security Income Program.”

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000, or so much thereof as may be necessary for fiscal year 1991-1992, to supplement funds in the Hawaii housing authority’s rent supplement program.

SECTION 5. The sum appropriated shall be expended by the Hawaii housing authority for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 251

S.B. NO. 1511

A Bill for an Act Making an Appropriation for a Classroom Library Including a Library Inventory, Mobile Carts, and Shelving for Kapaa Elementary.

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

SECTION 1. The legislature finds that Kapaa elementary is the most populated elementary school in the State, yet it presently shares the high school library facilities that are limited at best.

The purpose of this Act is to appropriate funds so that a mobile library in a classroom can be acquired that will sufficiently provide for the needs of the students of Kapaa elementary.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$80,000 or so much thereof as may be necessary for fiscal year 1991-1992, for the purchase of a library inventory, mobile carts, and shelving for grades kindergarten through sixth grade at Kapaa elementary school, Kauai.

SECTION 3. The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 252

S.B. NO. 1539

A Bill for an Act Relating to Practices and Procedures of the Hawaii Civil Rights Commission.

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

SECTION 1. Findings and purpose. The legislature has established the Hawaii civil rights commission to create a mechanism which would provide a uniform procedure for the enforcement of the state's laws prohibiting discrimination in employment, housing, and public accommodations. The legislature finds that in implementing its legislative mandate, there are ambiguous and inconsistent provisions.

The purpose of this measure is to clarify and conform those provisions, especially those that relate to contested case hearings and appeal procedures provided under chapter 91, Hawaii Revised Statutes. It is not the intent of this measure to make statutory amendments that would create substantive changes to chapter 368 or increase or decrease the rights provided under chapters 489 and 515 and part I of chapter 378, Hawaii Revised Statutes.

SECTION 2. Section 368-3, Hawaii Revised Statutes, is amended to read as follows:

“§368-3 Powers and functions of commission. The commission shall have the following powers and functions:

- (1) To receive, investigate, and conciliate complaints alleging any unlawful discriminatory practice under chapters 489 [and], 515 [and], part I of chapter 378, and complaints filed under this chapter, and conduct proceedings on complaints alleging unlawful practices where conciliatory efforts are inappropriate or unsuccessful.
- (2) To hold hearings and make inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of these hearings and inquiries, administer oaths and affirmations, conduct depositions, compel the attendance of parties and witnesses and the production of documents by the issuance of subpoenas, examine parties and witnesses under oath, require answers to interrogatories issued, and delegate these powers to any member of the commission or any person appointed by the commission for the performance of its functions.
- (3) To commence civil action in circuit court to seek appropriate relief, including the enforcement of any commission order[.], conciliation agreement, or predetermination settlement.
- (4) To issue the right to sue to a complainant.
- (5) To order appropriate legal and equitable relief or affirmative action when a violation is found.
- (6) To issue publications and results of investigations and research that, in its judgment, will tend to promote goodwill and minimize or eliminate discrimination in employment, housing, and public accommodations.
- (7) To submit annually to the governor and the legislature a written report of its activities and of its recommendations for administrative or statutory changes required to further the purposes of this chapter.
- (8) To appoint an executive director, attorneys, and hearings examiners who shall be exempt from chapters 76 and 77, and investigators and other necessary support personnel who shall be subject to chapters 76 and 77. Section 103-3 notwithstanding, an attorney employed by the commission as a full-time staff member may represent the commission in litigation, draft legal documents for the commission, provide other necessary legal services to the commission, and shall not be deemed to be a deputy attorney general.
- (9) To adopt rules under chapter 91.”

SECTION 3. Section 368-11, Hawaii Revised Statutes, is amended to read as follows:

“[§368-11] Complaint against unlawful discrimination. (a) The commission shall have jurisdiction over the subject of discriminatory practices made unlawful by chapters 489 [and], 515 [and], part I of chapter 378[.], and this chapter. Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the [commission] commission’s executive director a [verified] complaint in writing that shall state the name and address of the person or party alleged to have committed the unlawful discriminatory practice complained of, set forth the particulars thereof, and contain other information as may

be required by the commission. The attorney general, or the commission upon its own initiative may, in like manner, make and file a complaint.

(b) A complaint may be filed on behalf of a class by the attorney general or the commission, and a complaint so filed may be investigated, conciliated, heard, and litigated on a class action basis.

(c) No complaint shall be filed after the expiration of one hundred eighty days after the date:

- (1) Upon which the alleged unlawful discriminatory practice occurred; or
- (2) Of the last occurrence in a pattern of ongoing discriminatory practice.

(d) For the purposes of this chapter "unlawful discriminatory practice" means an unfair discriminatory practice or like terms, as may be used in chapters 489, 515, or part I of chapter 378."

SECTION 4. Section 368-13, Hawaii Revised Statutes, is amended to read as follows:

“[[§368-13]] Investigation and conciliation of complaint. (a) After the filing of [any] a complaint, or whenever it appears to the commission that an unlawful discriminatory practice may have been committed, the [commission] commission's executive director shall make 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 reasonable cause to believe that chapter 489, 515, [or] part I of chapter 378, or this chapter has been violated, the parties may agree to resolve the complaint through a predetermination settlement.

(b) The executive director shall issue a determination of whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred within one-hundred and eighty days from the date of filing a complaint unless the commission grants an extension of time to issue a determination.

(c) If the executive director makes a determination that there is no reasonable cause to believe that an unlawful discriminatory practice has occurred in a complaint filed, the executive director shall promptly notify the parties in writing. The notice to complainant shall indicate also that the complainant may bring a civil action as provided under section 368-12.

[(b) In the event that the commission] (d) When the executive director determines after the investigation that there is reasonable cause to believe that an unlawful discriminatory practice within the commission's jurisdiction has been committed, the [commission] executive director shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods[,] such as[,] conference, conciliation, and persuasion.

[(c)] (e) Where the [commission] executive director has determined that there is reasonable cause to believe that an unlawful discriminatory practice has occurred and has been unable to secure from the respondent a conciliation agreement acceptable to the commission within [sixty] one-hundred and eighty days of the filing of the complaint unless the commission has granted an extension of time, the [commission] executive director shall demand that the respondent cease the unlawful discriminatory practice. The [commission's] executive director's determination that a final conciliation demand is to be made shall be subject to reconsideration by the commission on its own initiative but shall not be subject to judicial review. The [commission] executive director may demand appropriate affirmative action as, in the judgment of the [commission,] executive director,

will effectuate the purpose of this chapter, and include a requirement for reporting on the manner of compliance.”

SECTION 5. Section 368-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If, fifteen days after service of the final conciliation demand, the commission finds that conciliation will not resolve the complaint, the commission shall appoint a hearings examiner and schedule a [public] contested case hearing that shall be held in accordance with chapter 91. The case in support of the complaint shall be presented at the hearing by counsel provided by the commission. Following the completion of the contested case hearing, the hearings examiner shall issue a [written decision. If the hearings examiner finds that discrimination occurred,] proposed decision containing a statement of reasons including a determination of each issue of fact or law necessary to the proposed decision which shall be served upon the parties. Any party adversely affected by the proposed decision may file exceptions and present argument to the commission which shall consider the whole record or such portions thereof as may be cited by the parties. If the commission finds that unlawful discrimination has occurred, the commission shall issue [an] a decision and order in accordance with chapter 91 requiring the respondent to cease the unlawful practice and to take appropriate remedial action. If there is no finding of discrimination, the commission shall issue an order dismissing the case.”

SECTION 6. Section 368-15, Hawaii Revised Statutes, is amended to read as follows:

“[[§368-15]] **Compliance review.** At any time in its discretion but not later than one year from the date of a conciliation agreement, predetermination settlement, or after the date of a commission’s order to cease an unlawful practice and to take appropriate remedy, the commission shall investigate whether the terms of the agreement, settlement, or order are being complied with by the respondent. Upon a finding that the terms of the agreement, settlement, or the terms of the commission’s order, are not being complied with by the respondent, the commission shall take affirmative action as authorized in section 368-3.”

SECTION 7. Section 368-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The remedies ordered by the commission or the court under this chapter may include compensatory and punitive damages and legal and equitable relief, including, but not limited to:

- (1) Hiring, reinstatement, or upgrading of employees with or without back pay;
- (2) Admission or restoration of individuals to labor organization membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, with the utilization of objective criteria in the admission of persons to those programs;
- (3) Admission of persons to a public accommodation or an educational institution;
- (4) Sale, exchange, lease, rental, assignment, or sublease of real property to a person;

- (5) Extension to all persons of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent;
- (6) Reporting as to the manner of compliance;
- (7) Requiring the posting of notices in a conspicuous place that the commission may publish or cause to be published setting forth requirements for compliance with civil rights law or other relevant information that the commission determines necessary to explain those laws;
- (8) Payment to the complainant of damages for an injury or loss caused by a violation of chapters 489 [and], 515 [and], part I of chapter 378, or this chapter, including a reasonable attorney's fee;
- (9) Payment to the complainant of all or a portion of the costs of maintaining the action before the commission, including reasonable attorney's fees and expert witness fees, when the commission determines that award to be appropriate; and
- (10) Other relief the commission or the court deems appropriate."

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 June 12, 1991.)

ACT 253

S.B. NO. 1567

A Bill for an Act Relating to Tobacco Products.

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

SECTION 1. The legislature finds that children are very susceptible to the prominence and accessibility of vending machines and that while it is against the law for a minor to purchase tobacco products through vending machines, many of those vending machines are left unattended and the lack of supervision of these vending machines may encourage minors to break the law whether knowingly or unknowingly. In addition, cigarette vending machines are estimated by the National Automatic Merchandising Association study to account for sixteen per cent of illegal cigarette sales to minors, and the younger the children are, the more likely they are to purchase from a vending machine. Currently Maine, Massachusetts, Alaska, and Utah have restrictions on the sale of cigarettes from vending machines. Sixteen municipalities in Minnesota recently banned cigarette vending machines entirely. Sale of alcohol is not legal via vending machines; tobacco is a controlled substance, therefore should have the same general restriction.

The legislature finds also that there are areas from which minors are restricted, and therefore not allowed easy access. These areas should not be subject to the general ban on vending machines. The tobacco industry has often claimed that they do not wish to focus their promotion of cigarettes towards minors, and therefore should not object to efforts to control the access of tobacco to minors.

The purpose of this bill is to provide a uniform statewide code to regulate the dispensing of cigarettes and other tobacco products from vending machines.

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SECTION 2. Chapter 328K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§328K- Cigarette vending machines. (a) The sale of cigarettes from vending machines is prohibited unless the vending machine is located in a bar, cabaret, or any establishment for which the minimum age for admission is eighteen.

(b) Violations of subsection (a), including placement of a cigarette vending machine in a location other than a bar, cabaret, or any establishment for which the minimum age for admission is eighteen, are subject to a fine of up to \$1,000 per day for each violation.

(c) As used in this section, “cigarette vending machine” means a self-service device that dispenses cigarettes, cigars, tobacco, or any other product containing tobacco.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 1992.

(Approved June 12, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 254

S.B. NO. 1726

A Bill for an Act Relating to Energy.

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

SECTION 1. The legislature has determined that because of Hawaii's almost total reliance on imported oil for energy, millions of dollars are taken from the State's economy each year for petroleum payments.

An integral component in the Hawaii state plan objective of increasing energy self-sufficiency is the development and utilization of indigenous energy resources; however, the development and utilization of these energy resources involve financial risks and costs that often discourage developers. If these costs can be lowered to allow for a more rapid amortization of capital investments, it would encourage the development of alternate energy power facilities.

While geothermal power, as a component of integrated resource planning, may assist the county of Hawaii in reducing its consumption of fossil fuel, the legislature finds it essential to emphasize conservation and energy efficiency to foster statewide energy self-sufficiency. The legislature further finds that geothermal facilities constitute a project as defined in chapter 39A, part V, Hawaii Revised Statutes, and 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. 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 \$5,000,000, for the purpose of assisting Puna Geothermal Venture in financing the geothermal energy projects in Puna, Hawaii; provided

that the facilities to be financed shall meet with the approval of the State of Hawaii and the county of Hawaii.

SECTION 3. 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 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1994.

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

(Approved June 12, 1991.)

ACT 255

S.B. NO. 1737

A Bill for an Act Making an Appropriation to the Department of Business, Economic Development, and Tourism for the Community-Based Development Program.

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

SECTION 1. The legislature finds that a community-based development program was established in 1990 to assist traditional and small community-based businesses and enterprises in becoming self-sufficient and to encourage the diversification of economic opportunities for Hawaii's residents and communities. The legislature also finds that a Hawaii community-based development revolving fund was established because conventional financial institutions traditionally did not provide loans to initiate the establishment of community-based enterprises, and because there was a need to support economic alternatives for communities, to provide assistance through loans and grants, and to initiate the establishment and expansion of traditional enterprises.

The legislature further finds that the community-based development program has the support of the administration, as evidenced by the fact that the governor in his State of the State address proposed that the State support the Opelu Project on the Waianae coast as a prototype of community-based development. During the first six months of the program, one grant of \$470,000 was made to the Waianae coast community alternative development corporation, leaving only \$30,000 in the grant program. Meanwhile, the loan program has \$400,000 available but has had no applicants, and loan applicants are likely to request only small loans.

The purpose of this Act is to provide that moneys appropriated to the Hawaii community-based development revolving fund for the purpose of making loans can be used to make grants, for the purpose of providing additional grants to traditional and small community-based businesses and enterprises.

SECTION 2. Chapter 210D, Hawaii Revised Statutes, is amended as follows:

1. By amending Section 210D-4 to read as follows:

"[§210D-4] Hawaii community-based development revolving fund;

established. There is established a revolving fund to be known as the Hawaii community-based development revolving fund from which moneys shall be loaned or granted by the department under this chapter. All moneys appropriated to the fund by the legislature, received in repayment of loan principal, or payment of interest, and fees shall be deposited into the revolving fund and used for the purposes of this chapter. The department may use all appropriations and other moneys in the revolving fund not appropriated for a designated purpose to make grants or loans, provided that at no time shall the department reallocate funds from the loan program to the grant program so that insufficient funds remain available to make loans.”

2. By amending subsection (a) of Section 210D-11 to read as follows:

“(a) Grants [shall only be made with funds specifically appropriated for providing grants, and] shall be made for amounts not to exceed \$500,000 for each applicant. Applications for grants shall be made to the department and contain such information as the department shall require by rules adopted pursuant to chapter 91. At a minimum, the applicant must show that:

- (1) The grant shall be used exclusively for a traditional or small community-based business or enterprise for a continuous period of at least five years;
- (2) The traditional or small community-based business or enterprise shall have applied for or received all applicable licenses and permits;
- (3) The applicant will comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
- (4) The grant shall not be used for purposes of entertainment or perquisites;
- (5) The applicant shall comply with other requirements as the department of business, economic development, and tourism may prescribe;
- (6) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules;
- (7) The applicant will indemnify and save harmless the State of Hawaii and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department; and
- (8) The facilities will not be used and are not intended to be used for sectarian instruction or as a place of worship.”

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 1991-1992, to be paid into the Hawaii community-based development revolving fund, for the purpose of providing grants under section 210D-11, Hawaii Revised Statutes.

SECTION 4. The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 256

S.B. NO. 1792

A Bill for an Act Relating to Correctional Industries.

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

SECTION 1. Section 354D-1, Hawaii Revised Statutes, is amended to read as follows:

“**[[§354D-1]] Finding and purpose.** The legislature finds that the number and types of programs operated by the department of public safety shall be expanded to provide a comprehensive work program for inmates. The full development of inmate employment opportunities shall be expanded to enable correctional industries programs to operate in a cost-effective manner.

The purpose of this chapter is to:

- (1) Establish the correctional industries program to allow expanded industries programs to generate revenue to sustain its operation and allow for capital investment. The program should be structured to allow for the increased involvement of correctional industries in providing specific training skills **[[for]]** offenders that increase their employment prospects after release;
- (2) Develop industries that provide a maximum level of work for all qualified, able-bodied inmates;
- (3) Provide an environment for the operation of correctional industries similar to that of a private business operation;
- (4) Encourage cooperative training ventures between the correctional industries program and the private sector; and
- (5) Provide for low-cost construction, renovation, and repairs of facilities, grounds, furniture, vehicles, and equipment for private nonprofit social service, education, and health agencies and programs.”

SECTION 2. Section 354D-4, Hawaii Revised Statutes, is amended to read as follows:

“**[[§354D-4]] Powers and duties of the director.** Under the supervision of the director or the director’s designee, the administrator of the correctional industries program shall:

- (1) Develop programs generating revenue that best sustains their operation and allows for capital investment, and reimburses the general fund, when possible, for the expense of correctional services;
- (2) Develop programs providing the maximum level of work and training opportunities for qualified, able-bodied inmates;
- (3) Develop programs assuming responsibility for training qualified, able-bodied inmates in general work and specific training skills that increase their employment prospects after release;
- (4) Develop programs in which inmates can learn skills used in the construction **[industry,] and other industries,** while providing low-cost construction, renovation, and repairs of facilities, grounds, furniture,

- vehicles, and equipment for private, nonprofit social services, health, or education agencies and programs;
- (5) Acquire or purchase equipment, materials, supplies, office space, insurance, and services necessary to establish and maintain programs pursuant to this chapter;
 - (6) Utilize labor services of qualified, able-bodied inmates in the manufacture or production of goods and services that are needed for the construction, operation, or maintenance of any office, department, institution, or agency supported in whole or in part by the State, the counties, or the federal government;
 - (7) Sell all goods and services to the State, the counties, or the federal government;
 - (8) Enter into any contract or agreement and execute all instruments consistent with this chapter and exempt from chapter 103;
 - (9) Purchase, lease, trade, exchange, acquire, and maintain personal property; and
 - (10) Accept grants or loans from the State, the counties, or the federal government.”

SECTION 3. Section 354D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The administrator may purchase or cause to be purchased and maintained all necessary materials, supplies, space, services, and equipment required for the operation of the program. Notwithstanding any other provision to the contrary, purchases [of equipment, materials, supplies, and services] by the administrator for the manufacture of any goods or services shall be exempt from the public bidding requirements of chapter 103.”

SECTION 4. Section 354D-10, Hawaii Revised Statutes, is amended to read as follows:

“**[§354D-10] Correctional industries revolving fund.** There is created [a revolving fund to be known as] the correctional industries revolving fund to be administered by the department. All moneys collected by the department from the sale or disposition of goods and services produced in accordance with this chapter shall be deposited into the correctional industries revolving fund. The proceeds in the correctional industries revolving fund shall be used for: the purchase or lease of supplies, equipment, and machinery; the construction, leasing, or renovating of buildings used to carry out the purposes of this chapter; the salaries of personnel necessary to administer the enterprises established in accordance with this chapter; payment of inmates for work assignments; and other necessary expenses; provided that the correctional industries revolving fund shall not be maintained in excess of the amount necessary to carry out the purposes of this chapter.”

SECTION 5. Section 354D-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director or a designated representative shall make all qualified, able-bodied inmate work assignments with the correctional industries program and establish the rate of compensation for the assignments. A portion of the compensation [shall be paid to the State to defray the cost of operations, and a

portion] shall be paid to the qualified, able-bodied inmate in relation to the number of hours worked, type of work assignment, and quality of work performed. Payment rates shall be established on an annual basis after review by the advisory committee. [Payment rates shall be subject to the availability of appropriations by the legislature.]”

SECTION 6. Section 354D-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Qualified, able-bodied inmates producing goods and services under the terms of an agreement authorized by this section shall be paid on a scale to be determined by the director. These payments shall be distributed to offset the cost of imprisonment, incidental expenses, [court-ordered] restitution, child support, and to establish funds in trust for the qualified able-bodied inmate upon release in conformance with section 354D-12.”

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 12, 1991.)

ACT 257

S.B. NO. 1797

A Bill for an Act Relating to Domestic Violence.

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

SECTION 1. Section 709-906, Hawaii Revised Statutes, is amended by amending subsection (5) to read as follows:

“(5) Abuse of a family or household member, and refusal to comply with the lawful order of a police officer under subsection (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. However, the court may suspend any portion of a jail sentence, except for the mandatory forty-eight hours, upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered counseling.”

SECTION 2. Section 709-906, Hawaii Revised Statutes, is amended by amending subsection (13) to read as follows:

“(13) If a person is ordered by the court to undergo any treatment or counseling [at any available domestic violence program], that person shall provide adequate proof of compliance with the [court] court’s order [as instructed by the court]. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered treatment. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the treatment ordered by the court.”

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SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$115,000, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$115,000, or so much thereof as may be necessary for fiscal year 1992-1993, to hire personnel to fill 4.0 social worker III positions. The sums appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 4. 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 1991-1992, to disseminate information about abuse and resources available to victims of abuse, examine the causes of domestic violence and abuse, and recommend solutions. The sum appropriated shall be expended by the commission on the status of women to undertake a fact-finding and educational dialogue through community forums with individuals and groups concerning various types of violent behavior and domestic abuse that manifest themselves in the cultural, societal, and personal ways of dealing with stress, power, and problem-solving and to disseminate up-to-date information on the many forms of abuse that occur and the resources available to victims of abuse. Based upon the information and knowledge obtained through these community forums, the commission shall make recommendations concerning:

- (1) Ways in which violent behavior can be minimized or eliminated and non-violent behavior can be learned; and
- (2) Means of encouraging healthy family relationships and individual self-esteem.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

ACT 258

S.B. NO. 1858

A Bill for an Act Relating to the Office of Youth Services.

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

SECTION 1. The purpose of this Act is to consolidate efforts made for the prevention of juvenile delinquency and betterment of the juvenile justice system. In the past, the legislature has established two bodies for these purposes, the juvenile justice interagency board and the office of youth services. The juvenile justice interagency board was established to advise juvenile justice agencies, among others, on policies for coordination and cooperation. Act 375, Session Laws of Hawaii 1989, established the office of youth services with the responsibility of addressing the needs of prevention of juvenile delinquency. The legislature also empowered the office with the responsibility for coordinating, overseeing, and

evaluating the myriad of youth services. To this end, the purpose of this Act is to combine efforts made for the prevention of juvenile delinquency by incorporating the juvenile justice interagency board into the office of youth services by transferring the board's power, functions, and duties to the office. This will provide the board a broader base to carry out its purpose and at the same time provide valuable expertise to the office to assist in its planning, coordination, and integration of a cohesive and effective youth service system.

This Act further provides for the establishment of four regional advisory boards and directorships located in each county to encourage community involvement, as well as cooperation and coordination among the public and private levels of service providers. This will also ensure that each island's needs are met as well as to achieve a coordinated statewide effort.

SECTION 2. Chapter 352D, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§352D- Office of youth services regional advisory boards; power, duties, and authority. (a) There shall be established a regional advisory board located in each county and they shall be called the Hawaii, Kauai, Maui, and Oahu regional advisory boards, respectively. The office shall provide staff support for each board. Each board shall elect annually from among its members a chairperson who shall preside at its regular meetings. Each board shall be composed of eleven voting members. Each board's membership shall include four lay persons, of which two shall possess knowledge of youth services, all appointed by the governor as provided in section 26-34.

The Oahu regional advisory board shall include the superintendent of education, the public defender, the directors of human services and health, the police chief and the prosecuting attorney of the city and county of Honolulu, and the senior family court judge of the first circuit, or their designees.

The other regional advisory boards shall include the county's chief of police and prosecuting attorney, a deputy public defender, a family court judge, and one representative from each of the following departments of education, human services, and health, who shall be selected by their respective directors, or their designees.

All board members shall be residents of the county in which the regional advisory board to which they are appointed is located, and shall serve without compensation, but shall be reimbursed for necessary expenses incurred during the performance of their duties.

(b) There shall be a combined meeting of all boards at least once a year. Each regional board shall advise the office on:

- (1) General policies relating to the youth service system, including but not limited to planning, integration, development, and coordination to effectuate the purposes of this chapter;
- (2) Monitoring and evaluating youth services as they relate to the coordination and integration of the youth service system within its region; and
- (3) Any pertinent issue related to the youth service system within its region.

§352D- Regional directors; powers, duties, and authority. The executive director shall appoint a regional director in each county. Each regional director shall be exempt from chapters 76 and 77, and shall answer to the executive director. The regional director shall:

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- (1) Oversee the youth services centers located in the director's region;
- (2) Assist the executive director in coordinating, monitoring, and evaluating all programs and activities operated by the office within its region;
- (3) Advise the executive director on any pertinent issue related to the youth service system within the director's region; and
- (4) Provide staff support for the regional advisory board located in the director's region."

SECTION 3. Section 352D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Beginning July 1, 1991, and terminating on June 30, [1992,] 1995, there shall be established within the office of youth services an oversight committee, consisting of seven members. The committee shall include five members who represent providers of youth services and two lay citizens. All members shall have knowledge and experience regarding the needs of youth. All members shall be appointed by the governor as provided in section 26-34. The director shall serve as executive secretary of the committee. The oversight committee shall have the responsibility of investigating and reporting misfeasance and malfeasance within the youth service system, inquiring into areas of concern, and conducting periodic audit evaluations of the youth service system to ascertain its effectiveness and compliance with established responsibilities. This responsibility shall not include, however, services which are provided directly by the office of youth services.

It shall be the duty of the oversight committee to conduct regular, periodic, unannounced inspections of state-operated children's institutions and facilities and to review the reports of the inspections of the county fire chief and the department of health and any agencies [which] that accredit [such] these institutions and facilities."

SECTION 4. Chapter 571D, Hawaii Revised Statutes, is repealed.

SECTION 5. (a) All rights, powers, functions, and duties of the juvenile justice interagency board, except for the juvenile justice information system, are transferred to the department of human services to be administered by the office of youth services, including, but not limited to, the Juvenile Justice Delinquency Protection Act (hereinafter referred to as "JJDP") and the JJDP's state advisory group, both established by Congress; provided that funds from the JJDP may be administered, but may not be used directly, by the office of youth services for its own programs.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

In the event that an office or position held by an officer or employee

having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

(b) All appropriations, records, files, contracts, books, papers, documents, maps and other personal property heretofore made, acquired, or held by the juvenile justice interagency board, except for the juvenile justice information system, shall be transferred to the department of human services with the functions to which they relate and shall be administered by the office of youth services.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$475,989, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$400,108, or so much thereof as may be necessary for fiscal year 1992-1993, to establish within the office of youth services four positions for the regional directors, four positions for clerical staff, and for the establishment and operations of the regional offices including, but not limited to, the purchasing of equipment and other necessary expenditures.

The sums appropriated shall be expended by the department of human services for the office of youth services.

SECTION 7. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall report promptly any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

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

SECTION 9. This Act shall take effect on July 1, 1991.

(Approved June 12, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 259

S.B. NO. 1962

A Bill for an Act Relating to Hazardous Waste.

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

SECTION 1. Chapter 342J, Hawaii Revised Statutes, is amended by adding two¹ new sections to be appropriately designated and to read as follows:

“§342J- Standards for persons who deal with hazardous waste fuel. The director may establish, by rule, standards applicable to persons who generate, transport, treat, store, dispose, distribute, or market any fuel which is produced from any hazardous waste or from any other material.

§342J- Guarantors. (a) In a case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any state court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this chapter or rules adopted pursuant to this chapter may be asserted directly against the guarantor providing evidence of financial responsibility. In the case of any action pursuant to this section, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(b) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter or rules adopted pursuant to this chapter. Nothing in this section shall be construed to limit any other statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith either in negotiations or in failing to negotiate the settlement of any claim. Nothing in this section shall be construed to diminish the liability of any person under chapter 128D or other applicable law.

(c) For the purpose of this section, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this chapter or rules adopted pursuant to this chapter.

§342J- Copy fee waiver. The fee chargeable under section 92-21 may be reduced or waived if the department determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public."

SECTION 2. Chapter 342J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

§342J- Citizens' suits. (a) Except as provided in subsections (b), (c) and (d) of this section, any person may commence a civil action on the person's own behalf:

- (1) Against any person who is alleged to be in violation of any permit, rule, requirement, prohibition, or order which has become effective pursuant to this chapter; or
- (2) Against any person including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or
- (3) Against the director where there is alleged a failure of the director to perform any act or duty under this chapter which is not discretionary with the director.

(b) No action may be commenced under subsection (a)(1) of this section:

- (1) Prior to sixty days after the plaintiff has given notice of the violation to:

- (A) The director;
 - (B) To any alleged violator of such permit, rule, requirement, prohibition, or order.
- (2) If the state has commenced and is diligently prosecuting a civil or criminal action in court to require compliance with such permit, rule, requirement, prohibition, or order.
- (c) No action may be commenced under subsection (a)(2) of this section prior to ninety days after the plaintiff has given notice of the endangerment to:
- (1) The director;
 - (2) Any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(2) of this section.
- (d) No action may be commenced under subsection (a)(3) of this section prior to sixty days after the plaintiff has given notice to the director that he will commence such action. Notice under this subsection shall be given in such manner as the director shall prescribe by rule.”

SECTION 3. Section 342J-2, Hawaii Revised Statutes, is amended by amending the definitions of “hazardous waste management facility” and “person” to read:

““Hazardous waste management facility” or “facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

“Person” means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity.”

SECTION 4. Section 342J-2, Hawaii Revised Statutes, is amended by adding the following definitions:

““RCRA” means the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 to 6991i.

“Any state” means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.”

SECTION 5. Section 342J-4, Hawaii Revised Statutes, is amended to read as follows:

“**[§342J-4] Powers; rulemaking; appointment of hearings officers.**
 (a) The director may make, amend, and repeal state rules [controlling, and prohibiting] which govern the management of hazardous waste and which control and prohibit hazardous waste pollution. All rules shall be adopted pursuant to chapter 91. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapters 76 and 77, hearings officers to

conduct public participation activities including public hearings and public informational meetings.”

SECTION 6. Section 342J-5, Hawaii Revised Statutes, is amended to read as follows:

“**[§342J-5] Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The [department] director may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed or existing [installation, alteration, or use] hazardous waste management facility will be in [accord] compliance with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that [such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that such is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.] the applicant and facility have complied with the provisions of this chapter. Each permit shall be reviewed five years after the date of issuance and shall be modified as necessary to assure that the facility and permittee continue to comply with applicable provisions of this chapter. Nothing in this subsection shall preclude the director from reviewing and modifying a permit at any time during its term. Each permit issued under this section shall contain such terms and conditions as the director determines are necessary to protect human health or the environment.

The director[, on the director’s own motion or the application of any person,] may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any term or condition of the permit; [or]
- (2) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts; [or]
- (3) There is a change in any [condition that requires either a temporary or permanent reduction or elimination of the permitted hazardous waste management activity;] circumstance that necessitates a modification, suspension, or revocation of the permit; or
- (4) Such is in the public interest.

[The director shall ensure that the public receives notice of each application for a permit to control hazardous waste pollution.] Public notice shall be given of proposed decisions respecting permit issuance, reissuance, denial, revocation, suspension, substantial modification to a permit requested by a permittee, and modifications to a permit initiated by the director. The director may hold a public hearing before [ruling on an application for a permit to control hazardous waste pollution] issuing a final decision respecting a permit issuance, reissuance, denial, revocation, suspension, request by a permittee to substantially modify a permit, and any modification to a permit initiated by the director if the director determines that such a public hearing [to be] is in the public interest.

[In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the

proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe.]

(d) No applicant for a modification or [renewal] reissuance of a permit shall be held in violation of this chapter during the pendency of the applicant's application so long as the applicant acts consistently and the facility is in compliance with the permit previously granted[, the application and all plans, specifications, and other information submitted as a part thereof].”

SECTION 7. Section 342J-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342J-6]]~~ **[Entry] Furnishing of information and entry and inspection of premises.** [The director, in accordance with law, may enter and inspect any building or place for the purposes of:

- (1) Investigating an actual or suspected source of hazardous waste pollution;
- (2) Monitoring for compliance or noncompliance with this chapter, any rule or standard adopted by the department, any permit, or any other approval granted by the department;
- (3) Conducting reasonable tests;
- (4) Taking samples; or
- (5) Copying records.

No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of hazardous waste pollution shall be disclosed by the official or employee except as it relates directly to hazardous waste pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.] (a) For purposes of enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall, upon request of any duly authorized representative of the director, furnish information relating to such wastes and permit such representative at all reasonable times to have access to, and to copy all records relating to such wastes.

(b) For purposes of enforcing the provisions of this chapter the authorized representative may:

- (1) Enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;
- (2) Inspect and obtain samples of any such wastes and samples of any containers or labeling for such wastes, and
- (3) Obtain any other information for purposes of determining compliance with the provisions of this chapter, including financial information.

Each such inspection shall be commenced and completed with reasonable promptness.”

SECTION 8. Section 342J-7, Hawaii Revised Statutes, is amended to read as follows:

“§342J-7 Enforcement. (a) If the director determines that any person has violated or is violating any provisions of this chapter, any rule adopted pursuant to this chapter, or [violating] any term or condition of a permit issued pursuant to this chapter or section 3005 of RCRA, 42 U.S.C §6925, the director may do one or more of the following:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (3) May impose penalties as provided in section 342J-9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.]
- (1) Issue an order assessing a civil penalty for any past or current violation;
- (2) Require compliance immediately or within a specified time period;
- (3) Commence a civil action in the circuit court in the circuit in which the violation occurred, the person resides, or the principal place of business exists for appropriate relief, including a temporary, preliminary or permanent injunction.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of any permit issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section 342J-9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.]

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any permit issued under section 3005 of RCRA, 42 U.S.C. §6925, by the Administrator of U.S. Environmental Protection Agency or under section 342J-5 by the director, and shall state with reasonable specificity the nature of the violation. Any penalties assessed in the order shall be in

accordance with section 342J-9.

[(c) If the director determines that any person has violated an accepted schedule or an order issued this section, pursuant to the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d)] (c) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

[(e)] (d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or disposals involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or disposals.

[(f)] (e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

[(g)] (f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.”

SECTION 9. Section 342J-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other law to the contrary, if the director determines that [an imminent peril to the public health and safety is or will be caused by disposal of hazardous waste or any combination of disposals of hazardous waste, which requires immediate action,] the past or present handling, storage, treatment, transportation or disposal of any hazardous waste or hazardous waste constituent may present an imminent and substantial endangerment to health or the environment, the director, with the approval of the governor and without public notice and public hearing, may [order any person causing or contributing to

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the disposal of hazardous waste to immediately reduce or stop such disposal or the director may take any and all other actions as may be necessary.] secure or order such relief as may be necessary to abate such danger or threat. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director. The director may also institute a civil action in any court of competent jurisdiction to secure such relief as may be necessary to abate such danger or threat.”

SECTION 10. Section 342J-9, Hawaii Revised Statutes, is amended to read as follows:

“**§342J-9 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each 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.

(b) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized representative of the director, or fails to provide information requested by such representative under section 342J-6 shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense.

[(b)] (c) Any person who knowingly:

- (1) Transports any hazardous waste to a storage, treatment, or disposal facility which does not have a permit pursuant to section 342J-5 to treat, store, or dispose of that particular hazardous waste;
- (2) Treats, stores, or disposes of hazardous waste without first having a permit pursuant to section 342J-5; or
- (3) Makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used, for purposes of compliance with this chapter[.];

shall be subject to criminal penalties of not more than \$25,000 for each day of each violation, or imprisonment, not to exceed one year, or both. If the conviction is for a violation committed after a first conviction, criminal punishment shall be by a fine of not more than \$50,000 for each day of each violation, or by imprisonment for not more than two years, or both.

[(c) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle which the officer or employee is authorized to enter and inspect shall be fined not more than \$10,000 for each separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.]”

SECTION 11. Section 342J-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342J-11]]~~ **Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to:

- (1) Address any release of hazardous waste or any hazardous waste constituent pursuant to section 342J-36; and
- (2) [prevent] Prevent any violation of any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a

permit [or variance] adopted pursuant to this chapter, without the necessity of a prior revocation of the permit [or variance]. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 12. Section 342J-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342J-14]]~~ **Public records; confidential information; penalties.** [Reports submitted to the department hazardous waste management shall be made available for inspection by the public during established office hours unless such reports, contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section 342J-6 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or by any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.] (a) For purposes of this chapter, chapter 92F applies to the determination of the types of information that should be made available to members of the public provided that any information that would be required to be disclosed under RCRA and the federal Freedom of Information Act, 5 U.S.C. §552, if these Acts were applicable, shall be open to the public notwithstanding any provisions to the contrary in chapter 92F. The legislature declares that disclosure of such information which RCRA and the federal Freedom of Information Act require to be disclosed for purposes of this chapter does not constitute an unwarranted invasion of privacy.

(b) Information concerning secret processes or methods of manufacture maintained by an agency pursuant to this chapter shall not be disclosed to the public unless disclosure of such information would be required under applicable provisions of RCRA, 42 U.S.C., §6901 to 6991i and the federal Freedom of Information Act, 5 U.S.C. §552.

(c) For purposes of this chapter, the department may adopt rules pertaining to both substantive and procedural aspects of information practices which are consistent with RCRA and the federal Freedom of Information Act. These rules shall govern information practices concerning all records maintained by any agency pursuant to this chapter or RCRA and shall supersede any inconsistent rules promulgated pursuant to chapter 92F.”

SECTION 13. Section 342J-16, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342J-16]]~~ **Intervention.** [Subject to the approval of the court, any] Any individual shall have the right to intervene in any civil action to enforce the provisions of this chapter provided the individual has an interest which is, or may be, adversely affected.”

SECTION 14. Section 342J-30, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342J-30]]~~ **Prohibition.** (a) No person, including any federal agency, the State, or any of its political subdivisions, shall own, operate, or construct a hazardous waste management facility without first securing a permit issued by the director. In addition, no person shall treat, store or dispose of hazardous waste at

an unpermitted hazardous waste management facility, unless otherwise permitted by law.

(b) Any person who:

- (1) Owns or operates a facility required to have a permit under section 342J-30 which was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section;
- (2) Has complied with the requirements of section 3010(a) of RCRA, 42 U.S.C. section 6930(a); and
- (3) Has made an application for a permit under section 3005 of RCRA, 42 U.S.C. §6925, or section 342J-5 shall be treated as having been issued such permit until such time as final administrative disposition of such application has been made unless the director proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process that application. Such facilities shall be deemed to have interim status. This paragraph shall not apply to any facility which has been previously denied a permit under section 3005 of RCRA, 42 U.S.C. §6925 or section 342J-5 or if authority to operate the facility under section 3005 of RCRA, 42 U.S.C. §6925 or this section has been previously terminated.

(c) The director shall have the authority to publish schedules for the submission of permit applications and other information reasonably required and or requested in order to process that application. Failure to comply with such schedules shall be a basis for automatic termination of interim status.”

SECTION 15. Section 342J-36, Hawaii Revised Statutes, is amended to read as follows:

“§342J-36 Hazardous waste releases. (a) [The director may issue an order requiring the owner or operator of a hazardous waste management facility or site to monitor, test, analyze, and report, with respect to a site, in order to ascertain the nature and extent of any release of hazardous waste or hazardous waste constituent.

(b) Any person to whom the order is issued may be required to submit to the director within thirty days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(c) If the director determines that the owner or operator is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the director may dictate the conduct of such activity, the cost of which shall remain the responsibility of the owner or operator.

(d) Whenever the director determines that there is or has been a release of hazardous waste or hazardous waste constituent into the environment from a hazardous waste management facility or site, the director may issue an order requiring corrective action to protect human health or environment, or the director may commence a civil action for appropriate relief, including a temporary or permanent injunction.] Whenever the director determines that there has been a release of hazardous waste or of a hazardous waste constituent into the environment from a facility handling hazardous wastes, the director may:

- (1) Require the facility or site to undertake corrective action or such other response action as the director deems necessary to protect

human health or the environment; and

- (2) Require that corrective action be taken beyond the facility boundary where necessary to protect human health or the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the director that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action.

(b) Whenever the director determines that there is or has been a release of hazardous waste or of a hazardous waste constituent into the environment from a hazardous waste management facility or site, the director may issue an order requiring corrective action to protect human health or the environment, or the director may commence a civil action for appropriate relief, including a temporary, preliminary, or permanent injunction. For purposes of enforcement, failure to comply with an order issued pursuant to this chapter shall constitute a violation of a requirement of this chapter.

(c) Any person to whom the order is issued may be required to submit to the director within thirty days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(d) If the director determines that the owner or operator is not able to conduct corrective action in a satisfactory manner, the director may dictate the conduct of such activity, the cost of which shall remain the responsibility of the owner or operator.

(e) Each permit issued by the director under this chapter shall require corrective action for all releases of hazardous waste or any hazardous waste constituent into the environment from the facility seeking the permit. Permits may contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit), and shall contain assurances of financial responsibility for completing such corrective action.

(f) If the action that results in a release otherwise constitutes a violation of this chapter, nothing in this section shall be construed to preclude the director from taking appropriate action under other provisions of this chapter.

(g) Public notice shall be given for proposed decisions on a final remedy."

SECTION 16. Amendment of conflicting laws. 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 1991, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such Acts specifically provide that the Act relating to a "department of the environment" is being amended. Amendments made to sections of the Hawaii Revised Statutes that are amended by this Act as of a future effective date shall include amendments made after the approval of this Act and before the effective date of the amendments made by this Act, to the extent that the intervening amendments may be harmonized with the amendments made by this Act.

SECTION 17. 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 18. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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SECTION 19. This Act shall take effect upon its approval; provided that SECTION 2 of this Act shall be repealed on December 31, 1996.

(Approved June 12, 1991.)

Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 260

S.B. NO. 2007

A Bill for an Act Relating to Water Treatment Devices.

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
WATER TREATMENT UNITS**

§ -1 **Short title.** This chapter shall be known and may be cited as the Hawaii Water Treatment Units Act.

§ -2 **Definitions.** As used in this chapter:

“Contaminant” shall be defined as provided in chapter 340E.

“Water treatment unit” means a product, device, or system designed for personal, family, or household use and for which a claim or claims are made stating that it will improve the quality of water by reducing one or more contaminants through mechanical, physical, chemical, or biological processes or combinations thereof.

§ -3 **Requirement for sale, lease or distribution.** No water treatment unit that claims to reduce or eliminate the concentration of one or more health related contaminants in water supplies intended for human consumption may be sold or leased, offered for sale or lease, distributed, or installed in the State unless the unit has been tested using industry accepted product testing protocols or protocols that utilize technically valid methodology using United States Environmental Protection Agency analytical testing methods for drinking water quality and maximum contaminant levels, or their equivalent.

§ -4 **Disclosure.** No person shall sell, offer for sale, rent, lease, or distribute any water treatment unit for use in this State unless written material which provides the following information is included with each unit:

- (1) The name and mailing address of the manufacturer or distributor;
- (2) The name, brand, or trademark under which the unit is sold, and its model number;
- (3) A statement listing all contaminants the unit is capable of reducing from the water;
- (4) The specifications of the unit, including:
 - (A) The filter life, if applicable;
 - (B) The approximate capacity of the unit, expressed in gallons or period of time, if applicable;

- (C) A summary of recommended operational procedures and requirements necessary for the proper operation of the unit, including, but not limited to:
 - (i) Electrical requirements;
 - (ii) Maximum and minimum operation pressure;
 - (iii) Maximum operating temperature;
 - (iv) Flow rate;
 - (v) Maintenance requirements;
 - (vi) Replacement frequencies; and
 - (vii) An explanation of any performance indicator, if available;
- (5) Installation instructions;
- (6) The manufacturer's warranty and guarantee, if applicable;
- (7) A statement that performance of the water treatment unit may vary based on local water conditions;
- (8) A statement that the unit is only intended for use with potable water, if true; and
- (9) A statement that all the contaminants reduced by the unit are not necessarily in the user's water supply, if true.

§ **-5 Prohibited practices.** (a) It shall be unlawful for any person to print or disseminate any false advertising or to use or employ any deceptive act or practice as described in subsection (b) in the conduct of any trade or commerce for the purpose of inducing the sale, lease, rental, or distribution of water treatment units.

- (b) No person shall use:
 - (1) Materially false or misleading claims concerning the quality of a prospective purchaser's public water supply or private well water;
 - (2) Materially false or misleading claims concerning the kind and degree of problems caused by water from a public water supply;
 - (3) Materially false or misleading claims of scientific certainty regarding the relationship between acute or chronic illnesses and water quality;
 - (4) Product performance claims and product benefit claims unless such claims are based on factual data obtained from tests conducted by a testing facility following scientifically valid test procedures, which data is in existence at the time such claims are made;
 - (5) Materially false or misleading pictures, exhibits, graphs, charts, or other graphic portrayals in advertisements;
 - (6) Materially false or misleading claims that serious harm may or will occur if the product is not purchased;
 - (7) Statements that the water flowing from a water treatment unit is "pure" unless such words are reasonably defined;
 - (8) Claims that a water treatment unit would provide a health benefit or diminish a health risk unless reasonably based on factual data;
 - (9) Materially false or misleading statements that the contaminants reduced by a water treatment unit are present in excess of permitted levels in the drinking water of the consumer;
 - (10) Endorsements or testimonials, unless such endorsements or testimonials state the opinion and qualifications of the person giving them, are not materially false or misleading, and accurately reflect the context in which they were made or given;
 - (11) Tests or test results of a consumer's drinking water to state or demonstrate the presence of contaminants in a prospective purchaser's

drinking water for the purpose of inducing a person to purchase a water treatment unit unless those test results have either been obtained from a certified laboratory or were performed in accordance with the United States Environmental Protection Agency approved test methods or guidelines, where applicable, and the results of the tests are not used in a materially false or misleading manner; and

- (12) Tests or test results of a consumer’s drinking water without providing maximum contaminant level information.

§ -6 Door-to-door sales. No door-to-door sales of water treatment units shall be permitted unless a copy of data, claims, and information on water quality and health effects, as used in the sales presentation, are made a part of the contract. As used in this section, “data, claims, and information” includes but is not limited to, graphs, charts, news clippings, and other supporting information.

§ -7 Exchanges. Any person in the business of offering water treatment units for sale at retail who accepts the return of goods for exchange only, shall post conspicuous signs in the person’s place of business bearing the words “Exchanges only,” or words or phrases of similar import, to inform customers that only exchanges will be given.

§ -8 Penalty and remedies. (a) Any violation of the provisions of this chapter shall constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under section 480-2.

(b) The penalty provided in subsection (a) is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this State.”

SECTION 2. This Act shall take effect on December 1, 1991.

(Approved June 12, 1991.)

ACT 261

H.B. NO. 665

A Bill for an Act Making an Appropriation and Establishing a Condominium Project Position.

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

SECTION 1. The purpose of this Act is to appropriate funds and to establish a permanent professional position to administer the registration of condominium projects, public reports, the owner-occupant provisions of Chapter 514A, and limited-equity cooperatives. There has been a substantial increase in the development of such condominium projects and projections for the 1990’s indicate further increases to meet Hawaii housing demands with what appears to be a more affordable route. In addition, over the years there has been an evolution in the complexity and types of condominium projects. Condominiums are two detached or attached units, a cluster of detached or attached units, townhouses, high rises, a variety of uses, a mixture of types, and integrated into a single family home development. Furthermore, it appears that significant legislation will pass on the administration of the owner-occupant provision of Chapter 514A.

SECTION 2. The department of commerce and consumer affairs is authorized to establish and fill one permanent professional position exempt from the provisions of chapters 76 and 77 to administer the registration of condominium projects, public reports, the owner-occupant provisions of Chapter 514A, and limited-equity cooperatives. The position shall require someone with administrative, legal, professional, and analytical work experience which demonstrates an ability to plan and coordinate activities and deal effectively with others.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary for the fiscal biennium 1991-1993, for the following purposes:

- (1) \$36,000 in fiscal year 1991-1992 and \$36,000 in fiscal year 1992-1993 to establish the professional position to carry out the purposes of this Act and that this position may be added to the position count for the department of commerce and consumer affairs; and
- (2) \$8,000 in fiscal year 1991-1992 for office equipment including, but not limited to, computer hardware and software, furniture, and other equipment necessary to furnish this professional position.

SECTION 4. The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved June 14, 1991.)

ACT 262

H.B. NO. 955

A Bill for an Act Relating to Water Pollution Control.

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

SECTION 1. Section 342D-54, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342D-54]]~~ **Treatment works; construction grants; advances; state revolving fund.** (a) The director may make grants or loans, or both, to any state or county agency of state funds as authorized and appropriated by the legislature for the construction of necessary treatment works and for other projects intended for wastewater reclamation or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters[.]; provided that the director may allocate grants or loans, or both, to projects on the basis of existing and future growth patterns. The director shall coordinate the granting of state funds with available federal funds for the same purpose. No grant or loan shall be made for any project unless:

- (1) The project conforms with the state water pollution control plan;
- (2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs; [and]
- (3) In the case of treatment [work,] works, the application for the grant

or loan, or both, contains [reasonable] the following:

- (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction[.]; and
- (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to insure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties;

and

- (4) The state or county agency receiving these state funds requires the installation of low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects, which fixtures and devices shall be approved by the International Association of Plumbing and Mechanical Officials and shall comply with applicable American National Standards Institute standards and such other standards as may be required by the respective county for all new residential and public buildings, beginning December 31, 1992.

(b) If the federal funds are not immediately available, the director may advance the federal share of the planning and design cost to the county or state agency, subject to the following provisions:

- (1) The director shall enter into a contract with the applicant specifying the conditions of the advance; and
- (2) The advances made by the State to the county or state agency shall be reimbursed to the State immediately upon the receipt from the federal government of the advanced funds or within one year after the completion of project construction[.], whichever is earlier.

If federal grant funds are available, the applicant shall be required to pay sixty per cent of the nonfederal share of the estimated reasonable cost of the approved treatment works as defined by 33 U.S.C. section 1251 et seq. If federal grant funds are not available, the director may make grants or loans, or both, up to one hundred per cent of the estimated cost of the project.

(c) There is established in the state treasury a fund to be known as the water pollution control revolving fund solely for the purpose of receiving federal and state funds to provide financial assistance to governmental agencies for the planning, design, and construction of treatment works owned by a governmental agency in accordance with Title VI of the Water Quality Act of 1987, Public Law 100-4, and implementation of management programs established under sections 319 and 320 of the Water Quality Act of 1987; provided that:

- (1) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants [which] that shall be deposited into the revolving fund;
- (2) The financial assistance [which] that may be provided to governmental agencies [by] from federal funds in the revolving fund shall be limited to loans, loan guarantees, and bond guarantees[.]; Federal funds shall be kept in a separate account or series of accounts from the account or accounts for state funds in the revolving fund;
- (3) The revolving fund shall be established, maintained, and credited with loan repayments and investment income and the fund balance shall be available in perpetuity for its stated purpose;
- (4) The director may make and condition loans from the fund as required by state or federal law. [Such] These loans shall:

- (A) Be made at or below market interest rates;
 - (B) Require annual payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made; and
 - (C) Be fully amortized not later than twenty years after project completion;
- (5) The director shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for appropriate accounting periods of payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period;
 - (6) The director may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance in conformance with Title VI of the Water Quality Act of 1987;
 - (7) No loan from the revolving fund shall be made unless the loan recipient establishes a dedicated source of revenue for the repayment of [such] the loans; [and]
 - (8) The director may adopt rules pursuant to chapter 91 necessary for the purposes of this section, including, but not limited to, penalties for default of loan repayments[.]; and
 - (9) Not less than twenty days prior to the convening of each regular session of the legislature, the director shall submit a report to the legislature of all grants made from the revolving fund during the last completed fiscal year, and during the first three months of the fiscal year in progress. For each grant, the report shall include:
 - (A) The name of the recipient;
 - (B) The effective date of the grant;
 - (C) The amount provided; and
 - (D) The intended or actual use of the funds.

(d) Nothing in this section shall restrict the director's authority to make grants or loans, or both, to treatment projects granted waivers under section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. section 1311(h)).

(e) The department of budget and finance, with the approval of the governor, is authorized to issue revenue bonds at such times and in such amount or amounts, not to exceed \$250,000,000 in aggregate principal, as may be necessary to carry out the purposes of this section. All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this section. The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds of the bonds shall be deposited in the revolving fund, where the proceeds may be held and invested in a separate account or accounts until used in accordance with subsection (c). For the purposes of providing a source of revenue or security for these bonds, the director may pledge funds deposited or to be deposited in the revolving fund to the payment or security of the bonds or the loans, and the pledge shall constitute a lien and security interest on the funds to the extent and with the priority set forth in the document establishing the pledge, without physical delivery, recording, or other further act."

SECTION 2. Section 39-51, Hawaii Revised Statutes, is amended as follows:

- 1. By amending the definition of "loan program" to read:

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“Loan program” means the activities and policies undertaken by any department to provide assistance to any department or to any county or board, agency, or instrumentality thereof, or to members of the general public who are residents of the State, by making loans or causing loans to be made available to them or by buying, refinancing, or guaranteeing loans made to or other obligations incurred by them for purposes as may be authorized by law.”

2. By amending the definition of “revenue” to read:

“Revenue” means the moneys collected, including any moneys collected from the State or any department, or any county or board, agency, or instrumentality thereof, from the rates, rentals, fees, and charges prescribed for the use and services of, and the facilities and commodities furnished by, an undertaking or the use and services and benefits of a loan program.”

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

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 14, 1991.)

ACT 263

H.B. NO. 1021

A Bill for an Act Relating to the State Highway Fund.

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 RENTAL MOTOR VEHICLE AND TOUR VEHICLE SURCHARGE TAX

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

“Department” means the department of taxation.

“Director” means the director of taxation.

“Lessor” means any person in the business of providing rental motor vehicles to the public.

“Person” has the same meaning as defined in section 237-1.

“Rental motor vehicle” or “vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power but which is not operated upon rails, but excluding mopeds as defined in section 286-2, which is rented or leased or offered for rent or lease in this state, whether for personal or commercial use, for a period of six months or less.

“Surcharge tax” means the rental motor vehicle and tour vehicle surcharge tax established under this chapter.

“Tour vehicle” means any vehicle, including vans, minibuses, and buses used for the purpose of transporting persons for pleasure or sightseeing trips. The term does not include any vehicle used solely for the purposes of transporting

individuals to and from a place of work or a public or private school or of transporting persons with disabilities.

“Tour vehicle operator” means a person regulated by the public utilities commission under chapter 271 and engaged in the business of transporting persons via tour vehicles.

§ -2 **Rental motor vehicle and tour vehicle surcharge tax.** (a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of \$2 a day or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall be levied upon the lessor.

(b) There is levied and shall be assessed and collected each month a tour vehicle surcharge tax of \$65 for each tour vehicle used or partially used during the month and categorized by the public utilities commission as an eighteen or over passenger carrier vehicle and of \$15 for each tour vehicle used or partially used during the month and categorized by the public utilities commission as an eight to seventeen passenger carrier vehicle. The tour vehicle surcharge tax shall be levied upon the tour vehicle operator.

§ -3 **Certificate of registration.** (a) Each person as a condition precedent to engaging or continuing in the business of providing rental motor vehicles to the public or engaging or continuing in the tour vehicle operator business shall register with the director. A person required to so register shall make a one-time payment of \$20, upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued.

(b) The registration shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new registration application and shall be subject to the payment of the one-time registration fee in subsection (a). The director may revoke or cancel any certificate of registration issued under this chapter for cause as provided by rule under chapter 91.

(c) If the registration fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the first amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section -13 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

(d) Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of providing rental motor vehicles or tour vehicles to the public subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any officer or director of a corporation who permits, aids, or abets the corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 231-34 for violation of that section.

§ -4 **Return and payments; penalties.** (a) On or before the last day of each calendar month, every person taxable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe together with a remittance for the amount of the surcharge tax in the form required by section -5. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director, for good cause, may permit a person to file the person's return required under this section and make payments thereon:

- (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 surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar year under this chapter will not exceed \$2,000; or
- (2) On a semiannual basis during the calendar year, the return and payment to be made by 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 surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar year under this chapter will not exceed \$1,000.

The director, for good cause, may permit a person to make monthly payments based on the person's estimated quarterly or semiannual liability; provided that the person files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar year, as provided in this section.

(c) If a person filing the return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the return or the payment of the surcharge taxes due thereon, or if the liability of a person, who possesses a permit to file the return and to make payments on a semiannual basis exceeds \$1,000 in surcharge taxes during the calendar year or exceeds \$2,000 in surcharge 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 surcharge tax, the director, at any time, may revoke a person's permit, in which case the person then shall be required to file the person's return and make payments thereon as provided in subsection (a).

(d) Section 232-2 does not apply to a monthly, quarterly, or semiannual return.

§ -5 **Remittances.** All remittances of surcharge taxes imposed under this chapter shall be made by cash, bank draft, cashier's check, money order, or certificate of deposit to the office of the taxation district to which the return was transmitted. The department shall deposit the moneys into the state treasury to the credit of the state highway fund.

§ -6 **Annual return.** On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of the surcharge taxes under this chapter during the preceding tax year shall file a return summarizing the person's liability under this chapter for

the year, in such form as the director prescribes. The person shall transmit with the return a remittance covering the residue of the surcharge tax chargeable to the person, if any, to the office of the appropriate state district tax assessor designated in section -7. The return shall be signed by the person, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, firm, society, unincorporated association, group, hui, joint adventure, joint stock company, corporation, trust estate, decedent's estate, trust, or other entity, any individual delegated by the entity shall sign the same on behalf of the person. If for any reason it is not practicable for the individual person to sign the return, it may be done by any duly authorized agent. The department, for good cause shown, may extend the time for making the return on the application of any person and grant such reasonable additional time within which to make the return as the department may deem advisable.

Section 232-2 applies to the annual return, but not to a monthly, quarterly, or semiannual return.

§ -7 Filing of returns. All monthly, quarterly, semiannual, and annual returns shall be transmitted to the office of the taxation district in which the person's place of business is situated or to the office of the first taxation district in Honolulu.

§ -8 Assessment of surcharge tax upon failure to make return; limitation period; exceptions; extension by agreement. (a) If any person fails to make a return as required by this chapter, the director shall make an estimate of the surcharge tax liability of the person from any information the director obtains, and according to the estimate so made, assess the surcharge taxes, interest, and penalty due the State from the person, give notice of the assessment to the person, and make demand upon the person for payment. The assessment shall be presumed to be correct until and unless, upon an appeal duly taken as provided in section -10, the contrary shall be clearly proved by the person assessed, and the burden of proof upon the appeal shall be upon the person assessed to disprove the correctness of assessment.

(b) After a return is filed under this chapter the director shall cause the return to be examined, and may make such further audits or investigation as the director considers necessary. If the director determines that there is a deficiency with respect to the payment of any surcharge tax due under this chapter, the director shall assess the surcharge taxes, interest, and penalty due the State, give notice of the assessment to the persons liable, and make demand upon the persons for payment.

(c) Except as otherwise provided by this section, the amount of surcharge taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any such surcharge taxes shall begin after the expiration of the period.

(d) In the case of a false or fraudulent return with intent to evade the surcharge tax, or of a failure to file the annual return, the surcharge tax may be assessed or levied at any time; however, in the case of a return claimed to be false or fraudulent with intent to evade the surcharge tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(b), which shall apply to the surcharge tax imposed by this chapter.

(e) Where, before the expiration of the period prescribed in subsection (c), both the department of taxation and the person have consented in writing to the assessment or levy of the surcharge tax after the date fixed by subsection (c), the surcharge tax may be assessed or levied at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§ **-9 Overpayment; refunds.** Upon application by a person, if the director determines that any surcharge tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the surcharge tax, interest, or penalty shall be credited by the director on any surcharge taxes then due from the person under this chapter. The director shall refund the balance to the person or the person's successors, administrators, executors, or assigns in accordance with section 231-23(d). No credit or refund shall be allowed for any surcharge tax imposed by this chapter, unless a claim for the credit or refund shall be filed within three years after the annual return was filed, or in any case of payment of surcharge tax without the filing of an annual return, within three years after payment of surcharge tax, or within three years of the date prescribed for the filing of the annual return, whichever is later. The preceding limitation shall not apply to a credit or refund pursuant to an appeal, provided for in section -10.

§ **-10 Appeals.** Any person aggrieved by any assessment of the surcharge tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided the surcharge tax so assessed shall have been paid.

§ **-11 Records to be kept; examination; penalties.** Every person shall keep in the English language within the state, and preserve for a period of three years, suitable records relating to the surcharge tax levied and assessed under this chapter, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, operators records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. Any person violating this section shall be guilty of a misdemeanor; and any officer or director of a corporation who permits, aids, or abets the corporation to violate this section likewise shall be guilty of a misdemeanor. The penalty for the misdemeanor shall be that prescribed by section 231-34 for violation of that section.

§ **-12 Disclosure of returns unlawful; destruction of returns.** (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to willfully permit any such tax return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for surcharge tax purposes only the lessor or tour vehicle operator, the lessor's or tour vehicle operator's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law,

persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory; and
- (11) The Multistate Tax Commission or its authorized representative.

Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.

(b) The department may destroy the monthly, quarterly, or semiannual returns filed pursuant to section -4, or any of them, upon the expiration of three years after the end of the calendar or fiscal year in which the surcharge taxes so returned accrued.

§ -13 Collection by suit; injunction. The department may collect surcharge taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the circuit court of the judicial circuit in which the surcharge taxes arose. After delinquency shall have continued for sixty days, or if any person lawfully required so to do under this chapter shall fail to apply for and secure a certificate as provided by this chapter for a period of sixty days after the first date when the person was required under this chapter to secure the certificate, the department may proceed in the circuit court of the judicial circuit in which the rental motor vehicles were leased or the tour vehicles were hired, to obtain an injunction restraining the further furnishing of services until full payment shall have been made of all surcharge taxes, penalties, and interest due under this chapter, or until the certificate is secured, or both, as the circumstances of the case may require.

§ -14 Application of surcharge tax. The surcharge tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided in this chapter; provided that if it be held by any court of competent jurisdiction that the surcharge tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property or the use thereof, then this chapter shall be deemed not to apply to such property and the use thereof under the specific circumstances, but the other laws shall be given full effect with respect to such property and use.

§ -15 Administration and enforcement; rules. (a) The director shall administer and enforce this chapter in respect of:

- (1) The examination of books and records and of lessors, tour vehicle operators, and other persons;
- (2) Procedure and powers upon failure or refusal by a person to make a return or proper return; and
- (3) The general administration of this chapter.

All of the provisions of chapter 237 not inconsistent with this chapter and which may appropriately be applied to the taxes, persons, circumstances, and situations involved in this chapter, including (without prejudice to the generality of the foregoing) provisions as to penalties and interest, and provisions granting administrative powers to the department, and provisions for the assessment, levy, and collection of taxes, shall be applicable to the surcharge taxes imposed by this chapter, and to the assessment, levy, and collection thereof.

(b) The director may adopt, amend, or repeal rules under chapter 91 to carry out this chapter.

§ -16 Evasion of surcharge tax, etc.; penalties. (a) It shall be unlawful for any person to refuse to make the return required to be made in section -6; or to make any false or fraudulent return or false statement in any return, with intent to defraud the State or to evade the payment of surcharge tax imposed by this chapter; or for any person to aid or abet another in any attempt to evade the payment of any surcharge tax imposed by this chapter; or for the president, vice-president, secretary, or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required by this chapter, with the intent to evade the payment of any surcharge tax under this chapter. Any person violating this section or violating any of the provisions of section 231-34 in relation to the surcharge tax imposed by this chapter, shall be punished as provided in section 231-34. Any corporation for which a false return, or a return containing a false statement shall be made, shall be fined in the amount provided in section 231-34.

(b) Any person entering into an agreement, where the agreement is based on a time period or other provision in the agreement, with the intention of avoiding the surcharge tax imposed under this chapter shall be guilty of a misdemeanor."

SECTION 2. Section 231-1, Hawaii Revised Statutes, is amended to read as follows:

"§231-1 Definitions. Whenever used in chapters 231 to 249, 236D [and], 237D, 244D[:], and _____:

"Assessor" or "assistant assessor" means the assessor or an assistant assessor appointed for the taxation district concerned. Whenever there is more than one assessor for the first district, with respect to that district "assessor" or "assistant assessor" means the assessor or assistant assessor for a particular tax.

"Comptroller" means the comptroller of the State.

"Department" means the department of taxation, unless the context clearly indicates otherwise.

"Property" or "real property" has the meaning defined herein, and, to the extent required by provisions making applicable to other chapters, this chapter, or chapters 232, 233, 235 to 239, 241 to 245, 236D, 237D, [and] 244D, and _____, also means and includes other subjects or measures of tax. "Real property" includes all land and appurtenances thereof and the buildings, structures, fences,

and improvements erected on or affixed to the land, and any fixture which is erected on or affixed to such land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use thereof is necessary to the utility of such land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to such land, buildings, structures, fences, and improvements, excluding, however, any growing crops.”

SECTION 3. 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 make any 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, 236D, 237D, 244D, and [237D,] _____, 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 those 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 the attorney general’s 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 administered by the department;
- (5) Forms: To prescribe forms to be used in or in connection with any 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 any 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 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 any other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules: To adopt such rules 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 each case there shall be placed on file in the department's office a statement of (A) the name of the taxpayer and the amount and type 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 amount of tax assessed, 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; and notwithstanding the provisions of any law making unlawful the disclosure of tax returns or return information, statements on file in respect of compromises shall be open to public inspection;
 - (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, rule, 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 that case there shall be placed on file in the department's office a statement showing the name of the person receiving the 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; the 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, the 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 chapters

235, 237 to 239, 243 to 245, 236D, 237D, 244D, and [237D,] _____, 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, receiving, and enforcing payment of the taxes imposed under the authority of those chapters as far as the provisions 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 shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner.”

SECTION 4. Section 231-6, Hawaii Revised Statutes, is amended to read as follows:

“**§231-6 Oath, 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, 236D, 237D, 244D, and [237D,] _____, with respect to any matters coming within the scope of the duties of the department.”

SECTION 5. Section 231-12, Hawaii Revised Statutes, is amended to read as follows:

“**§231-12 District judges; jurisdiction over misdemeanors and actions for tax collections.** Except as otherwise specifically provided by chapters 231 to 249, 236D, 237D, 244D, and [237D,] _____, 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 6. Section 231-15.6, Hawaii Revised Statutes, is amended to read as follows:

“**[§231-15.6] Returns of corporations or partnerships.** The returns, statements, or answers required by chapter 234, 235, 236D, 237, 237D, 238 to 243, 244D, 245, [or] 247, or _____, in the case of a corporation, shall be made by any officer of the corporation, or in the case of a partnership, by any one of the partners.”

SECTION 7. Section 231-15.7, Hawaii Revised Statutes, is amended to read as follows:

“**[§231-15.7] Returns by fiduciaries.** The returns, statements, or answers required by chapter 234, 235, 236D, 237, 237D, 238 to 243, 244D, 245, [or] 247, or _____, shall be made by the personal representative, trustee, guardian, or other fiduciary in such capacity in any taxation district in which returns are required.”

SECTION 8. Section 231-23, Hawaii Revised Statutes, is amended by

amending subsection (c) to read as follows:

“(c) 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 a 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 245, 236D, 237D, 244D, and [237D,] _____, 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, from time to time, may deposit taxes collected 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.”

SECTION 9. 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, 236D, 237 to 239, 237D, 241, 243, 244D, 245, [237D,] _____, 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 10. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

“§237-24.7 **Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to [amounts]:

- (1) Amounts received by the operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this section:

“Employee” means employees directly engaged in the day to day operation of the hotel and employed by the operator.

“Hotel” means an operation licensed under section 445-92.

“Owner” means the fee owner or lessee under a recorded lease of a hotel.

“Operator” means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

- (2) Surcharge taxes on rental motor vehicles imposed by chapter and passed on and collected by persons holding certificates of registration under that chapter.”

SECTION 11. 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 the distributor in the State or imported by the distributor, or acquired by the distributor from persons not licensed distributors, and sold or used by 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. 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 paragraphs (1) and (2), sold or used in the city and county of Honolulu, or sold in any county for ultimate use in the city and county of Honolulu, [11] 16 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 paragraphs (1) and (2), sold or used in the county of Hawaii, or sold in any county for ultimate use in the county of Hawaii, [11] 16 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 paragraphs (1) and (2), sold or used in the county of Maui, or sold in any county for ultimate use in the county of Maui, [11] 16 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 paragraphs (1) and (2), sold or used in the county of Kauai, or sold in any county for ultimate use in the county of Kauai, [11] 16 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 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 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 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 or used in the city and county of Honolulu, or sold in any other county for ultimate use in the city and county of Honolulu, [or used in the city and county of Honolulu, 10] 15 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 or used in the county of Hawaii, or sold in any other county for ultimate use in the county of Hawaii, [or used in the county of Hawaii, 10] 15 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 or used in the county of Maui, or sold in any other county for ultimate use in the county of Maui, [or used in the county of Maui, 10] 15 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 or used in the county of Kauai, or sold in any other county for ultimate use in the county of Kauai, [or used in the county of Kauai, 10] 15 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) 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 to administer the refunding of such taxes."

SECTION 12. 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 to 249-6 shall be subject to a [\$10] \$20 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 13. Section 249-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in section 249-3 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 [.50] .75 cents a pound according to the net weight of each vehicle as the “net weight” is defined in section 249-1 up to and including [4,000] four thousand pounds net weight; vehicles over [4,000] four thousand pounds and up to and including [7,000] seven thousand pounds net weight shall be taxed at the rate of [.55] 1.00 [cents] cent a pound; vehicles over [7,000] seven thousand pounds and up to and including [10,000] ten thousand pounds net weight shall be taxed at the rate of [.60] 1.25 cents a pound; vehicles over [10,000] ten thousand pounds net weight shall be taxed at a flat rate of [\$65.] \$150.”

SECTION 14. Section 249-33, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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] six thousand 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 to administer such refunds.”

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 16. This Act shall take effect on January 1, 1992; provided that sections 12, 13, and 14 of this Act shall take effect on October 1, 1991; and provided further that section 11 of this Act shall take effect on July 1, 1991.

(Approved June 14, 1991.)

A Bill for an Act Relating to the Wage and Hour Law.

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

SECTION 1. Section 387-1, Hawaii Revised Statutes, is amended by amending the definition of "employee" to read:

""Employee" includes any individual employed by an employer, but shall not include any individual employed:

- (1) At a guaranteed compensation totaling [\$1,000] \$1,250 or more a month, whether paid weekly, biweekly, or monthly;
- (2) In agriculture for any workweek in which the employer of the individual employs less than twenty employees or in agriculture for any workweek in which the individual is engaged in coffee harvesting;
- (3) In domestic service in or about the home of the individual's employer or as a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code;
- (4) By the individual's brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law;
- (5) In a bona fide executive, administrative, supervisory, or professional capacity or in the capacity of outside [salesman] salesperson or as an outside collector;
- (6) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;
- (7) As a seaman;
- (8) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;
- (9) As a golf caddy;
- (10) By a nonprofit school during the time such individual is a student attending such school;
- (11) In any capacity if by reason of the employee's employment in such capacity and during the term thereof the minimum wage which may be paid the employee or maximum hours which the employee may work during any workweek without the payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as amended, or as the same may be further amended from time to time; provided that if the minimum wage which may be paid the employee under the Fair Labor Standards Act for any workweek is less than the minimum wage prescribed by section 387-2, then section 387-2 shall apply in respect to the employees for such workweek; provided further that if the maximum workweek established for the employee under the Fair Labor Standards Act for the purposes of overtime compensation is higher than the maximum workweek established under section 387-3, then section 387-3 shall apply in respect to such employee for such workweek; except that the employee's regular rate in such an event shall be the employee's regular rate as determined under the Fair Labor Standards Act;

- (12) As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or nonprofit organizations exempt from income tax under section 501 of the federal Internal Revenue Code or in a youth camp accredited by the American Camping Association; or
- (13) As an automobile [salesman] salesperson primarily engaged in the selling of automobiles or trucks if employed by an automobile or truck dealer licensed under chapter 437.”

SECTION 2. Section 387-2, Hawaii Revised Statutes, is amended to read as follows:

“**§387-2 Minimum wages.** Except as provided in section 387-9 and this [paragraph,] section, every employer shall pay to each employee employed by the employer wages at the rate of not less than \$3.85 per hour beginning January 1, 1988[.], \$4.75 per hour beginning April 1, 1992, and \$5.25 per hour beginning January 1, 1993. The hourly wage of a tipped employee may be deemed to be increased on account of tips if the employee is paid not less than twenty cents below the applicable minimum wage by the employee’s employer and the combined amount the employee receives from the employee’s employer and in tips is at least fifty cents more than the applicable minimum wage.”

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

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 14, 1991.)

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S.B. NO. 113

A Bill for an Act Relating to the Characterization of Non-Ciguatera Marine Toxin in Reef Fish and Algae.

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

SECTION 1. The legislature finds that a potent marine toxin is suspected of being the agent responsible for the deaths of two Atlantic dolphins living in the lagoon of the Hyatt Regency Waikoloa in the spring of 1989. This is the first report that a toxin of this type is present in waters around the State. The toxic compound or compounds were found in the mullet, wrasse, aholehole, and manini caught in the Hyatt Regency Waikoloa lagoon. Lower levels of this toxin were also found in the dolphins and sand and algae from the dolphin pond. Not much is known about the nature of this toxin, its source, its relative toxicity, or how it is formed.

The purpose of this Act is to appropriate funds for a study to:

- (1) Identify the algae consumed by fish inhabiting the Hyatt Regency Waikoloa lagoon and waters off the resort;
- (2) Test the algae for toxicity; and
- (3) Initiate characterization studies of this new toxin or toxins.

This study is of particular importance because reef fish are a major source of food and recreation for the people of Hawaii, and it has been speculated that

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the production of this toxin may be associated with changes to the near-shore marine environment.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$77,038, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$58,078, or so much thereof as may be necessary for fiscal year 1992-1993, for the University of Hawaii to carry out the study described in section 1 of this Act.

The sums appropriated shall be expended by the department of health.

SECTION 3. The University of Hawaii shall submit a report of its findings and recommendations to the legislature not less than twenty days before the convening of the regular session of 1994 or not later than two months after the completion of the study, whichever is earlier.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 14, 1991.)

ACT 266

S.B. NO. 115

A Bill for an Act Making an Appropriation for the Hawaii Undersea Research Laboratory.

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

SECTION 1. The legislature finds that the Hawaii Undersea Research Laboratory (HURL), University of Hawaii, provides the State of Hawaii with a manned deep submergence capability for the study and assessment of the living and geological resources of the 200-mile Hawaiian exclusive economic zone (EEZ). The HURL is the only academically-based deep submergence program in the Pacific and one of the only two such facilities in the United States, and is capable of assessing Hawaii's marine resources to depths of 6,600 feet. The program is partially federally-funded by the National Oceanic and Atmospheric Administration's (NOAA) National Undersea Research Program. The remainder of the program's funding has come from the legislature and contract services on state-related projects.

Direct fisheries resource studies, especially those over seamounts or banks of the Hawaiian EEZ, using the HURL submersibles and remotely-operated vehicles, have not been possible to date because of the lack of an ocean-going, dedicated support ship, the R/V KAIMIKAI-O-KANALOA. Such a dedicated support ship is now being constructed and will be operational by April 1992. Deployment for research in the northern end of the Hawaiian chain is being planned for later in 1992. The NOAA is providing the funds for construction of the vessel and for the on-board PISCES V handling equipment and remotely-operated vehicles (ROV). In order to expand the ship's capability for night-time ROV and remote camera operations from aboard the ship, an ocean floor navigation system and conducting cable with a winch are urgently needed. This equipment would allow real-time positioning and operation of robotic devices on the ocean floor from aboard the ship. The HURL would then be able to fully investigate the State's great potential in the area of seamount and other bottom fisheries in the EEZ.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 1991-1992, for the purchase of the following equipment:

- (1) \$350,000 for a conducting cable and refurbished winch to allow for the use of remotely-operated vehicles on the ocean floor; and
- (2) \$150,000 for a long baseline navigation system.

SECTION 3. The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 14, 1991.)

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S.B. NO. 1718

A Bill for an Act Relating to Underground Storage Tanks.

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

SECTION 1. Section 210-3, Hawaii Revised Statutes, is amended to read as follows:

“§210-3 Hawaii capital loan revolving fund. There is established the Hawaii capital loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided in this chapter.] and in section 342L-36.5.”

SECTION 2. Section 342L-36.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§342L-36.5] Financial responsibility guarantee fund.] Under-ground storage tank fees. (a) [There is established in the state treasury a special fund to be known as the “underground storage tank financial responsibility guarantee fund”. The moneys in the fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury.] The department shall collect underground storage tank fees that, after the deduction of administrative expenses necessary for the implementation of this chapter, are to be placed into a separate account of the Hawaii capital loan revolving fund for the purpose of making loans to businesses to replace, upgrade, close, take remedial action relating to, and clean up releases from, their underground storage tanks.

(b) The director may suspend the collection of fees at any time that the director determines, on both actuarial and environmental grounds, that the [fund] account has a sufficient balance to meet actual and projected [claims.] loans.

(c) Beginning October 1, [1990, but not later than October 26, 1990,] 1991, every owner [or operator] who has complied with the notification requirements of section 342L-30 and whose tank is currently in use, shall pay a [maintenance] registration fee of [\$200] \$250 to the director for each petroleum underground storage tank [and not later than April 26 and October 26 of each]. Every year thereafter, every owner [or operator] who has complied with the notification requirements of section 342L-30 and whose tank is currently in use, shall

pay [a biannual maintenance] an annual registration fee of [\$100] \$250 to the director for each petroleum underground storage tank [unless the fee is suspended by the director pursuant to subsection (b)].

The director may increase or decrease the amount of the fee pursuant to rules adopted under chapter 91 in order to maintain an adequate level in the [fund.] account.

[(d) In addition to any other moneys appropriated by the legislature, the fund shall consist of:

- (1) Funds from the annual maintenance fees; and
- (2) Any interest earned on moneys deposited into the fund.

(e) No later than twenty days prior to the convening of the 1991 regular legislative session, the department shall submit a report to the legislature, with accompanying proposed legislation, to provide for a financial guarantee program. The program shall contain the following features:

- (1) An actuarially sound program covering those losses or expenses which cannot be otherwise covered by the certified persons;
- (2) A program which will qualify under United States Environmental Protection Agency guidelines; and
- (3) A program which will ensure that no state moneys, other than any directly appropriated for such purposes, are at risk.

The department shall present any other insurance or guarantee program that should be considered as alternatives.

(f) (d) The department [shall] may adopt rules pursuant to chapter 91 to establish the conditions and eligibility requirements related to tank replacement, upgrade, closure, and remediation, and the clean up of releases, necessary for persons to [acquire and maintain certification under the] utilize the Hawaii capital loan program[. The department shall design a certificate to verify the standing of any individual. The conditions required for the granting of certifications shall include, but not be limited to:

- (1) The submittal of release detection data by the applicant to demonstrate that a tank is not leaking; and
- (2) The submittal of sufficient soil and groundwater data by the applicant to demonstrate that any existing contamination at the site has been characterized.

(g) The department shall distribute information on interim application requirements and publicize the availability of applications. Interim application requirements shall include, but not be limited to:

- (1) General information on the owner or operator, and the identity and description of the petroleum underground storage tank and facility;
- (2) The submittal of sufficient soil and groundwater data to demonstrate that any existing contamination at the site has been characterized; and
- (3) Release detection data which demonstrate that the petroleum underground storage tank is not leaking.

(h) The department shall review all completed interim applications received prior to October 26, 1990, and issue its determination on the approval or disapproval of all interim applications prior to October 26, 1991, with regard to interim participation in the program.

(i) Only those applicants who have complied with the notification requirements of section 342L-30 and have been granted interim approval for participation in the program shall be deemed certified under the fund.

(j) The department shall coordinate with and enlist the assistance of the

department of commerce and consumer affairs on matters relating to finance and insurance.

(k) The department shall adopt rules in accordance with chapter 91 to carry out this section.

(l) The department may use the fund for the payment of administrative expenses including but not limited [to]¹ the hiring of consultants, actuaries, and attorneys on a contractual basis, for the study required under this section.] established under chapter 210.

(e) As used in this section:

“Account” means the separate account established in the Hawaii capital loan revolving fund that, after deduction for administrative expenses needed for the implementation of this chapter, is to be used for the purpose of making loans to businesses replacing, upgrading, closing, taking remedial action relating to, or cleaning up releases from, their underground storage tanks.

“Hawaii capital loan revolving fund” means the revolving fund established pursuant to section 210-3.”

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

SECTION 4. This Act shall take effect upon its approval; provided that this Act shall be repealed on January 1, 1993; provided further that on January 1, 1993, section 210-3 and section 342L-36.5, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 14, 1991.)

Note

1. So in original.

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S.B. NO. 1822

A Bill for an Act Relating to Health Insurance.

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

SECTION 1. Section 431:10A-116, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-116 Coverage for specific services. Every person insured under a policy of accident and sickness insurance delivered or issued for delivery in this State shall be entitled to the reimbursements and coverages specified below:

- (1) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides for reimbursement for any visual or optometric service which is within the lawful scope of practice of a duly licensed optometrist, the person entitled to benefits or the person performing the services shall be entitled to reimbursement whether the service is performed by a licensed physician or by a licensed optometrist. Visual or optometric services shall include eye or visual examination, or both, or a correction of any visual or muscular anomaly, and the supplying of ophthalmic materials,

lenses, contact lenses, spectacles, eyeglasses, and appurtenances thereto.

- (2) Notwithstanding any provision to the contrary, for all policies, contracts, plans, or agreements issued on or after May 30, 1974, whenever provision is made for reimbursement or indemnity for any service related to surgical or emergency procedures which is within the lawful scope of practice of any practitioner licensed to practice medicine in this State, reimbursement or indemnification under such policy, contract, plan, or agreement shall not be denied when such services are performed by a dentist acting within the lawful scope of the dentist's license.
- (3) Notwithstanding any provision to the contrary, whenever the policy provides reimbursement or payment for any service which is within the lawful scope of practice of a psychologist licensed in this State, the person entitled to benefits or performing the service shall be entitled to reimbursement or payment, whether the service is performed by a licensed physician or licensed psychologist.
- (4) Notwithstanding any provision to the contrary, each policy, contract, plan, or agreement issued on or after February 1, 1991, except for policies which only provide coverage for specified diseases or other limited benefit coverage, but including policies issued by companies subject to chapter 431, article 10A, part II and chapter 432, article 1 shall provide coverage for screening by low-dose mammography for occult breast cancer as follows:
 - (A) For women thirty-five to thirty-nine years of age, one baseline mammogram;
 - (B) For women forty to forty-nine years of age, a mammogram every two years;
 - (C) For women fifty years of age and older, an annual mammogram; and
 - (D) For a woman of any age with a history of breast cancer or whose mother or sister has had a history of breast cancer, a mammogram upon the recommendation of the woman's physician.

The services provided in this paragraph are subject to any coin-surance provisions which may be in force in these policies, contracts, plans, or agreements. The commissioner shall annually review the age and frequency guidelines for mammographic screening recommended by the American Cancer Society, and shall accordingly adjust the age and frequency requirements under sub-paragraphs (A) to (C) by rule, if necessary.

For the purpose of this paragraph, the term "low-dose mam-mography" means the x-ray examination of the breast using equip-ment dedicated specifically for mammography, including but not limited to the x-ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad mid-breast, with two views for each breast. An insurer may provide the services required by this paragraph through con-tracts with providers; provided that the contract is determined to be a cost-effective means of delivering the services without sacrifice of quality and meets the approval of the director of health.

- (5) (A) (i) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides coverage

for the children of the insured, that coverage shall also extend to the date of birth of any newborn child to be adopted by the insured; provided that the insured gives written notice to the insurer of the insured's intent to adopt the child prior to the child's date of birth or within thirty days after the child's birth or within the time period required for enrollment of a natural born child under the policy, contract plan, or agreement of the insured, whichever period is longer; provided, however, if the adoption proceedings are not successful, the insured shall reimburse the insurer for any expenses paid for the child.

- (ii) Where notification has not been received by the insurer prior to the child's birth or within the specified period following the child's birth, insurance coverage shall be effective from the first day following the insurer's receipt of legal notification of the insured's ability to consent for treatment of the infant for whom coverage is sought.
- (B) When the insured is a member of a health maintenance organization (HMO), coverage of an adopted newborn is effective:
- (i) From the date of birth of the adopted newborn when the newborn is treated from birth pursuant to a provider contract with the HMO, and written notice of enrollment in accord with the HMO's usual enrollment process is provided within thirty days of the date the insured notifies the HMO of the insured's intent to adopt the infant for whom coverage is sought; or
 - (ii) From the first day following receipt by the HMO of written notice of the insured's ability to consent for treatment of the infant for whom coverage is sought and enrollment of the adopted newborn in accord with the HMO's usual enrollment process if the newborn has been treated from birth by a provider not contracting or affiliated with the HMO."

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§432- Newborn adoptee; coverage. (a) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides coverage for the children of the insured, that coverage shall also extend to the date of birth of any newborn child to be adopted by the insured; provided that the insured gives written notice to the society of the insured's intent to adopt the child prior to the child's date of birth or within thirty days after the child's birth or within the time period required for enrollment of a natural born child under the policy, contract, plan, or agreement of the insured, whichever period is longer; provided, however, if the adoption proceedings are not successful, the insured shall reimburse the society for any expenses paid for the child.

Where notification has not been received by the society prior to the child's birth or within the specified period following the child's birth, insurance coverage shall be effective from the first day following the society's receipt of legal notification of the insured's ability to consent for treatment of the infant

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whom coverage is sought.

(b) When the insured is a member of a health maintenance organization (HMO), coverage of an adopted newborn is effective:

- (1) From the date of birth of the adopted newborn when the newborn is treated from birth pursuant to a provider contract with the HMO, and written notice of enrollment in accord with the HMO's usual enrollment process is provided within thirty days of the date the insured notifies the HMO of the insured's intent to adopt the infant for whom coverage is sought; or
- (2) From the first day following receipt by the HMO of written notice of the insured's ability to consent for treatment of the infant for whom coverage is sought and enrollment of the adopted newborn in accord with the HMO's usual enrollment process if the newborn has been treated from birth by a provider not contracting or affiliated with the HMO."

SECTION 3. New statutory material is underscored.¹

SECTION 4. The legislative auditor shall submit a report to the legislature twenty days prior to the convening of the regular session of 1995. The report shall include, but not be limited to, the number of families whom this bill affects; the cost of providing coverage as prescribed in this act and the resultant increase, if any, in premiums or dues; who currently pays for medical services provided to newborn adoptees; the relative health status of newborn adoptees; and the time from birth to adoption.

SECTION 5. This Act shall take effect upon its approval, and shall be repealed on June 30, 1995.

(Approved June 14, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 269

S.B. NO. 2122

A Bill for an Act Making an Appropriation for the Social and Employment Services Incubator Project for the West Oahu Region.

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

SECTION 1. The legislature finds that with the continual development of west Oahu into master-planned communities such as Kapolei and the Ewa Plain/West Beach projects, pressure for human services increase. Recognizing this, in 1990 under Act 325 the legislature provided funding for the establishment of the west Oahu social and employment services incubator project. The project established a board to review all studies conducted for individual communities in the west Oahu region and to inventory all social and employment service providers in the region. The board submitted a report to the 1991 legislature which included the following:

- (1) A summary of the needs assessments data and an inventory of current services in west Oahu;

- (2) Recommendations regarding social and employment services required to meet projected needs in Kapolei;
- (3) An implementation plan for the coordinated delivery of needed services and for the location of the service providers in a shared facility;
- (4) A projected budget required to implement the project;
- (5) Proposals for legislation necessary to facilitate the implementation; and
- (6) Recommendations regarding utilizing the social and employment service incubator project and board to plan and implement projects for other master-planned communities in the State.

The purpose of this Act is to provide funds necessary to support and begin implementation of the social and employment service incubator project for west Oahu and, by realigning the social and employment services incubator board, to facilitate such implementation.

The additional funding will allow the west Oahu project to:

- (1) Select a permanent site to house the project;
- (2) Computerize the common intake and referral system and develop a common information management system;
- (3) Identify and secure an interim site to implement a pilot project of the social and employment services incubator project in fiscal year 1992-1993; and
- (4) Inform community agencies and residents of the project's findings and recommendations and gather community input relating to the creation of the pilot project.

SECTION 2. Section 3 of Act 325, Session Laws of Hawaii 1990, is amended by amending subsection (a) to read as follows:

“(a) There is established, within the department of labor and industrial relations, the social and employment services incubator project board, which shall be responsible for the planning and implementation of the social and employment services incubator project. The board shall be composed of fifteen voting members to be appointed by the governor as follows: the directors of health, human services, and labor and industrial relations, or their designated representatives; the superintendent of education or a designated representative; the [director of the office of state planning or a] comptroller or the comptroller's designated representative; one representative each from the city and county of Honolulu's Work Hawaii program, the office of Hawaiian affairs, the University of Hawaii, the West Oahu Employment Corporation, the Kamehameha Schools Na Hookama Program, the Honolulu Community Action Program, Inc., and Alu Like; and three residents from communities adjacent to the Kapolei site. The board shall elect a chairperson from among its members at its first meeting. The members shall serve without compensation but shall be reimbursed for necessary and actual expenses incurred in the discharge of their duties under this Act.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$125,536, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$130,813, or so much thereof as may be necessary for fiscal year 1992-1993, for implementation of the west Oahu social and employment services incubator project. The sums appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

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SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 14, 1991.)

ACT 270

H.B. NO. 375

A Bill for an Act Relating to the Hawaii State Coordinating Council on Deafness.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 347D-1, Hawaii Revised Statutes, is amended to read as follows:

“§347D-1 Hawaii state coordinating council on deafness; establishment. (a) There is established a Hawaii state coordinating council on deafness within the department of health for administrative purposes. The council shall consist of:

- (1) Seven representatives of state [agencies, including the departments of health, education, labor and industrial relations, human services, personnel services, the University of Hawaii, and the office of the governor;] or county agencies;
- (2) Seven members who are [hearing impaired] deaf, hard-of-hearing, or deaf-blind, or who are immediate family members of [hearing impaired] deaf, hard-of-hearing, or deaf-blind persons[.], of which two may be certified or locally screened interpreters; and
- (3) Seven members of the public who have an interest in [hearing impaired] deaf, hard-of-hearing, or deaf-blind persons[.], of which two may be certified or locally screened interpreters.

(b) Members shall be appointed by the governor without the necessity of the advice and consent of the senate and shall serve at the pleasure of the governor.

(c) Members shall elect the officers of the council.

(d) Members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(e) Interpreters who serve as voting council members shall not be hired to interpret at any council meetings.”

SECTION 2. Section 347D-2, Hawaii Revised Statutes, is amended to read as follows:

“[§347D-2] General duties. In addition to the duties regarding interpreter services under this chapter, the council shall [compile]:

- (1) Compile information on the [hearing impaired] deaf, hard-of-hearing, or deaf-blind population[, advocate];
- (2) Advocate for the [hearing impaired, develop] deaf, hard-of-hearing, or deaf-blind;
- (3) Develop and monitor programs for [hearing impaired] deaf, hard-of-hearing, or deaf-blind persons[.]; and [act]
- (4) Act to establish better communication and coordination among public and private agencies concerning access to services by [hearing impaired] deaf, hard-of-hearing, or deaf-blind persons.”

SECTION 3. Section 347D-3, Hawaii Revised Statutes, is amended to read as follows:

“[[§347D-3]] Responsibility of council for interpreter services. The council shall establish guidelines for the utilization of interpreter services by [hearing impaired] deaf, hard-of-hearing, or deaf-blind persons in state programs and activities, including the qualifications of persons who may receive the services, the qualifications of interpreters who may provide services, and the amount of payments to interpreters. The guidelines shall be consistent with Section 504 of the federal Rehabilitation Act of 1973, Public Law 93-112, as amended, for state programs and activities [which] that receive federal financial assistance.”

SECTION 4. Section 347D-4, Hawaii Revised Statutes, is amended to read as follows:

“§347D-4 Responsibility of council for payment of interpreter services. The council, subject to legislative appropriations, shall coordinate the payment of interpreter services for [hearing impaired] deaf, hard-of-hearing, or deaf-blind persons [when] participating in the programs and activities of [the State and its political subdivisions] tax exempt organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1986, which do not receive federal financial assistance. For the purposes of this section, payment of interpreter services may include transportation and per diem.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that section 4 shall take effect on July 1, 1992.

(Approved June 17, 1991.)

ACT 271

H.B. NO. 547

A Bill for an Act Relating to Culture and the Arts.

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

SECTION 1. The legislature finds that since the arrival of the first Filipino immigrants to Hawaii in December 1906, the Filipino people have made many significant contributions to the well-being and development of the State. The strong traditions of perseverance and hard work, and the rich culture and proud heritage of the Filipinos have been, and continue to be, positive influences upon Hawaii's unique lifestyle and people. It is appropriate to recognize the invaluable contributions and rich history of the Filipino people in 1991, on the celebrated occasion of the eighty-fifth anniversary of the arrival of the first Filipino people in Hawaii.

The purpose of this Act is to establish an executive committee to recognize and to provide for the celebration of the eighty-fifth anniversary of the arrival of the first Filipino people in Hawaii.

SECTION 2. **Creation of the Filipino celebration executive committee.**

There is established a temporary executive committee to be known as the Filipino celebration executive committee, which shall have charge of all arrangements for the commemoration of the eighty-fifth anniversary of the arrival of the first Filipinos in Hawaii. The executive committee shall be placed within the office of the governor for administrative purposes and shall cease to operate after June 30, 1992.

SECTION 3. Membership; compensation. The executive committee shall consist of fifteen members to be appointed by the governor without regard to section 26-34, Hawaii Revised Statutes. Two members shall be representatives from the state and county governments, and the remaining members shall represent the community at-large. The governor shall designate the chair of the executive committee from among the appointed members. The members shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.

SECTION 4. Powers and duties. The executive committee shall prepare an overall program to celebrate the eighty-fifth anniversary of the arrival of the first Filipino people in Hawaii, their significant contributions to the development of this State, their achievements, and their culture and heritage. The executive committee shall develop, plan, and coordinate the various program activities scheduled throughout the year of the celebration and shall encourage the participation of all segments of the Filipino community. The executive committee shall consider any related plans and programs developed by Filipino community organizations and other interested private and public organizations or agencies from whose members the executive committee may designate special committees to plan, develop, and coordinate specific projects or activities.

The executive committee shall submit to the governor a comprehensive report for the eighty-fifth anniversary celebration which shall include, but not be limited to:

- (1) The production, publication, and distribution of books, films, and other educational materials on the life and experiences of Filipinos in Hawaii;
- (2) Conferences, convocations, lectures, and seminars; and
- (3) Ceremonies, theatrical productions, and other special events commemorating the anniversary.

SECTION 5. Cooperation. In fulfilling its responsibilities, the executive committee shall consult, cooperate with, and seek the advice from Filipino community organizations and other appropriate organizations or agencies.

SECTION 6. Trust fund established. There is hereby created a trust fund to be known as the ethnic celebration trust fund which shall consist of payments made to the trust fund as provided in this Act. All moneys received by the executive committee shall be deposited by the director of finance into the trust fund and expended by the executive committee for the purposes of this Act. Disbursement of the moneys shall be by state warrants issued in accordance with applicable laws and rules and shall be based on vouchers signed by the chair of the executive committee.

The executive committee may seek grants from public and private sources and may accept donations to finance the projects, programs, and activities of the eighty-fifth anniversary celebration.

All property acquired by the executive committee shall be deposited for preservation in the state library system, museums, or public archives or shall otherwise be disposed of as directed by the executive committee.

SECTION 7. Final report. At the end of its term, the executive committee shall submit to the governor a final report of all its activities, including an accounting of all moneys received and disbursed.

SECTION 8. 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 1991-1992, to carry out the purposes of this Act.

The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

SECTION 9. This Act shall take effect upon its approval; provided that section 8 of this Act shall take effect on July 1, 1991. This Act shall be repealed on June 30, 1992.

(Approved June 17, 1991.)

ACT 272

H.B. NO. 917

A Bill for an Act Relating to the Transfer of All Functions, Powers and Duties Involving the Regulation of Ocean Recreational Boating and Coastal Activities.

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

SECTION 1. The legislature recognizes that the principal function of the department of transportation is to provide for the transportation of people and goods into, out of, and within the State.

The boating program with the objective of providing boating and other ocean-based recreation programs does not fit into the primary functions of the department although some elements are intertwined with certain commercial harbor facilities and activities.

The coastal areas program with the objective of preserving and enhancing the natural beauty and unique characteristics of coastal areas also does not fit neatly into the primary functions of the department.

The legislature finds that ocean-based recreation and coastal activities in Hawaii are now controlled in part by two different agencies: the department of transportation and the department of land and natural resources. The activities of boating and other ocean recreational activities and their impact on the marine environment are inseparable, and jurisdiction for recreational waterborne activities and protection of the marine life should rest in one department.

The regulation and development of ocean-based recreation and coastal area use would better be accomplished under the umbrella of one central agency.

The legislature further finds that the transfer of the boating and coastal areas programs from the department of transportation to the department of land and natural resources is appropriate, because the department of land and natural resources will be able to address the impact an activity may have on the marine environment when it regulates small boat harbors, boating, and ocean-based recreation activities.

The purpose of this Act is to establish the department of land and natural resources as the agency responsible for overseeing and administering the boating and coastal areas programs and to provide for the orderly transfer of the jurisdiction, functions, powers, and duties of the boating and coastal areas programs, from the department of transportation to the department of land and natural resources including the transfer of personnel, records, equipment, appropriations, and other property.

This Act also provides that in the interim between the Act's effective date of July 1, 1991, and July 1, 1992, a management team shall be selected by the director of transportation and the chairperson of the board of land and natural resources, with necessary staff hired by the director of transportation and the chairperson of the board of land and natural resources, to develop the appropriate transitional plans, rework position descriptions, review personnel classifications, develop an organizational structure, and attend to other administrative details so that the newly transferred functions and personnel can be initially operational on July 1, 1992.

SECTION 2. Effective July 1, 1992, the Hawaii Revised Statutes is amended by adding a new subtitle and a new chapter to be appropriately designated and to read as follows:

**“SUBTITLE . OCEAN RECREATION AND COASTAL AREAS
CHAPTER
OCEAN RECREATION AND COASTAL AREAS PROGRAMS
PART I. GENERAL PROVISIONS**

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

“Beaches encumbered with easements in favor of the public” means any lands which lie along the shores of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing, swimming, or other similar or related purposes and for foot passage.

“Board” means the board of land and natural resources.

“Chairperson” means the chairperson of the board of land and natural resources.

“Department” means the department of land and natural resources.

“Ocean waters” means all waters seaward of the shoreline 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.

§ -2 **Board of land and natural resources, powers and duties.** The board shall establish within the department a separate administrative unit which shall have the primary responsibility for administering the ocean recreation and coastal areas programs and performing the functions heretofore performed by the department of transportation.

§ -3 **Ocean recreation and coastal areas programs.** The board shall assume the following functions of the department of transportation:

- (1) Managing and administering the ocean-based recreation and coastal areas programs of the State;
- (2) Planning, developing, operating, administering, and maintaining

- small boat harbors, launching ramps, and other boating facilities and associated aids to navigation throughout the State;
- (3) Developing and administering an ocean recreation management plan;
 - (4) Administering and operating a vessel registration system for the State;
 - (5) Regulating the commercial use of boating facilities;
 - (6) Regulating boat regattas and other ocean water events;
 - (7) Administering a marine casualty and investigation program;
 - (8) Assisting in abating air, water, and noise pollution;
 - (9) Conducting public education in boating safety;
 - (10) Administering the boating special fund;
 - (11) Assisting in controlling shoreline erosion;
 - (12) Repairing seawalls and other existing coastal protective structures under the jurisdiction of the State; and
 - (13) Removing nonnatural obstructions and public safety hazards from the shoreline, navigable streams, harbors, channels, and coastal areas of the State.

§ -4 Rules. (a) The chairperson may adopt rules necessary:

- (1) To regulate the manner in which all vessels may enter the ocean waters and navigable streams of the State and moor, anchor, or dock at small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
- (2) To regulate the embarking and disembarking of passengers at small boat harbors, launching ramps, other boating facilities, and public beaches;
- (3) For the safety of small boat harbors, launching ramps, and other boating facilities, the vessels anchored or moored therein;
- (4) For the conduct of the public using small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
- (5) To regulate and control recreational and commercial use of small boat harbors, launching ramps, and other boating facilities owned or controlled by the State and the ocean waters and navigable streams of the State;
- (6) To prevent the discharge or throwing into small boat harbors, launching ramps, other boating facilities, ocean waters, and navigable streams, of rubbish, refuse, garbage, or other substances likely to affect the quality of the water or that contribute to making the small boat harbors, launching ramps, other boating facilities, ocean waters, and streams unsightly, unhealthful, or unclean, or that are liable to fill up, shoal, or shallow the waters in, near, or affecting small boat harbors, launching ramps, and other boating facilities and the ocean waters and navigable streams of the State, and likewise to prevent the escape of fuel or other oils or substances into the waters in, near, or affecting small boat harbors, launching ramps, or other boating facilities and the ocean waters and navigable streams of the State from any source point, including, but not limited to, any vessel or from pipes or storage tanks upon land. The rules may include:
 - (A) Requirements for permits and fees for:
 - (i) The mooring, docking, or anchoring of recreational and commercial vessels or the launching of recreational or commercial vessels at small boat harbors, launching ramps, and other boating facilities; or

- (ii) Other uses of these facilities;
- (B) Requirements for permits and fees for use of a vessel as a principal place of habitation while moored at a state small boat harbor;
- (C) Requirements governing:
 - (i) The transfer of any state commercial, mooring, launching, or any other type of use or other permit, directly or indirectly, including, but not limited to, the imposition or assessment of a business transfer fee upon transfer of ownership of vessels operating commercially from, within or in any way related to the state small boat harbors; and
 - (ii) The use of state small boat harbors, launching ramps, or other boating facilities belonging to or controlled by the State, including, but not limited to, the establishment of minimum amounts of annual gross receipts required to renew a commercial use permit, and conditions under which a state commercial, mooring, launching, or any other type of use or other permit may be terminated, canceled, or forfeited; and
- (D) Any other rule necessary to implement this chapter pertaining to small boat harbors, launching ramps, and other boating facilities belonging to or controlled by the State;
- (7) To continue the ocean recreational and coastal areas programs and govern the ocean waters and navigable streams of the State, and beaches encumbered with easements in favor of the public to protect and foster public peace and tranquility and to promote public safety, health, and welfare in or on the ocean waters and navigable streams of the State, and on beaches encumbered with easements in favor of the public. The rules may include:
 - (A) Regulating the anchoring and mooring of vessels, houseboats, and other contrivances outside of any harbor or boating facility, including:
 - (i) The designation of offshore mooring areas;
 - (ii) The licensing and registration of vessels, houseboats, and other contrivances; and the issuance of permits for offshore anchoring and mooring of vessels, houseboats, and other contrivances; and
 - (iii) The living aboard on such vessels, houseboats, or other contrivances while they are anchored or moored within ocean waters or navigable streams of the State.

The rules shall provide for consideration of environmental impacts on the State's aquatic resources in the issuance of any permits for offshore mooring;
 - (B) Safety measures, requirements, and practices in or on the ocean waters and navigable streams of the State;
 - (C) The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State;
 - (D) The licensing and registration of equipment utilized for commercial activities in or on the ocean waters and navigable streams of the State;
 - (E) For beaches encumbered with easements in favor of the

public, the prohibition or denial of the following uses and activities:

- (i) Commercial activities;
 - (ii) The storage, parking, and display of any personal property;
 - (iii) The placement of structures or obstructions;
 - (iv) The beaching, landing, mooring, or anchoring of any vessels; and
 - (v) Other uses or activities that may interfere with the public use and enjoyment of these beaches; and
- (F) Any other matter relating to the safety, health, and welfare of the general public; and
- (8) To regulate the examination, guidance, and control of harbor agents and their assistants.

(b) All rules shall be adopted in accordance with chapter 91 and shall have the force and effect of law.

§ -5 Commercial harbors excluded. For purposes of this chapter, ocean waters and navigable streams shall not include the commercial harbors of the State.

§ -6 Limitation of private use of ocean waters and navigable streams. (a) No person shall erect or place any structure or similar object, or sink any type of watercraft or other sizeable object, or abandon any type of watercraft or other sizeable object, either sunk or unsunk, on or within the ocean waters or navigable streams of the State without a written permit from the department. The department may require any person violating this section to remove any structure, similar object, watercraft, or other sizeable object on or within the ocean waters or navigable streams of the State. If any person fails to remove the same within a time limit set by the department, the department may effect the removal and charge the person with the cost thereof. The department may enforce compliance with this section by the use of any appropriate remedy including, but not limited to, injunction or other equitable or legal process in the courts of the State.

(b) No person shall anchor, moor, or otherwise place any vessel, houseboat, or other contrivance on or within the ocean waters or navigable streams of the State without a permit from the department. This section shall not apply to:

- (1) Vessels owned by the United States;
- (2) Vessels engaged in interstate or foreign commerce; or
- (3) Pleasure craft or fishing vessels temporarily anchored for a period of less than seventy-two hours.

The department may require any person violating this section to remove any vessel, houseboat, or other contrivance from the ocean waters or navigable streams of the State. If any person fails to remove the same within the time limit set by the department, the department may effect the removal and charge the person with the cost thereof. The department may enforce compliance with this section by the use of any appropriate remedy, including, but not limited to, injunction or other equitable or legal process in the courts of the State. As used in this section:

“Contrivance” means any human-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended within the water.

“Houseboat” means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or capable of being moved by oars, sweeps, or towing.

“Vessel” means every description of watercraft used or capable of being used as a means of transportation on water, including, but not limited to, power boats, ships, tugs, sailing vessels, barges, scows, lighters, ferry boats, pleasure craft, floating equipment, floating gear, dry docks, and any and all other watercraft.

(c) The permittee shall pay fees to the department for the offshore mooring permit issued by the department. The fees shall be based on, but not limited to, the use of the vessel, its effect on the waters and aquatic resources of the State, and the administrative expenses incurred by the department and other state agencies in administering offshore mooring. All revenues collected under this section shall be deposited in the boating special fund.

§ -7 **Waiver of mooring charges.** The department shall waive the mooring charge for any and all sea scout craft using moorings belonging to or controlled by the State, when moorings are available as determined by the department; provided the craft are owned and used exclusively for the purpose of regular organized sea scout groups.

§ -8 **Boating program; payment of costs.** The cost of administering a comprehensive statewide boating program, including, but not limited to, the cost of:

- (1) Operating, maintaining, and managing all boating facilities under the control of the department;
- (2) Improving boating safety;
- (3) Operating a vessel registration and boating casualty investigation and reporting system; and
- (4) Other boating program activities,

shall be paid from the boating special fund. The amortization (principal and interest) of the costs of capital improvements for boating facilities appropriated after July 1, 1975, including, but not limited to, berths, slips, ramps, related accommodations, general navigation channels, breakwaters, aids to navigation, and other harbor structures, may be paid from the boating special fund or from general revenues as the legislature may authorize in each situation. Revenues provided in this chapter for the boating special fund shall be at least sufficient to pay the special fund costs established in this section.

§ -9 **Purpose and use of state small boat harbors.** State small boat harbors are constructed, maintained, and operated for the purposes of:

- (1) Recreational boating activities;
- (2) Landing of fish; and
- (3) Commercial vessel activities.

For the purpose of this section, “recreational boating activities” means the utilization of watercraft for sports, hobbies, or pleasure, and “commercial vessel activities” means the utilization of vessels for activities or services provided on a fee basis. To implement these purposes, only vessels in good material and operating condition that are regularly navigated beyond the confines of the small boat harbor, and which are used for recreational activities, the landing of fish, or commercial vessel activities shall be permitted to moor, anchor, or berth at such harbor or use any of its facilities. Vessels used for purposes of recreational boating activities which are also the principal habitation of the owners shall occupy no more than one hundred twenty-nine berths at Ala Wai boat harbor and thirty-five berths at Keehi boat harbor, which is equal to fifteen per cent of the respective total moorage space that was available as of July 1, 1976, at the Ala Wai and Keehi

boat harbors. Notwithstanding the purposes of small boat harbors, moorage for commercial vessels and commercial vessel activities is not permitted in the Ala Wai and Keehi boat harbors; provided that commercial catamarans, for which valid permits or registration certificates have been issued by the department which allow the catamarans to operate upon Waikiki shore waters for hire, may be permitted to moor in Ala Wai boat harbor at facilities leased for commercial purposes. The chairperson may adopt rules pursuant to chapter 91 to further implement this section.

§ -10 **Permits and fees for state small boat harbors.** (a) No person shall moor a vessel in a state small boat harbor without:

- (1) First obtaining a use permit from the department; and
- (2) Being the owner of the vessel.

(b) In order to obtain a permit or a permit renewal, the owner of a vessel shall provide, at the owner's own expense:

- (1) A marine surveyor's inspection no more than two years old, certifying that the surveyor has inspected the vessel and considers it to fulfill the requirements set by the department; and
- (2) Documentation that the person is the owner of the vessel. The documentation shall meet requirements established by the department.

(c) The permittee shall pay moorage fees to the department for the use permit which shall be based on, but not limited to, the use of the vessel, its effect on the harbor, use of facilities, and the cost of administering this mooring program; and, furthermore:

- (1) Moorage fees shall be established by the department and shall be higher for nonresidents;
- (2) An application fee shall be collected when applying for moorage in state small boat harbors and shall thereafter be collected annually when the application is renewed. The application fee shall be:
 - (A) Set by the department; and
 - (B) Not less than \$100 for nonresidents;
- (3) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in addition to the moorage fee, a liveaboard fee which shall be:
 - (A) \$5.20 a foot of vessel length a month if the permittee is a state resident; and
 - (B) \$7.80 a foot of vessel length a month if the permittee is a non-resident;

provided that the liveaboard fees established by this subsection may be increased by the department at the rate of the annual cost-of-living index, but not more than five per cent in any one year, beginning January 1 of each year; and

- (4) If a vessel is used for commercial purposes from its permitted mooring, the permittee shall pay, in lieu of the moorage and liveaboard fee, a fee based on a percentage of the gross revenues derived from the use of the vessel which shall be not less than two times the moorage fee assessed for a recreational vessel of the same size.

(d) The department shall not renew or issue a permit to a person who is not the owner of the vessel which is moored or which the person desires to moor in a state small boat harbor. Any individual who is an owner of a vessel used for commercial purposes, including commercial fishing as a principal means of livelihood, and possesses a valid mooring permit or commercial permit, or both, in accordance with the rules adopted by the chairperson pursuant to chapter 91,

may transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to moor or operate the vessel under the permit or permits. The existing permit or permits shall be reissued in the name of the transferee corporation or other business entity.

For the purposes of this section, "person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity, and "owner" includes the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under a lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. No permittee shall be allowed to moor a leased vessel in a berth unless the terms of the lease are set at fair market value. A "legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest in the vessel. An owner who is issued a permit to moor a vessel in a state small boat harbor shall notify the department in writing of a transfer of interest or possession in the vessel within seven days of transfer.

Any person owning an interest in a corporation or other business entity possessing a valid commercial permit issued by the department, in accordance with rules adopted by the chairperson pursuant to chapter 91, may transfer any or all stock or other interest to another person without terminating the right of the corporation or business entity to retain or renew its commercial permit or any other permit issued to it by the department; provided that:

- (1) The corporation or business entity has been engaged in the same commercial vessel activity, as defined in section -9, for a minimum of one year; and
- (2) The seller shall pay the department a business transfer fee based on the passenger-carrying capacity of the vessels owned or operated by the corporation or business entity as provided by rules adopted by the chairperson pursuant to chapter 91.

Any person possessing a commercial permit shall be required to meet minimum revenue standards, as a condition of retaining or renewing the commercial permit.

(e) The department may designate moorage space within state small boat harbors to accommodate commercial fishing vessels and transient vessels.

(f) All revenues from the foregoing operations shall be deposited in the boating special fund.

§ -11 Existing permits. An owner of a vessel used as a principal place of habitation holding a permit for that use in a state small boat harbor on June 9, 1976, may continue to moor the vessel in that harbor for such purpose and be permitted to obtain a new mooring permit; provided that the owner conforms to conditions set forth in sections -9 and -10.

§ -12 Administration of state small boat harbors. The department shall include a separate administrative unit which shall administer the state small boat harbors and the state comprehensive recreational boating program. The unit shall:

- (1) Adopt necessary rules under section -4 for the purposes of this section;
- (2) Organize a comprehensive recreational boating program; and
- (3) Develop standard permits, and fees, for moorage in state small boat harbors to comply with section -10.

§ -13 **Marine inspections.** (a) The department shall:

- (1) Develop a list of minimum requirements for the marine inspection of vessels seeking permits to moor in state small boat harbors;
- (2) Approve qualified marine surveyors to inspect vessels seeking permits to moor in state small boat harbors; and
- (3) Approve a fee schedule for marine surveyors' inspections.

(b) Vessels failing the marine inspection for a permit or a permit renewal shall have thirty days to correct deficiencies and complete the inspection.

(c) Owners of vessels that fail the marine inspection may contest the inspection before an arbitration board of three inspectors approved by the department and the original inspector.

§ -14 **Violation of rules; penalty.** Any person who violates any rule adopted and published by the department under this part or who violates this part, shall be fined not more than \$10,000 for each offense, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$10,000 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the court may deprive the offender of the privilege of operating or mooring any vessel in state waters for a period of not more than two years.

§ -15 **Vessels or property taken into legal custody; unauthorized control.** No person shall exercise control over a vessel or other property that is under legal custody, seizure, or detention by the department.

§ -16 **Mooring of unauthorized vessel in state small boat harbors and offshore mooring areas; impoundment and disposal proceedings.** (a) No person shall moor a vessel in a state small boat harbor or offshore mooring area without obtaining a use permit; nor shall a person continue to moor a vessel in any state small boat harbor or offshore mooring area if the use permit authorizing the vessel to moor has expired or otherwise been terminated. A vessel moored without a use permit or with a use permit that has expired or been terminated is an unauthorized vessel and is subject to subsections (b) to (d).

(b) The department shall cause to be placed upon, or as near to the unauthorized vessel as possible, a notice to remove vessel, which shall indicate that the vessel is in violation of this section, the date and time the notice was posted, and that the vessel must be removed within seventy-two hours from the time the notice was posted.

(c) An unauthorized vessel may be impounded by the department at the sole cost and risk of the owner of the vessel, if the vessel is not removed after the seventy-two hour period or if during that period the vessel is removed and remoored in the harbor or mooring or anchorage area or any other state harbor or mooring or anchorage area without a use permit.

(d) Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment to the department of all fees and costs due, and fines levied by the department or a court. In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of the impounded vessel. The owner or operator of the impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The hearing must be held

within seventy-two hours of the department's receipt of the written request. The chairperson shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

PART II. BOATING LAW

§ **-21 Declaration of policy.** The legislature hereby finds, determines, and declares that this part is necessary to promote and attain:

- (1) The full use and enjoyment of the waters of the State;
- (2) The safety of persons and the protection of property as related to the use of the waters of the State;
- (3) A reasonable uniformity of laws and rules regarding the use of the waters of the State; and
- (4) Conformity with, and implementation of, federal laws and requirements.

§ **-22 Purpose.** The purpose of this part is to authorize the chairperson to adopt rules for the regulation of vessels and their use in the waters of the State, which, together with the provisions of this part, shall conform with and supplement federal laws and requirements to fully implement the declared policy of section -21.

§ **-23 Definitions.** As used in this part unless the context otherwise requires:

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boat livery" means the business of holding out vessels for rent, lease, or charter.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"Boating accident" means any occurrence involving a vessel or its equipment that results in:

- (1) The death of a person;
- (2) The loss of consciousness by any person, the receipt of medical treatment by any person, or the incapacity of any person for more than twenty-four hours;
- (3) Damage to the vessel and other property totalling more than \$200; or
- (4) The disappearance of a person from the vessel under circumstances that indicate death or injury.

"Certificate" means certificate of number for an undocumented vessel.

"Coast Guard" means the Coast Guard of the United States, or its successor agency.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides. "Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for racing competition; provided that no passenger pays compensation for riding the boat during the practice.

“Federal laws and requirements” means all statutes, rules, and other laws of the United States, which may apply to any and all subject matter of this part, and of the rules adopted pursuant to this part.

“Length” means the measurement of a vessel from end to end over the deck.

“Open ocean racing boat” means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed boat racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

“Operate” means to navigate or otherwise use a vessel on or in the waters of the State.

“Operator” means a person who operates, or who has charge of the navigation or use of, a vessel.

“Parasailing” means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline which is towed by a vessel.

“Person” means an individual, partnership, firm, corporation, association, or other legal entity.

“State” means the State of Hawaii.

“Thrill craft” means any motorized vessel which is generally less than thirteen feet in length as manufactured, is capable of exceeding a speed of twenty miles per hour, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, a jet ski, wet bike, surf jet, miniature speed boat, and hovercraft.

“Undocumented vessel” means any vessel which does not have and is not required to have a valid marine document as a vessel of the United States.

“Vessel” means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

“Water sledding” means the activity in which an individual is transported or carried over the surface of the water on an apparatus that is more than twelve inches wide and is attached to a towline which is towed by a vessel. If the apparatus is round with a hollow center, the width shall be measured as a straight line:

- (1) Starting from a point on the outer edge of the apparatus;
- (2) Bisecting the hollow center; and
- (3) Ending at the farthest point on the opposite outer edge.

“Waters of the State” means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

§ -24 Rules. The department shall adopt rules pursuant to chapter 91 to implement the policy and purpose of this part, and to classify vessels into appropriate categories and classes.

The department shall adopt rules pursuant to chapter 91 with respect to the following:

- (1) The registration and numbering of vessels;
- (2) The operation, use, and equipment of vessels on or in the waters of the State;

- (3) The conduct of persons involved in boating accidents and in the reporting of accidents and other casualties and losses to the department; and
- (4) The designation of areas of the waters of the State and time periods during which thrill craft may be operated, and waters on or above which, and time periods during which, persons may engage in parasailing, commercial high speed boating, and water sledding; provided that in designating the areas, the department shall use the official recommendation of the National Marine Fisheries Service with regard to the protection of protected marine life and habitats in adopting rules to implement this section, except as otherwise provided by law.

§ -25 **Fines and penalties.** Any person violating any of the provisions of this part, or of the rules adopted pursuant to this part, shall be guilty of a misdemeanor; provided that in addition to, or as a condition to the suspension of, the fines and penalties, the court may deprive the offender of the privilege of operating any vessel, including, but not limited to, any thrill craft or vessel engaged in parasailing, in the waters of the State for a period of not more than two years.

§ -26 **Arrest or citation.** (a) Except when required by state law to take immediately before a district judge a person arrested for a violation of any provision of this part, including any rule adopted pursuant to this part, any person authorized to enforce this part, hereinafter referred to as an enforcement officer, upon arresting a person for violation of any provision of this part, including any rule adopted pursuant to this part, in the discretion of the enforcement officer, shall either:

- (1) Issue to the purported violator a summons or citation, printed in the form described, warning the purported violator to appear and answer to the charge against the purported violator at a certain place and at a time within seven days after such arrest; or
- (2) Take the purported violator without unnecessary delay before a district judge.

(b) The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of the summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copies.

Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

(c) Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer, upon the person's arrest for violation of any provision of this part, including any rule adopted pursuant to this part, shall be guilty of a misdemeanor.

In the event any person fails to comply with a summons or citation issued to that person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against that person and secure the issuance of a warrant for the person's arrest.

- (d) When a complaint is made to any prosecuting officer of the violation

of any provision of this part, including any rule adopted thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official of the department whose name has been submitted to the prosecuting officer and who has been designated by the chairperson to administer the same.

§ -27 **Police reports.** For the purpose of enforcement, it shall be incumbent upon the director of public safety and the police chief of each county to transmit to the department a copy of every investigation report submitted by the director of public safety and the police chief's subordinate officers which relate to boating accidents or the theft, loss, or recovery of vessels required to be registered and numbered pursuant to section -31.

§ -28 **Duty of operator involved in, and at the scene of, a boating accident; limitations on liability.** (a) An operator involved in a boating accident, if and so far as the operator can do so without serious danger to the operator's own vessel, or person aboard, shall render such assistance as may be practicable and necessary to other persons and any property in order to save them from danger caused by the accident. The operator shall also make every reasonable effort to identify oneself by giving the operator's name and address and the identification of the vessel the operator was operating to:

- (1) All persons injured;
- (2) All owners of properties damaged; and
- (3) All operators of other vessels involved in the accident.

It shall further be the operator's duty to reasonably cooperate with all duly authorized personnel of governmental agencies investigating the accident.

(b) Any person who renders assistance in compliance with subsection (a) and any person who in good faith without remuneration or expectation of remuneration renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted, shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage, medical treatment, or other assistance, except for damages as may result from the person's gross negligence or wanton acts or omissions.

§ -29 **Accident reports by operators; confidential nature.** The operator of:

- (1) Any vessel involved in a boating accident in the waters of the State; and
- (2) Any vessel required to be registered, or registered, with the department and involved in a boating accident in any waters,

shall file a written report with the department truthfully setting forth all relevant information required by the department; provided that the report need not be filed with the department where the operator is required by federal laws and requirements to report the accident to the Coast Guard.

The department shall transmit information of all boating accidents to the Coast Guard as may be requested by the agency for compilation, analysis, and publication of statistics.

The accident reports required by this section shall be used only to enable the department and the Coast Guard to make findings with respect to the causes of accidents and recommendations for their prevention, and to compile information for use in making statistical reports; except that the accident reports may also be used in the prosecution of the filing of false accident reports.

§ -30 **Reciprocal agreements and courtesy.** The department may enter into, amend, revise, suspend, or revoke reciprocal agreements or arrangements with appropriate and duly authorized agencies of other jurisdictions whereby vessels properly numbered and equipped under the laws and regulations of this State are granted the same or substantially similar privileges, exemptions, and benefits enjoyed by vessels properly registered and equipped in such other jurisdictions in exchange for substantially similar privileges, exemptions, and benefits granted to properly registered and equipped vessels from other jurisdictions by the State. The department by appropriate rules may define the extent and nature of privileges, exemptions, and benefits which may be extended, as a matter of courtesy, to vessels properly numbered and equipped in other jurisdictions not covered by reciprocal agreements or arrangements.

Notwithstanding the preceding language of this section, the department shall recognize the validity of a number awarded to any vessel by:

- (1) Another state under a numbering system approved by the Coast Guard under appropriate federal laws and requirements; or
- (2) By the Coast Guard, for a period of at least sixty days.

§ -31 **Vessels required to be registered and numbered.** Every undocumented vessel shall be registered and numbered before its use or operation on or in the waters of the State on an annual basis in accordance with the rules of the department except:

- (1) Foreign vessels temporarily using the waters of this State;
- (2) Public vessels of the United States;
- (3) Ships' life boats; and
- (4) Other vessels exempted by the department, if federal laws and requirements permit the department to exempt the vessels.

§ -32 **Fees and charges.** (a) Except for vessels for which fees and charges are provided in subsection (b), the department shall assess and collect from the owner of each vessel required to be registered and numbered by section -31, the following fees and charges:

- (1) Initial annual registration fee. For the issuance of an original certificate:
 - (A) For each vessel less than twenty feet in length, \$13;
 - (B) For each vessel twenty feet or more in length, \$25; and
 - (C) For each amphibious vehicle licensed as a motor vehicle, \$15;
- (2) Annual certificate renewal fee. For the annual renewal of a certificate:
 - (A) For each vessel less than twenty feet in length, \$10;
 - (B) For each vessel twenty feet or more in length, \$15; and
 - (C) For each amphibious vehicle licensed as a motor vehicle, \$10;
- (3) Reregistration fee. For the reregistration of a vessel, after a certificate has been canceled or voided, the appropriate amount provided in paragraph (1);
- (4) Transfer fee. For the transfer of a certificate, \$5;
- (5) Certificate and registration sticker replacement fee. For the issuance of a replacement certificate or a replacement set of vessel registration stickers, \$5;
- (6) Certificate modification fee. For modifying a certificate, \$5;
- (7) Penalty charges for late registration, etc. For each month or fraction thereof that a registration, renewal, reregistration, or transfer is delinquent, one-tenth of the appropriate fee shall be added to the

normal fee, and the department may take such other enforcement action it deems appropriate; and

- (8) Exemptions. The department may reasonably establish, by rules, exemptions from the fees required by this section.

(b) For vessels owned by or operated under the custody or control of a boat manufacturer or boat dealer, the manufacturer or dealer shall pay, in lieu of the fees and charges provided for in subsection (a):

- (1) Boat manufacturer and boat dealer annual certificate fee. For each certificate, a fee of \$20;
- (2) Annual certificate renewal fee. For the annual renewal of a certificate, a fee of \$15;
- (3) Certificate reissuance. For the reissuance of a certificate after a certificate has been canceled or voided, a fee of \$20; and
- (4) Certificate and registration sticker replacement fee. For the replacement of a certificate or registration sticker, a fee of \$5.

§ -33 **Future fee and charge increases or decreases.** Notwithstanding section -32, all future fee and charge increases or decreases for vessels required to be registered and numbered pursuant to section -31 or for vessels owned by or operated under the custody of a boat manufacturer or boat dealer shall be established by rules adopted by the department pursuant to chapter 91. Fees and charges established pursuant to this section shall supersede the fees and charges set forth in section -32.

§ -34 **Disposition of revenues.** All fees and penalties collected pursuant to section -32 shall be deposited in the boating special fund.

§ -35 **Uniformity.** This part shall be interpreted and construed in the manner best able to effectuate the general purposes of attaining uniformity in the laws of the State, and with the laws of other states and the United States.

§ -36 **Preemption of local law and special rules.** If any ordinance or rule of any county of the State conflicts or is inconsistent with this part or with the rules adopted pursuant thereto, the ordinance or rule shall be void.

Any county of the State, at any time, may make formal request to the chairperson for the department to adopt special rules with reference to the operation and use of vessels on any waters within its jurisdiction. The request shall set forth the reasons which make these special rules necessary or appropriate.

The department may make special rules with reference to the operation and use of vessels on any waters of the State as may be reasonably necessary to implement the declared policy of section -21.

§ -37 **Operation of thrill craft; parasailing; water sledding; commercial high speed boating.** (a) No person shall operate a thrill craft unless the person is fifteen years of age or older.

(b) The department shall adopt rules to designate areas where, and time periods during which, thrill craft may be operated and parasailing, water sledding, and commercial high speed boating may be engaged in.

(c) No person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department; and
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill craft between the areas designated under paragraph (1) and the shore.

(d) No person shall:

(1) Engage in parasailing; or

(2) Operate a motorized vessel towing a person engaged in parasailing; on or above the waters of the State, except on or above areas and during time periods designated by the department.

(e) No person shall:

(1) Engage in water sledding; or

(2) Operate a motorized vessel towing a person engaged in water sledding;

in the waters of the State, except in areas and during time periods designated by the department.

(f) No person shall engage in commercial high speed boating or operate an open ocean racing boat for commercial high speed boating purposes in the waters of the State, except:

(1) In areas and during time periods designated by the department; and

(2) Through areas designated by the department to serve as avenues for the ingress and egress of open ocean racing boats between the areas designated under paragraph (1) and the shore.

(g) During all weekends and state and federal holidays, no commercial operator shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing in Kaneohe Bay and Maunaloa Bay on Oahu as provided for in section -38.

(h) On Sundays, all commercial ocean recreation activities, including those listed in this section, shall be prohibited on Oahu in Kaneohe Bay and Maunaloa Bay as provided for in section -38.

(i) Between December 15 and May 15 of each year, no person shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing on the west and south shore of Maui as provided in section -38.

(j) All commercial use and operator permits issued by the department for commercial thrill craft and parasailing activities shall be nontransferable and shall expire upon the dissolution, sale, or transfer of any or all interests in the corporation, business entity, or person to which the permit was originally issued.

§ -38 Ocean recreation management areas. (a) Notwithstanding any other law to the contrary, no commercial operator shall operate a thrill craft, engage in parasailing, water sledding, or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a motor vessel towing a person engaged in water sledding during all weekends and state and federal holidays on Oahu:

(1) In Kaneohe Bay from Mokapu Point to Makahonu Point which includes commercial zones a, b, c, d, e, f, g, i, and j; and

(2) In Maunaloa Bay from Kawaihoa (Portlock) Point to Waiupe Peninsula and commercial zones a, b, and c.

(b) Notwithstanding any other law to the contrary, all commercial ocean recreation activities shall be prohibited on all Sundays on Oahu in Kaneohe Bay and Maunaloa Bay as defined in subsection (a)(1) and (2).

(c) Notwithstanding any other law to the contrary, no person shall operate a thrill craft, engage in parasailing, operate a motorized vessel towing a person engaged in parasailing, engage in commercial water sledding or commercial high speed boating, or operate a commercial motor vessel towing a person engaged in

water sledding between December 15 and May 15 of each year in the waters of west and south Maui from Pu'u Ola'i to Hawea Point.

(d) The department may adopt rules pursuant to chapter 91 to further implement this section.

PART III. ABANDONED VESSELS ON PUBLIC AND PRIVATE PROPERTY GENERALLY

§ -41 **Disposition by chairperson of certain abandoned vessels.** Any vessel which:

- (1) Has been left unattended for a continuous period of more than thirty days; and
- (2) Is within the waters of the State or on public property, or is on private property without authorization of the owner or occupant of the property,

may be caused by the chairperson to be taken into custody and disposed of pursuant to this part.

§ -42 **Notice to owner.** Upon taking custody of any such vessel, a written notice shall immediately be posted on the vessel and a duplicate original thereof sent by registered or certified mail, with a return receipt requested, to the registered owner of the vessel at the registered owner's last known address and to all lien holders shown on the records of the department. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within twenty days after the mailing of the notice. A notice need not be sent to any purported owner or any other person whose interest in the vessel is not recorded with the department.

§ -43 **Public auction.** If the vessel is not repossessed within twenty days after the mailing of the notice, the vessel shall be disposed of by public auction, through oral tenders, or by sealed bids, after public advertisement has been made once in a newspaper of general circulation; provided that the public auction shall not be held less than five days after the publication of the advertisement. Where no bid is received, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency.

§ -44 **Possession by interested party.** Any person having an interest in the vessel may take possession of the vessel prior to the date of public auction upon payment to the department of all use fees, towing, handling and storage charges, appraisal and advertising expenses, and any other expenses incurred by the department in connection with the vessel. If the person taking possession of the vessel is not the registered owner, the person, prior to taking possession of the vessel, shall pay the foregoing expenses and post security satisfactory to the department which shall not exceed the value of the vessel. The security, if not forfeited, shall be returned to the person posting it within two years after receipt.

§ -45 **When public auction not required.** Public auction shall not be required when the appraised value of any vessel is less than \$250, as determined by an independent appraiser who has at least one year of experience in the sale or purchase of vessels. Upon that determination the chairperson may sell the vessel by negotiation, dispose of it as junk, or donate the vessel to any governmental agency.

§ -46 **Effect of sale.** The transfer of interest by sale hereunder shall be evidenced by a bill of sale from the department, shall be considered a transfer by operation of law, and shall be governed by provisions applicable thereto.

§ -47 **Disposition of proceeds.** The department shall deposit that portion of the proceeds of the sale of a vessel as shall represent the mooring or other fees and charges due the department, the expenses of the auction, and any other expense incurred by the department in taking into custody and disposing of an abandoned vessel, into the boating special fund from which the expenses incurred in connection with the abandoned vessel, were paid. The balance, if any, shall be deposited into the general fund of the State. The owner may recover any such balance of the proceeds from the State only if the owner files a claim therefor with the department of budget and finance within one year after the execution of the bill of sale. If no claim is made within the year allowed, the money shall become a state realization. A lien holder shall receive priority in payment from the balance of the proceeds to the extent of the lien holder's lien on the vessel. If the proceeds of the sale are insufficient to cover the mooring and other fees and charges, the expenses of the auction and the other expenses incurred by the department in taking into custody and disposing of the abandoned vessel, the department may bring an action for the deficiency in a court of appropriate jurisdiction against the registered owner or any person who had an interest in the vessel when custody was taken by the department.

§ -48 **Derelict vessel.** A vessel which has been left unattended for a continuous period of more than twenty-four hours is a derelict if:

- (1) The vessel is sunk or in immediate danger of sinking, is obstructing a waterway, or is endangering life or property; or
- (2) The vessel has been moored or otherwise left in the waters of the State or on public property contrary to law, or rules having the force and effect of law, or the vessel has been left on private property without authorization of the owner or occupant of the property and if:
 - (A) The vessel's registration certificate or marine document has expired and the registered owner no longer resided at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;
 - (B) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
 - (C) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner; or
 - (D) The vessel registration records of the department and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined.

§ -49 **Disposition of derelict vessel.** The chairperson may cause a derelict vessel to be immediately taken into custody. Upon taking custody of a derelict vessel the chairperson shall concurrently:

- (1) Publish a notice of intended disposition, once, in a newspaper of general circulation;

- (2) When possible, post a notice of intended disposition on the vessel; and
- (3) Serve a duplicate original of the notice of intended disposition by certified mail, return receipt requested on:
 - (A) The registered owner of the vessel, if known, at the registered owner's last known address or the address on record with the United States Coast Guard; and
 - (B) All lien holders who have properly filed a financing statement, referencing the name of the registered owner, in the bureau of conveyances or who are shown on the records of the department or United States Coast Guard.

If the vessel is not repossessed within twenty days after the publication or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that, when two or more purchasers indicate an interest in purchasing the vessel, the vessel will be sold at public auction to the highest bidder. If no purchaser expresses a desire to purchase the vessel, the vessel may be destroyed.

PART IV. VESSELS ABANDONED ON BUSINESS PREMISES OF PERSONS ENGAGED IN REPAIR BUSINESS

§ -51 Disposition of vessels by persons in vessel repair business.

When any person abandons a vessel upon the premises of a vessel repair business, the owner of the business or the owner's representative may sell or dispose of the vessel in accord with this part.

§ -52 When vessel deemed abandoned. A vessel shall be deemed to be abandoned upon satisfaction of all the following conditions:

- (1) The service requested or required by a person whose vessel is towed or brought to a vessel repair business, such as towing and rendering estimates of the cost of repairs, has been performed;
- (2) No authorization is given to perform any further service respecting the vessel but the vessel is left on the repair business premises;
- (3) The owner of the repair business or the owner's authorized representative has given notice by registered or certified mail, to the registered owner of the vessel at the address on record at the vessel repair business and the address on record in the department or United States Coast Guard, and to any person with a recorded interest in the vessel stating that, if the vessel is not repossessed within thirty days after the mailing of the notice, it will be sold or disposed of. The notice also shall contain a description of the vessel and its location. The notice need not be sent to an owner or any person with an unrecorded interest in the vessel whose name or address cannot be determined; and
- (4) The vessel is not repossessed within the thirty-day period.

§ -53 Sale or disposition of vessel. When a vessel is abandoned, the owner of the vessel repair business, or the owner's authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vessel or dispose of it; provided that the vessel shall not be sold or disposed of less than five days after the publication of the advertisement.

§ -54 Disposition of proceeds. The authorized seller of the vessel shall

be entitled to the proceeds of the sale to the extent of the compensation that is due the seller for services rendered in connection with the vessel, including reasonable and customary charges for towing, handling, and storage, and the cost of notices and advertising required by this part. A lien holder shall receive priority in payment from the balance to the extent of the lien holder's lien. Any remaining balance shall be forwarded to the registered owner of the vessel, if the registered owner can be found. If the registered owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the registered owner of the vessel, if a proper claim is filed thereof within one year from the execution of the sale agreement. If no claim is made within the year allowed, the money shall become a State realization.

§ -55 **Effect of transfer of title.** The transfer of title and interest by sale under this part is a transfer by operation of law; provided that a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

PART V. TRESPASS TO VESSEL

§ -61 **Definitions.** As used in this part:

"Enforcement officer" means a police officer and any other state or county officer charged with the enforcement of state laws.

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

§ -62 **Trespass to vessel; penalty.** Whoever, without right, boards or remains in or upon any vessel of another within the waters of the State shall be guilty of a misdemeanor.

§ -63 **Questioning and detaining suspected persons aboard a vessel.** An enforcement officer may detain any person found upon a vessel under circumstances as reasonably justify a suspicion that the person boarded without permission for the purpose of demanding, and may demand of the person, the person's name, address, and the nature of the person's business upon the vessel. If the enforcement officer has reason to believe that the person has no right to be upon the vessel, the enforcement officer may arrest the person without a warrant on the charge of violating section -62.

PART VI. VESSEL IDENTIFICATION NUMBERS

§ -71 **Hull, defined.** As used in this part, "hull" means the shell, frame, or body of a vessel, exclusive of masts, yards sails, riggings, machinery, and equipment.

§ -72 **Defacing, etc., vessel hull identification numbers.** No person shall willfully deface, destroy, remove, or alter the vessel hull identification number which is carved, burned, stamped, embossed, or otherwise permanently affixed to the hull of a vessel by the manufacturer, or by the owner in the case of restoration, for the purpose of identifying the hull. This section does not prohibit the restoration by an owner of an original number when the restoration is

authorized by the department, nor prevent any manufacturer from placing in the ordinary course of business, numbers or marks upon new hulls.

§ -73 **Unlawful to possess certain vessels or hulls.** No person shall possess a vessel or hull, knowing that the vessel hull identification number, placed on the same by the manufacturer or the owner for the purpose of identification, has been changed, altered, erased, or mutilated for the purpose of changing the identity of the vessel or hull thereof. Any vessel or hull from which the vessel hull identification number carved, burned, stamped, embossed, or otherwise permanently affixed to the hull by the manufacturer or by the owner, has been removed, defaced, or altered shall be caused by the chairperson to be taken into custody and, if not identified, disposed of pursuant to part III. If identified, the chairperson shall:

- (1) Notify the owner at the owner's last known address or the address shown on the records of the department or United States Coast Guard, and all lien holders who have properly filed a financing statement, referencing the name of the registered owner, in the bureau of conveyances or who are shown on the records of the department or United States Coast Guard;
- (2) Authorize restoration of the original vessel hull identification number or if unknown, assign a new number; and
- (3) Restore the vessel or hull to the owner upon payment to the State of all costs and expenses incurred by the State causing the vessel to be taken into custody.

§ -74 **Penalty.** Any person who violates this part shall be guilty of a misdemeanor."

SECTION 3. Effective July 1, 1992, section 26-15, Hawaii Revised Statutes, is amended to read as follows:

"§26-15 **Department of land and natural resources.** (a) The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources, except for matters relating to the state water code where the commission on water resource management shall have exclusive jurisdiction and final authority.

The board shall consist of six members, one from each land district and two at large. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. The governor shall appoint the chairperson of the board from among the members thereof.

The board may delegate to the chairperson such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The chairperson of the board shall serve in a full-time capacity. The chairperson [shall], in that capacity, shall perform those duties, and exercise those powers and authority, or so much thereof, as may be delegated by the board.

(b) The department shall manage and administer the public lands of the State and minerals thereon[,] and all water and coastal areas of the State except the commercial harbor areas of the State, including the soil conservation function, the forests and forest reserves, aquatic life [and], wildlife resources, aquaculture programs, [and] state parks, including historic sites[.], and all activities thereon and therein including, but not limited to, boating, ocean recreation, and coastal areas programs.

(c) The functions and authority heretofore exercised by the commissioner and board of public lands (including the hydrography division and the bureau of conveyances), the Hawaii water authority, the commission on ground water resources, the Hawaii land development authority, the soil conservation committee, and the commission on historical sites and the function of managing the state parks and the function of promoting the conservation, development and utilization of forests, including the regulatory powers over the forest reserve, aquatic life and wildlife resources of the State heretofore exercised by the board of commissioners of agriculture and forestry as heretofore constituted are transferred to the department of land and natural resources established by this chapter.”

SECTION 4. Effective July 1, 1992, section 171-3, Hawaii Revised Statutes, is amended to read as follows:

“§171-3 Department of land and natural resources. The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. The department shall manage, administer, and exercise control over public lands, the water resources, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law. The department shall also manage and administer the state parks, historical sites, forests, forest reserves, [aquatic] aquatic life and aquaculture programs, aquatic life sanctuaries, public fishing areas, boating, ocean recreation, and coastal programs, wildlife, wildlife sanctuaries, game management areas, public hunting areas, natural area reserves, and other functions assigned by law.”

SECTION 5. Effective July 1, 1992, section 199-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The conservation and resources enforcement officers, with respect to all state lands, including public lands, state parks, forest reserves, forests, aquatic life and wildlife areas, and any other lands and waters subject to the jurisdiction of the department of land and natural resources, shall:

- (1) Enforce title 12, and chapter 6E, and rules adopted thereunder;
- (2) Investigate complaints, gather evidence, conduct investigations, and conduct field observations and inspections as required or assigned;
- (3) Cooperate with enforcement authorities of the State, counties, and federal government in development of programs and mutual agreements for conservation and resources enforcement activities within the State;
- (4) Cooperate with established search and rescue agencies of the counties and the federal government in developing plans and programs, and mutual aid agreements for search and rescue activities within the State;
- (5) Check and verify all leases, permits, and licenses issued by the department of land and natural resources;
- (6) Enforce the laws relating to firearms, ammunition and dangerous weapons contained in chapter 134;
- (7) Enforce the rules[, at the request of the department of transportation,] relative to the control and management of [the beaches encumbered with easements in favor of the public and ocean waters adopted by the director of transportation under chapter 266] boating

facilities owned or controlled by the State, ocean waters and navigable streams and any activities thereon or therein, and beaches encumbered with easements in favor of the public, and the rules [for the regulation of] regulating vessels and their use in the waters of the State [adopted by the department of transportation under chapter 267]; and

- (8) Carry out such other duties and responsibilities as the board of land and natural resources [may] from time to time may direct.”

SECTION 6. Effective July 1, 1992, section 205A-48, Hawaii Revised Statutes, is amended to read as follows:

“**§205A-48 Conflict of other laws.** In case of a conflict between the requirements of any other state law or county ordinance regarding shoreline setback lines, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing contained in this part shall be construed to diminish the jurisdiction of the state department of transportation over wharves, airports, docks, piers, [small boat,] or other commercial harbors, and any other maritime [or water sports recreational] facilities [to be] constructed [on state land] by the State; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the county zoning laws, and found not to conflict with any county ordinances, zoning laws, and building [code.] codes.”

SECTION 7. Effective July 1, 1992, section 248-8, Hawaii Revised Statutes, is amended to read as follows:

“**§248-8 Special funds in treasury of State.** There are created in the treasury of the [state] State three special funds to be known, respectively, as the state highway fund, the airport revenue fund, and the boating special fund. All taxes collected under chapter 243 in each calendar year, except the “county of Hawaii fuel tax”, “city and county of Honolulu fuel tax”, “county of Maui fuel tax”, and “county of Kauai fuel tax”, shall be deposited in the state highway fund; provided that all taxes collected under chapter 243 in respect to gasoline or other aviation fuel sold for use in or used for airplanes shall be set aside in the airport revenue fund; and provided further that all taxes collected under chapter 243 with respect to liquid fuel sold for use in or used for small boats shall be deposited in the boating special fund. “Small boats” as used herein means all vessels and other watercraft except those operated in overseas transportation beyond the [state] State and ocean-going tugs and dredges. The [director of transportation] chairperson of the board of land and natural resources is directed, [prior to July 1, 1973,] from July 1, 1992, and every three years thereafter to establish standards or formulas that will as equitably as possible establish the [percentage of] total taxes collected under chapter 243 in each fiscal year that are derived from the sale of liquid fuel for use in or used for small boats. The amount so determined shall be deposited in the boating special fund.”

SECTION 8. Effective July 1, 1992, section 266-1, Hawaii Revised Statutes, is amended to read as follows:

“**§266-1 Department of transportation; harbors; jurisdiction.** All [ocean waters and navigable streams, and all] commercial harbors and roadsteads, and all commercial harbor and waterfront improvements[,] belonging to or controlled by

the State, and all vessels and shipping within the commercial harbors[,] and roadsteads[, waters, and streams] shall be under the care and control of the department of transportation.

For the purpose of this chapter, "commercial harbor" means a harbor or off-shore mooring facility which is primarily for the movement of commercial cargo, passenger and fishing vessels entering, leaving, or travelling within the State, and facilities and supporting services for loading, off-loading, and handling of cargo, passengers, and vessels."

SECTION 9. Effective July 1, 1992, section 266-2, Hawaii Revised Statutes, is amended to read as follows:

"§266-2 Powers and duties of department. (a) The department of transportation shall [have]:

- (1) Have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the State relative to the control and management of [the shores, shore waters, navigable streams,] commercial harbors, commercial harbor and waterfront improvements, ports, docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State, and the shipping using the same[, and shall have]:
- (2) Have the authority to use and permit and regulate the use of the commercial docks, wharves, piers, [bulkheads,] quays, bulkheads, and landings belonging to or controlled by the State for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor[, and, subject]:
 - (A) Services rendered in mooring commercial vessels[, charges for the];
 - (B) The use of commercial moorings belonging to or controlled by the State[, rates or charges for wharfage];
 - (C) Wharfage or demurrage[, rents or charges for warehouses or warehouse];
 - (D) Warehouse space, [for offices or] office space, [for] and storage [of] space for freight, goods, wares and merchandise[, for storage space, for the use of donkey engines,]; and
 - (E) The use of derricks[,] or other equipment belonging to the State[,] or under the control of the department[, and to make];
- (4) Make other charges including toll or tonnage charges on freight passing over or across docks, wharves, [docks,] piers, quays, bulkheads, or landings[. The department shall likewise have power to appoint];
- (5) Appoint and remove clerks, [wharfingers,] harbor agents and their assistants, [pilot boat crews,] and all such other employees as may be necessary, and to fix their compensation; [to make]
- (6) Adopt rules pursuant to chapter 91 and not inconsistent with law; and [generally shall]
- (7) Generally have all powers necessary [fully] to fully carry out this chapter.

(b) Notwithstanding any law or provision to the contrary, the department of transportation is authorized to plan, construct, operate, and maintain any

commercial harbor facility in the State, including, but not limited to, the acquisition and use of lands necessary to stockpile dredged spoils, without the approval of county agencies.

All moneys appropriated for commercial harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the department, subject to this chapter and chapter 103.

All contracts and agreements authorized by law to be entered into by the department shall be executed on its behalf by the director of transportation.

(c) The department shall prepare and submit annually to the governor a report of its official acts during the preceding fiscal year, together with its recommendations as to commercial harbor improvements throughout the State.”

SECTION 10. Effective July 1, 1992, section 266-3, Hawaii Revised Statutes, is amended to read as follows:

“§266-3 Rules [and regulations]. (a) The director of transportation may [from time to time] adopt rules [not inconsistent with law] as [the director may deem] necessary [respecting] to:

- (1) Regulate the manner in which all vessels may enter and moor, anchor or dock in the [ocean waters, navigable streams,] commercial harbors, ports, and roadsteads of the State, or move from one dock, wharf, [bulkhead,] pier, quay, bulkhead, landing, anchorage, or mooring to another within the [waters, streams,] commercial harbors, ports, or roadsteads; [the]
- (2) The examination, guidance, and control of harbor masters and their assistants[,] and their conduct while on duty; [the]
- (3) The embarking or disembarking of passengers; [the]
- (4) The expeditious and careful handling of freight, goods, wares, and merchandise of every kind which may be delivered for shipment or discharged on the [wharves,] commercial docks, wharves, piers, quays, bulkheads, or landings belonging to or controlled by the State; and [defining]
- (5) Defining the duties and powers of carriers, shippers, and consignees respecting passengers, freight, goods, wares, and merchandise in and upon the [wharf, landing, dock, quay, or bulkhead,] docks, wharves, piers, quays, bulkheads, or landings within the commercial harbors, ports, and roadsteads of the State. The director may also make further rules [and regulations] for the safety of the docks, wharves, [landings,] piers, quays, bulkheads, and landings on, in, near, or affecting a commercial harbor and waterfront improvements belonging to or controlled by the State.

(b) The director may also[, from time to time, make, alter,] adopt, amend, and repeal such rules [not inconsistent with law as shall be deemed] as are necessary [for the]:

- (1) For the proper regulation and control of all shipping in the commercial harbors[, ocean waters, and navigable streams] belonging to or controlled by the State, and of the entry, departure, mooring, and berthing of vessels therein, and for the regulation and control of all other matters and things connected with such shipping [in all the harbors, ocean waters, and navigable streams; and rules and regulations to];

- (2) To prevent the discharge or throwing into [these] commercial harbors[, ocean waters, and navigable streams,] of rubbish, refuse, garbage, or other substances [liable to make] likely to affect water quality or that contribute to making such harbors[, ocean waters, and navigable streams] unsightly, unhealthful, or unclear, or that are liable to fill up [or] shoal or shallow [the] waters in, near, or affecting the commercial harbors[, ocean waters, and streams]; and [like-wise to]
- (3) To prevent the escape of fuel or other oils or substances into the waters in, near, or affecting commercial harbors[, ocean waters, and streams, either] from any source point, including, but not limited to, any vessel or [from] pipes or storage tanks upon the land.

[(c) In addition to the powers vested in the director by sections 266-1 and 266-2, the director, to protect and foster public peace and tranquility and to promote public safety, health, and welfare in or on the ocean waters, navigable streams, and on beaches encumbered with easements in favor of the public, may adopt rules governing the ocean waters, navigable streams, and beaches encumbered with easements in favor of the public. The rules to be adopted under this subsection may include:

- (1) Safety measures, requirements, and practices in or on the ocean waters and navigable streams of the State;
- (2) The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State;
- (3) The licensing and registration of equipment utilized for commercial activities in or on the ocean waters and navigable streams of the State;
- (4) For beaches encumbered with easements in favor of the public, the prohibition or denial of the following uses and activities:
 - (A) Commercial activities;
 - (B) The storage, parking, and display of any personal property;
 - (C) The placement of structures or obstructions;
 - (D) The beaching, landing, mooring, or anchoring of any vessels; and
 - (E) Other uses or activities that may interfere with the public use and enjoyment of these beaches; and
- (5) Any other matter relating to the safety, health, and welfare of the general public.

Management of all other beaches, shores, and submerged lands, belonging to or controlled by the State, shall be the responsibility of the department of land and natural resources.

For the purpose of this chapter, if not inconsistent with the context:

“Beaches encumbered with easements in favor of the public” means any lands which lie along the shores of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing purposes and for foot passage.

“Ocean waters” means all waters seaward of the shoreline 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.]

[(d)] (c) The rules [and regulations] shall be adopted in the manner prescribed in chapter 91 and shall have the force and effect of law.”

SECTION 11. Effective July 1, 1992, section 266-21.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall (1) develop a list of minimum requirements for the marine inspection of vessels seeking permits to moor in state [small boat] commercial harbors, (2) approve qualified marine surveyors to inspect vessels seeking permits to moor in state [small boat] commercial harbors, and (3) approve a fee schedule for marine surveyors’ inspections.”

SECTION 12. Effective July 1, 1992, section 266-24, Hawaii Revised Statutes, is amended to read as follows:

“**§266-24 Enforcement.** For the purpose of the enforcement of this chapter and of all rules adopted pursuant to this chapter [and the enforcement of title 12, chapter 6E, and chapter 266 and rules adopted thereunder, and chapter 267 and rules adopted thereunder,] the powers of police officers are conferred upon the director of transportation and any officer, employee, or representative of the department of transportation[, or employee of a county appointed by the director]. Without limiting the generality of the foregoing, the director and any person appointed by the director hereunder may serve and execute warrants, arrest offenders, and serve notices and orders. Every state and county officer charged with the enforcement of laws and ordinances shall enforce and assist in the enforcement of this chapter and of all rules adopted pursuant to this chapter [and in the enforcement of title 12, chapter 6E, and chapter 266 and rules adopted thereunder, and chapter 267 and rules adopted thereunder].”

SECTION 13. Effective July 1, 1992, section 266-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall moor a vessel in a state commercial harbor without obtaining a use permit; nor shall a person continue to moor a vessel in any state commercial harbor[,] if the use permit authorizing the vessel to moor has expired or otherwise been terminated. A vessel moored without a use permit or with a use permit that has expired or been terminated is an unauthorized vessel and is subject to subsections (b) to (e).”

SECTION 14. Effective July 1, 1992, section 266-27, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

“(c) An unauthorized vessel may be impounded by the department at the sole cost and risk of the owner of the vessel, if such a vessel is not removed after the seventy-two hour period or if during said period the vessel is removed and re-moored in said harbor or any other state commercial harbor without a use permit.

(d) Custody of an [unauthorized] impounded vessel shall be returned to the person entitled to possession upon payment to the department of all fees and costs due, and fines levied by a court. In addition, the department [shall], within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any [unauthorized] impounded vessel. The owner or operator of an [unauthorized] impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner or operator of an [unauthorized] impounded vessel to contest the basis given by the department for the

[administrative] impoundment of the vessel. The administrative hearing must be held within seventy-two hours of the department's receipt of the written request. The department shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

(e) Any unauthorized vessel impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner or a lien holder for more than thirty days, may be sold by the department at public auction [in accordance with the procedures set forth in chapter 267A].”

SECTION 15. Effective July 1, 1992, section 662-15, Hawaii Revised Statutes, is amended to read as follows:

“§662-15 Exceptions. This chapter shall not apply to:

- (1) Any claim based upon an act or omission of an employee of the State, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved has been abused;
- (2) Any claim arising in respect of the assessment or collection of any tax, or the detention of any goods or merchandise by law enforcement officers;
- (3) Any claim for which a remedy is provided elsewhere in the laws of the State;
- (4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;
- (5) Any claim arising out of the combatant activities of the Hawaii national guard and Hawaii state defense force during time of war, or during the times the Hawaii national guard is engaged in federal service pursuant to sections 316, 502, 503, 504, 505, or 709 of Title 32 of the United States Code;
- (6) Any claim arising in a foreign country; or
- (7) Any claim arising out of the acts or omissions of any boating enforcement officer [appointed under section 267-6].”

SECTION 16. Effective July 1, 1992, section 266-16, Hawaii Revised Statutes, is repealed.

SECTION 17. Effective July 1, 1992, section 266-18, Hawaii Revised Statutes, is repealed.

SECTION 18. Effective July 1, 1992, section 266-20, Hawaii Revised Statutes, is repealed.

SECTION 19. Effective July 1, 1992, section 266-21, Hawaii Revised Statutes, is repealed.

SECTION 20. Effective July 1, 1992, section 266-21.1, Hawaii Revised Statutes, is repealed.

SECTION 21. Effective July 1, 1992, section 266-21.2, Hawaii Revised Statutes, is repealed.

SECTION 22. Effective July 1, 1992, section 266-21.3, Hawaii Revised Statutes, is repealed.

SECTION 23. Effective July 1, 1992, Chapter 267, Hawaii Revised Statutes, is repealed.

SECTION 24. Effective July 1, 1992, Chapter 267A, Hawaii Revised Statutes, is repealed.

SECTION 25. Effective July 1, 1992, Chapter 267B, Hawaii Revised Statutes, is repealed.

SECTION 26. Effective July 1, 1992, Chapter 267C, Hawaii Revised Statutes, is repealed.

SECTION 27. **Plans and preparation for transfers.** The director of transportation and the chairperson of the board of land and natural resources shall appoint a management team and may hire necessary staff, who shall be exempt from chapters 76 and 77, Hawaii Revised Statutes, to develop the appropriate transition plans, rework position descriptions, revise personnel classifications, develop an organizational structure, and attend to other administrative details so that the transfer of functions can be implemented on July 1, 1992.

SECTION 28. **Transfer of functions.** Effective July 1, 1992, the jurisdiction, functions, powers, duties, and authority heretofore exercised by the department of transportation pursuant to chapters 266 and 267, Hawaii Revised Statutes, relating to boating and other ocean-based recreational activities and coastal areas shall be transferred to and conferred upon the department of land and natural resources by this Act and shall be performed and enforced in the same manner as previously authorized, entitled, or obligated except as otherwise authorized, directed, or instructed by this Act.

The department of land and natural resources shall succeed to all of the rights and powers previously exercised, and all of the duties and obligations incurred by the department of transportation in the exercise of the functions, powers, duties, and authority transferred, whether such functions, powers, duties, and authority are mentioned in or granted by any law, contract, or other document.

All rules, policies, procedures, guidelines, and other material adopted or developed by the department of transportation to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of land and natural resources by this Act, shall remain in full force and effect until amended or repealed by the chairperson of the board of land and natural resources pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of transportation or director of transportation in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of land and natural resources or chairperson of the board of land and natural resources as appropriate.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of transportation pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of land and natural resources by this Act, shall remain in full force and effect. Effective July 1, 1992, every reference to the department of transportation or the director of transportation therein shall be

construed as a reference to the department of land and natural resources or the chairperson of the board of land and natural resources as appropriate.

SECTION 29. Transfer of personnel. All officers and employees whose functions are transferred to the department of land and natural resources by this Act shall be transferred with their current functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act. No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave or other employee benefit or privilege as a consequence of this Act.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department of personnel services or the governor.

SECTION 30. Transfer of records, equipment, appropriations, and other property. Effective July 1, 1992, all records, equipment, files, supplies, contracts, books, papers, documents, maps, appropriations, and other property heretofore made, used, acquired, or held by the department of transportation in the exercise of the functions to be transferred by this Act shall be transferred with the functions to which they relate to the department of land and natural resources.

SECTION 31. Enforcement by the marine patrol. Pursuant to section 1 of Act 211, Session Laws of Hawaii 1989, the law enforcement and security functions and employees of the department of transportation shall be transferred to the department of public safety effective July 1, 1991. It is the intent of the legislature that the marine patrol, which is currently under the department of transportation and will be transferred to the department of public safety on July 1, 1991, shall be primarily responsible for the enforcement of boating, ocean recreational, and coastal area programs pursuant to chapter . The department of land and natural resources shall cooperate with the department of public safety to ensure the effective coordination of resource management, conservation, education, enforcement, and control with regard to the enforcement of chapter .

SECTION 32. Federal aid, contract and bond obligations; not impaired. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to persons with which it has existing contracts or to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 33. Use of state lands for the boating program. All executive orders, revocable permits, easements, and rights of entry for the use of state lands issued and granted to the department of transportation for use in connection with the boating program shall be withdrawn or terminated and appropriate land dispositions for use in connection with the boating program may be made by the board of land and natural resources, as appropriate, subsequent to the transfer of the boating program to the department of land and natural resources.

SECTION 34. Department of public safety report. The department of public safety shall report to the legislature on how the marine patrol transferred from the department of transportation is being assimilated into the department of public safety, how the marine patrol is being utilized, and how the marine patrol is functioning and an assessment of those functions under the department of public safety no later than twenty days before the convening of the regular session of 1992.

SECTION 35. Legislative auditor report. The legislative auditor shall report to the legislature on the effectiveness of the transfer of the marine patrol from the department of transportation to the department of public safety and the potential transfer and merger of the division of conservation and resource enforcement with the marine patrol in the department of public safety for the effective coordination of resource management, conservation, education, enforcement, and control no later than twenty days before the convening of the regular session of 1993.

SECTION 36. Conflict with provisions of this Act. All acts passed by the legislature during this regular session of 1991, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 37. Construction; severability. This Act shall be liberally construed in order to accomplish the purposes set forth herein. 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 38. There is appropriated out of the boating special fund the sum of \$150,000, or so much thereof as may be necessary for fiscal year 1991-1992, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of transportation.

SECTION 39. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 40. This Act shall take effect on July 1, 1991, except that specific provisions of this Act shall take effect as otherwise specified in this Act.

(Approved June 17, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 273

H.B. NO. 932

A Bill for an Act Relating to Certification of Water Treatment Plant Operators.

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 LAW FOR MANDATORY CERTIFICATION OF
OPERATING PERSONNEL IN WATER TREATMENT PLANTS**

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

“Association of boards of certification for operating personnel in water and wastewater utilities” means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for the classification of potable water supply and wastewater systems and facilities and for certification of operators, facilitates reciprocity between state programs, and assists authorities in establishing new certification programs and upgrading existing programs.

“Board” means the board of certification established by section -4.

“Director” means the director of health.

“Operator” means any individual who operates a water treatment plant, or a major segment of a water treatment plant.

“Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality, or any other private, county, state, or federal legal entity.

“Supervisor” means, where shift operation is not required, any individual who has direct responsibility for the operation of a water treatment plant or who supervises operators of such a plant. Where shift operation is required, “supervisor” means any individual who has direct responsibility for active daily on-site technical and administrative supervision, and active daily on-site charge of an operating shift, or a major segment of a water treatment plant.

“Water treatment plant” means the various facilities used in the treatment of water, including source, treatment, storage, and distribution, serving a public water system.

§ -2 **Classification.** The board shall classify all water treatment plants. The classification shall take due regard to size and type of the water treatment facility, character of water to be treated, and other physical conditions affecting such water treatment plants, and the skill, knowledge, and experience required of an operator.

§ -3 **Certification.** (a) Upon board approval the director shall issue certificates entitling qualified individuals to operate water treatment plants. Each certificate shall indicate the class of water treatment plant for which the individual is qualified.

(b) The director shall issue a certificate to each applicant who on June 30, 1991 has completed at least one year of satisfactory performance in the operation of a water treatment plant. This certificate shall be valid until January 1, 1994 or until a certification program has been established by the director.

§ -4 **Board of certification.** (a) A state board of certification of five members shall be appointed by the governor to carry out this chapter. The board shall be placed, for administrative purposes, in the department of health. The board shall consist of the following:

- (1) Four individuals who shall be duly qualified in the fields of sanitary engineering or drinking water treatment plant operation.

(2) One individual from the state agency responsible for the State's safe drinking water program.

(b) The foregoing members shall serve for four-year terms except that of the initial appointments, one shall be for one year, one shall be for two years, one shall be for three years, and two shall be for four years.

(c) The members of the board shall meet for an organizational meeting at the call of the director, within forty-five days of their appointment and thereafter at least twice a year at such time and place as may be provided by rules and regulations adopted by them. The members of the board shall annually elect one of the board members to serve as chairperson. Additional meetings may be called by the chairperson as deemed necessary. Notice of such meeting shall be given all members in writing at least ten days prior to the date of the meeting.

(d) The governor shall fill any vacancy in the board and may remove any member for cause.

(e) Board members shall be reimbursed for expenses incurred in the performance of their duties.

§ **-5 Association of certification authorities.** The board may, when taking action pursuant to sections -2, -3, and -7 of this chapter, consider generally applicable criteria and guidelines developed by the association of boards of certification for operating personnel in water and wastewater utilities.

§ **-6 Certification requirement.** All classified water treatment plants whether publicly or privately owned, used or intended for use by the public or private persons, shall at all times be under the direct supervision of an individual whose competency is certified to by the director in a classification corresponding to the classification of the water treatment plant to be supervised.

§ **-7 Regulations.** The board shall adopt such rules and regulations as may be necessary for the administration of this chapter, and which shall include at least the following provisions:

- (1) The basis for classification of water treatment plants as required by section -2;
- (2) Criteria for the qualification of applicants for operator certification corresponding to each of the classifications referred to in paragraph (1) of this section;
- (3) Procedures for examination of candidates and renewal of certificates and
- (4) Procedures for the revocation of certificates.

§ **-8 Prohibited acts.** It shall be unlawful:

- (1) For any water treatment plant to be operated unless the operator is duly certified under this chapter;
- (2) For any individual to perform the duties of an operator without being duly certified under this chapter.

§ **-9 Injunctions and civil penalty.** Any person who violates any provision of this chapter, or any rules, regulations, criterion, procedure, or certificate issued hereunder may, in a legal action commenced by the board;

- (1) Be enjoined from continuing such violation; and
- (2) Be subject to a civil penalty of not more than \$25,000 a day for each day of continuing violation.

§ -10 **Criminal penalties.** Any individual who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, shall be guilty of a misdemeanor.

§ -11 **Powers and duties of the board.** To carry out the provisions and purposes of this chapter, the board shall:

- (1) Perform any and all acts and adopt, amend, or repeal such rules and regulations as it finds necessary or appropriate;
- (2) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as deemed appropriate with other state, federal, or interstate agencies, municipalities, educational institutions, or other organizations or individuals;
- (3) Receive financial and technical assistance from the federal government and other public or private agencies;
- (4) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;
- (5) Furnish upon request to federal, state or interstate agencies, municipalities, educational institutions and other organizations and individuals, reports, information and materials relating to the certification program authorized by this chapter;
- (6) Revoke, suspend, or refuse to renew any certificate of any individual following a hearing before the board of the individual or the individual's designated representative, when it is determined that the individual has practiced fraud or deception; that reasonable care, judgment, or the application of the individual's knowledge or ability was not used in the performance of the individual's duties; or that the individual is incompetent or unable to properly perform the individual's duties; provided that the board gives the person concerned notice and hearing in conformity with chapter 91;
- (7) Delegate those duties and responsibilities the board may deem appropriate for the purpose of administering requirements of this chapter;
- (8) Establish and collect such fees for application, conduct examinations, issue or renew certificates as are necessary for the support of this chapter, and deposit all fees collected into the State's general fund; and
- (9) Oversee the development and implementation of a continuous training program if that is necessary to carry out this chapter.

§ -12 **Reciprocity.** (a) On or after the effective date of this chapter, certification of operators by any state which, as determined by the board, accepts certifications made or certification requirements deemed satisfactory pursuant to this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the board the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations adopted hereunder and providing further that reciprocal privileges are granted to certified operators of this State.

(b) In making determinations pursuant to subsection (a) of this section, the board may consider any generally applicable criteria and guidelines developed by

the association of boards of certification for operating personnel in water and wastewater utilities.”

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

(Approved June 17, 1991.)

ACT 274

H.B. NO. 1025

A Bill for an Act Relating to Alcohol and Aeronautics.

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

SECTION 1. Title 15, Hawaii Revised Statutes, is amended by adding a new chapter to be designated Chapter 263A and to read as follows:

“CHAPTER 263A ALCOHOL AND AVIATION SAFETY

§263A-1 Implied consent of operator of aircraft to submit to testing to determine alcoholic content of blood. (a) Any person who operates an aircraft within the State shall be deemed to have given consent to a test approved by the director of health of the person’s breath or blood for the purpose of determining the alcoholic content of the person’s blood. The person shall have the option to take a test of the person’s breath or blood, or both.

(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating or in actual physical control of an aircraft is under the influence of intoxicating liquor only after (1) a lawful arrest and (2) the officer has informed the person of the sanctions of section 263A-5.

§263A-2 Persons qualified to take blood specimen. No person, other than a physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a breath specimen.

§263A-3 Additional tests. The person tested may select and allow any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 to withdraw blood or have any person administer a test or tests in addition to any administered at the direction of a law enforcement officer. The results of the additional test or tests may be used as provided in section 263A-5. The failure or inability to obtain an additional test by a person shall not preclude the admission of a test or tests taken at the direction of a law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the law enforcement officer shall be made available to the person.

§263A-4 Consent of person incapable of refusal not withdrawn. The consent of a person deemed to have given consent pursuant to section 263A-1 shall not be withdrawn by reason of the person’s being dead, unconscious, or in any other state which renders the person incapable of consenting to examination,

and the test may be given. In such event, a test of the person's blood shall be administered.

§263A-5 Revocation of privilege to operate an aircraft 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 263A-9, but the law enforcement officer, as soon as practicable, shall 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 law enforcement officer had probable cause to believe the arrested person had either been flying or was in actual physical control of an aircraft 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 263A-6, and shall determine whether the statements contained in the affidavit are true. If the district judge finds the statements contained in the affidavit are true, the judge shall prohibit the person from operating an aircraft from a state or private airport for a period of one year.

(c) 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.

(d) The penalties provided by this section are additional penalties and not substitutes for other penalties provided by law.

§263A-6 Hearing before a district judge. A hearing to determine the truth of an affidavit submitted to a district judge shall be held within twenty days after the district judge has received the affidavit.

The district judge shall hear and determine:

- (1) Whether the law enforcement officer had probable cause to believe that the person had either been flying or was in actual physical control of an aircraft while under the influence of intoxicating liquor;
- (2) Whether the person was lawfully arrested;
- (3) Whether the law enforcement officer had informed the person of the sanctions of section 263A-5; and
- (4) Whether the person refused to submit to a test of the person's breath or blood.

§263A-7 Notice to federal aviation administration. When it is determined under this chapter that a nonresident's privilege to operate an aircraft from a state or private airport shall be prohibited, the director of transportation shall so inform the administrator of the Federal Aviation Administration in writing.

§263A-8 Test results to be collected. The results of any test for alcohol content made upon the operator of an aircraft involved in an accident shall be sent to the state director of transportation who shall compile the data without revealing the identity of any individual tested. This data shall be available only to the State and the administrator of the Federal Aviation Administration, but may

be made available to other government agencies as the director of transportation deems necessary and advisable.

§263A-9 Applicable scope of chapter. Nothing in this chapter shall be construed to prevent a law enforcement officer from obtaining a sample of breath or blood as evidence of intoxication from the operator of any aircraft involved in an accident resulting in injury to or death of any person.

§263A-10 Evidence of intoxication. (a) In any criminal prosecution for a violation of section 263-11, four-hundredths per cent or more by weight of alcohol in the defendant's blood within four hours after the time of the alleged violation as shown by chemical analysis of the defendant's blood or breath or other approved analytical technique shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 263-11, the amount of alcohol found in the defendant's blood within four hours after the time of the alleged violation as shown by chemical analysis of the defendant's blood or breath or other approved analytical technique shall be competent evidence of whether or not the defendant was under the influence of intoxicating liquor at the time of the alleged violation, and shall give rise to the following presumptions:

- (1) If there were two-hundredths per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor at the time of the alleged violation.
- (2) If there were in excess of two-hundredths per cent but less than four-hundredths per cent by weight of alcohol in the defendant's blood, that fact may be considered with other competent evidence in determining whether or not the defendant was at the time of the alleged violation under the influence of intoxicating liquor, but shall not of itself give rise to any presumption.

(c) Subsection (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor at the time of the alleged violation."

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

(Approved June 17, 1991.)

ACT 275

H.B. NO. 1304

A Bill for an Act Relating to Loitering for Prostitution.

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

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- Loitering for the purpose of engaging in or advancing prostitution. (1) For the purposes of this section, "public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts

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on any of the aforesaid places, or a motor vehicle in or on any such place.

(2) Any person who remains or wanders about in a public place and repeatedly beckons to or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing the crime of prostitution as that term is defined in §712-1200, shall be guilty of a violation.

(3) Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing the crime of advancing prostitution as that term is defined in §712-1201(1) is guilty of a petty misdemeanor.”

SECTION 2. New statutory material is underscored.¹

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

(Approved June 17, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 276

H.B. NO. 1985

A Bill for an Act Relating to Residential Lease Disclosure.

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 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 to do so 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 the licensee's services from both of such parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson's employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson,

- compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson's employer or the broker with whom 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 salesperson's license to act as a real estate 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 salesperson's license to act as a real estate salesperson therefor;
 - (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee 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;
 - (13) Violating this chapter, chapter 484, 514A, 514E, 515[;], or section 516-71[or 516D-11;], or the rules adopted pursuant thereto;
 - (14) 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 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;
 - (15) Commingling the money or other property of the licensee's principal with the licensee's own;
 - (16) Converting other people's moneys to the licensee's own use;

- (17) The licensee is adjudicated insane or incompetent; and
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact; and
- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee.

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. Section 514A-61, Hawaii Revised Statutes, is amended to read as follows:

"§514A-61 Disclosure requirements. (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or the developer's agent and of the project manager or the project manager's agent;
- (2) A breakdown of the annual maintenance fees and the monthly estimated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;
- (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties; and if no warranties exist, the developer shall state that no warranties exist;
- (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed use project containing apartments for both residential and hotel use;
- (5) A statement of the extent of commercial or other non-residential development in the project.

(b) In the case of a project which includes one or more existing structures being converted to condominium status:

- (1) A statement by the declarant, based upon a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
- (2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard;
- (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations;

(4) A statement whether the project is on a lot, or has structures, or uses which do not conform to present zoning requirements; provided that paragraphs (1), (2), and (3) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years.

[(c) In the sale of residential leasehold properties, the disclosure requirements set forth in section 516D-11 shall be complied with.

(d) (c) This section shall be administered by the real estate commission. The real estate commission may waive the requirements of subsections (a) and (b) if the information required to be contained in the disclosure abstract is included in the real estate commission's public report on the project."

SECTION 3. Section 516-71, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§516-71]]~~ **Residential lease; disclosure.** (a) [Notwithstanding any provision to the contrary,] Except as otherwise provided for in this section, for any sale of a leasehold residential [leasehold property,] lot, no later than ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract [must state that no later than ten calendar days from acceptance], the seller shall directly or through the seller's agent provide to the buyer, a copy of the original recorded lease and any amendments thereto for the buyer's approval and acceptance. A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse, parent or child of the seller, or to any stranger by devise, descent, court order, or by operation of law, including, but not limited to, any transfer by foreclosure, bankruptcy, or partition sale. Upon receipt of the original lease and amendments thereto, the buyer shall have [five] ten calendar days to review, accept, or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer shall acknowledge receipt of the lease documents specified under subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary, as set forth on the optional standardized summary form in this chapter, or in a form similar to the optional standardized summary form, [major provisions of] of the lease provisions in plain language[, such as] which shall contain information on the following: the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
- (2) A standardized glossary, satisfied by use of a Hawaii governmental publication, of commonly used lease terms in plain language; and
- (3) A statement that the buyer has read and understands the provisions of the [lease document.] standardized summary of the lease provisions;

(c) Within [five] ten calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.

(d) The seller and buyer [may], on a standardized form, may agree to reduce or extend the time period provided herein for production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer.

Buyers other than natural persons may waive, in writing, all the requirements of this section."

SECTION 4. Chapter 516, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516- Civil penalty. Failure to furnish disclosures substantially complying with the requirements of section 516-71 shall entitle the buyer to the recovery of a civil penalty of \$1,000 in any proceeding at law brought within one year of the violation and the violator shall be liable further for the actual damages of the buyer, if any, reasonable attorneys' fees and court costs."

SECTION 5. Chapter 516, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516- Suggested form of standardized summary of lease provisions. A standardized summary of lease provisions executed pursuant to Section 516-71 of this chapter may, but need not, be substantially in the following form:

STANDARDIZED SUMMARY OF LEASE PROVISIONS

This receipt dated _____, 19____ between
 (the "buyer"), and
 (the "seller"),
 tax map key no. _____ () / / / (the "property").
 Lessor:
 Sublessor:
 Lease Expiration: _____ Surrender Clause: (yes or none)
 Lease Rent: \$ _____ per _____ until
 \$ _____ per _____ until
 \$ _____ per _____ until
 Renegotiation Dates:
 Renegotiation Terms:

I understand the information above is a summary of the terms of the lease and that for more detailed information I should read the lease.

I understand that the subject property is leasehold property and I will acquire the right to occupy and use the leased real property for the time stated in the lease agreement. I will not acquire outright or absolute ownership of the land or fee simple ownership. The land is owned by lessor or the leased fee owner, to whom I, the lessee, will agree to make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed for specific amounts at fixed periods of time, then subject to renegotiation. Renegotiation may be based on formula or arbitration set in the lease agreement or by law or by agreement between the lessor and lessee. **THE RENEGOTIATED LEASE RENTS MAY INCREASE SIGNIFICANTLY. AT THE END OF THE LEASE, I MAY HAVE TO SURRENDER THE PROPERTY (SURRENDER CLAUSE) AND THE LAND BACK TO THE LESSOR WITHOUT ANY COMPENSATION.**

I understand when leasehold property is acquired, title is normally conveyed by means of an assignment of lease, whose purpose is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease to the property, not the property itself.

I UNDERSTAND THAT IF I HAVE ANY LEGAL QUESTIONS ABOUT LEASEHOLD PROPERTY, ABOUT THE LEASE DOCUMENTS, ABOUT THE TERMS OF THE LEASE, AND ITS CONSEQUENCES, I SHOULD SEEK THE ADVICE OF AN ATTORNEY.

[] I HAVE READ AND UNDERSTAND THE PROVISIONS OF THE LEASE DOCUMENTS RECEIVED, AND ACCEPT THE TERMS OF THE LEASE.

[] I DO NOT ACCEPT THE TERMS OF THE LEASE AND CANCEL THE ACCEPTANCE CONTRACT (DROA).

 Buyer's signature
 Date: _____, 19____

 Buyer's signature
 AM/PM"

SECTION 6. Section 516D-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§516D-11~~]] Residential lease; disclosure.~~ (a) [Notwithstanding any provision to the contrary,] Except as otherwise provided for in this section, for any sale of a condominium or a cooperative residential leasehold [property,] apartment, no later than¹ ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract [must state that no later than ten calendar days from acceptance], the seller [shall, either directly or through the seller's agent, shall provide to the buyer for the buyer's approval and acceptance one of the following lease documents which provide the major provisions of the lease, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated, and surrender clause provisions:

- (1) Master lease and any amendments thereto; or
- (2) Apartment lease and any amendments thereto; or
- (3) For initial buyers of condominium apartments only, an unexpired preliminary, final or supplemental condominium property regime public report.

A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse, parent or child of the seller, or to any transfer by devise, descent, court order, or by operation of law, including, but not limited to, any transfer by foreclosure, bankruptcy, or partition sale. Upon receipt of the applicable lease document, the buyer shall have [five] ten calendar days to review, accept or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer, on resale of the unit, shall acknowledge receipt of the lease documents specified in subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary, as set forth on the optional standardized summary form in this chapter or in a form similar to the optional standardized summary form, [of major provisions] of the provisions in plain language[, such as] which shall contain information on the following: the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
- (2) A standardized glossary, satisfied by use of a Hawaii governmental publication, of commonly used lease terms in plain language;
- (3) A statement that there are currently no statutory provisions for the mandatory conversion of leasehold condominiums and cooperatives,

and that there are no assurances that such measures will be enacted in the future; and

- (4) A statement that the buyer has read and understands the provisions of the [lease document.] standardized summary of the lease provisions.

(c) Within [five] ten calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.

(d) The seller and buyer [may], on a standardized form, may agree to reduce or extend the time period provided herein for the production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer. Buyers other than natural persons may waive, in writing, all the requirements of this section."

SECTION 7. Chapter 516D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516D- Civil penalty. Failure to furnish disclosures substantially complying with the requirements of section 516D-11 shall entitle the buyer to the recovery of a civil penalty of \$1,000 in any proceeding at law brought within one year of the violation and the violator shall be liable further for the actual damages of the buyer, if any, reasonable attorneys' fees and court costs."

SECTION 8. Chapter 516D-11,¹ Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516D- Suggested form of a standardized summary of lease provisions. A standardized summary of lease provisions executed pursuant to section 516D-11 of this chapter may, but need not, be substantially in the following form:

STANDARDIZED SUMMARY OF LEASE PROVISIONS

The receipt dated _____, 19____ between _____
(the "buyer"), and _____ for the
(the "seller"), _____
sale of the property at _____
tax map key no. () / / / (the "property").

Lessor:

Sublessor:

Lease Expiration:

Surrender Clause: (yes or none)

Lease Rent: \$ _____ per _____
\$ _____ per _____
\$ _____ per _____

until _____
until _____
until _____

Renegotiation Dates:

Renegotiation Terms:

I understand the information above is a summary of the terms of the lease and that for more detailed information I should read the lease.

I understand that the subject property is leasehold property and I will acquire the right to occupy and use the leased real property for the time stated in the lease agreement. I will not acquire outright or absolute ownership of the land or fee simple ownership. The land is owned by lessor or the leased fee owner, to whom I, the lessee, will agree to make lease rent payments and comply with the

terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed for specific amounts at fixed periods of time, then subject to renegotiation. Renegotiation may be based on formula or arbitration set in the lease agreement or by law or by agreement between the lessor and lessee. THE RENEGOTIATED LEASE RENTS MAY INCREASE SIGNIFICANTLY. AT THE END OF THE LEASE, I MAY HAVE TO SURRENDER THE PROPERTY (SURRENDER CLAUSE) AND THE LAND BACK TO THE LESSOR WITHOUT ANY COMPENSATION.

I understand when leasehold property is acquired, title is normally conveyed by means of an assignment of lease, whose purpose is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease to the property, not the property itself.

I understand that the original developer of this project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer or the cooperative corporation may then have entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

I understand that there are currently no statutory provisions for the mandatory conversion of leasehold condominium and cooperatives, and that there are not¹ assurances that such measures will be enacted in the future.

I UNDERSTAND THAT IF I HAVE ANY LEGAL QUESTIONS ABOUT LEASEHOLD PROPERTY, ABOUT THE LEASE DOCUMENTS, ABOUT THE TERMS OF THE LEASE, AND ITS CONSEQUENCES, I SHOULD SEEK THE ADVICE OF AN ATTORNEY.

Buyer's signature
Date: _____, 19

Buyer's signature
AM/PM"

- [] I HAVE READ AND UNDERSTAND THE PROVISIONS OF THE LEASE DOCUMENTS RECEIVED, ACCEPT THE TERMS OF THE LEASE, AND ACCEPT THE SUBJECT DROA.
- [] I DO NOT ACCEPT THE TERMS OF THE LEASE AND CANCEL THE SUBJECT DROA.

Buyer's signature
Date: _____, 19

Buyer's signature
AM/PM"

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 10. This Act shall take effect upon its approval.

(Approved June 17, 1991.)

Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 277

H.B. NO. 2117

A Bill for an Act Making an Appropriation for Telecommunications and the Disabled.

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 \$75,000, or so much thereof as may be necessary for fiscal year 1991-1992, to fund a telecommunication project using the state information network and HAWAII FYI for the disabled population, in particular the physically and sensory impaired, to provide equal access to government and information services.

SECTION 2. The sum appropriated shall be expended by the commission on persons with disabilities for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 17, 1991.)

ACT 278

S.B. NO. 431

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist ETV Hawaii/Elephant Television, Inc.

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. Presently, the State's economy is highly concentrated in a few industries and diversification of the State's economy is urgently needed to provide a broader economic base to create new employment opportunities, to increase tax revenues, and to stimulate the infusion of new capital into the State, which will ultimately improve the general welfare and economic well-being of residents of Hawaii.

The legislature further finds that a project with significant potential to stimulate new enterprises and to provide new and increased employment opportunities has been undertaken by ETV Hawaii/Elephant Television Inc., to provide television and film industry production training to Hawaii's residents.

The legislature finds that part IV, chapter 39A, Hawaii Revised Statutes, permits the State to assist processing enterprises financially through the issuance of special purpose revenue bonds.

SECTION 2. The department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$6,000,000, in one or more series, for the purpose of assisting ETV Hawaii/Elephant Television, Inc., a Hawaii corporation, in the generation of new capital for its television and film industry production and training facility on Maui. The legislature finds and determines that the activities and facilities of ETV Hawaii/Elephant Television, Inc., constitute a project defined in part

IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a processing enterprise.

SECTION 3. The department of business, economic development, and tourism, with assistance from the Hawaii Economic Development Corporation, shall perform a technical and economic analysis of ETV Hawaii/Elephant Television, Inc., and provide its findings and recommendations to the department of budget and finance.

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1993.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 17, 1991.)

ACT 279

S.B. NO. 1230

A Bill for an Act Relating to Income Tax Withholding.

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

SECTION 1. Section 235-68, Hawaii Revised Statutes, is amended to read as follows:

“[[§235-68]] Withholding of tax on the disposition of real property by nonresident persons. (a) As used in this section:

“Nonresident person” means every person other than a resident person.

“Property” or “real property” means “property” or “real property” as the term is defined in section 231-1.

“Resident person” means any individual included in the definition of “resident” in section 235-1; any corporation incorporated or granted a certificate of authority under chapter 415, 415A, or 415B[, or 416]; any partnership formed or registered under chapter 425[;] or 425D; any foreign partnership qualified to transact business pursuant to chapter 425 or 425D; or any trust included in the definition of “resident trust” in section 235-1; or any estate included in the definition of “resident estate” in section 235-1.

“Transferee” means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

“Transferor” means any person disposing real property which is located in Hawaii.

(b) Unless otherwise provided in this section, every transferee shall deduct and withhold a tax equal to [nine] five per cent of the amount realized on the disposition of Hawaii real property. Every person required to withhold a tax under this section is made liable for the tax and is relieved of liability for or upon the

claim or demand of any other person for the amount of any payments to the department made in accordance with this section.

(c) Every transferee required by this section to withhold tax under subsection (b) shall make a return of the amount withheld to the department of taxation not more than twenty days following the transfer date.

(d) No person shall be required to deduct and withhold any amount under subsection (b), if the transferor furnishes to the transferee an affidavit by the transferor stating the transferor's taxpayer identification number and:

- (1) The transferor is a resident person; or
- (2) That by reason of a nonrecognition provision of the Internal Revenue Code as operative under this chapter or the provisions of any United States treaty, the transferor is not required to recognize any gain or loss with respect to the transfer;
- (3) A brief description of the transfer; and
- (4) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

This subsection shall not apply if the transferee has actual knowledge that the affidavit referred to in this subsection is false.

(e) Any transferor who willfully supplies false or fraudulent information on an affidavit pursuant to subsection (d) or (g) or on an application for a withholding certificate pursuant to subsection (f) shall be in violation of section 231-34 and shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(f) An application for a withholding certificate may be submitted by the transferor to the department setting forth:

- (1) The name, address, and taxpayer identification number, if any, of the parties to the transaction and the location and general description of the real property to be transferred; and
- (2) A calculation and written justification showing that the transferor will not realize any gain with respect to the transfer; or
- (3) A calculation and written justification showing that there will be insufficient proceeds to pay the withholding required under subsection (b) after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property.

Upon receipt of the application, the department shall determine whether the transferor has realized or will realize any gain with respect to the transfer, or whether there will be insufficient proceeds to pay the withholding. If the department is satisfied that no gain will be realized or that there will be insufficient proceeds to pay the withholding, it shall issue a withholding certificate stating the amount to be withheld, if any.

The submission of an application for a withholding certificate to the department does not relieve the transferee of its obligation to withhold or to make a return of the tax under subsections (b) and (c).

(g) No person shall be required to deduct and withhold any amount under subsection (b) if one or more individual transferors furnishes to the transferee an affidavit by the transferor stating the transferor's taxpayer identification number, that for the year preceding the date of the transfer the property has been used by the transferor as a principal residence, and that the amount realized for the property does not exceed \$300,000.

(h) The department may enter into written agreements with persons who engage in more than one real property transaction in a calendar year or other persons to whom meeting the withholding requirements of this section are not practicable. The written agreements may allow the use of a withholding method other

than that prescribed by this section or may waive the withholding requirement under this section.”

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

SECTION 3. This Act shall take effect on August 1, 1991.

(Approved June 17, 1991.)

ACT 280

S.B. NO. 1756

A Bill for an Act Relating to the Environmental Response Law.

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

SECTION 1. Chapter 128D, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

“§128D- Apportionment and contribution. (a) Liability to the State for any costs or expenditures under this chapter shall be joint and several. Wholly apart from such liability to the State, as between parties who are liable under this chapter, there shall be the rights of apportionment and contribution as provided in this section.

(b) Any party found liable for any costs or expenditures may institute an action for apportionment under this section at any time after receiving an order or after costs or expenditures are incurred by the liable party. Any party found liable for any costs or expenditures may join any other parties that may be liable under section 128D-6 in an action for apportionment.

(c) Any action for apportionment under this section shall be without prejudice to any other action that may be brought by an objecting party under this chapter.

(d) Any party who has incurred removal or remedial action costs in accordance with this chapter may seek contribution or indemnity from any person who is liable pursuant to this chapter. An action to enforce a claim for indemnity or contribution may be brought by any defendant in an action brought pursuant to this chapter or in a separate action after the party seeking contribution or indemnity has paid removal or remedial action costs in accordance with this chapter. In resolving claims for indemnity or contribution, the court may allocate costs among liable parties using those equitable principles which are appropriate.

(e) Any party who receives compensation for response costs or damages or claims pursuant to this chapter shall be precluded from recovering compensation for the same response costs or damages or claims pursuant to any other state or federal law. Any party who receives compensation for response costs or damages or claims pursuant to any other state or federal law shall be precluded from receiving compensation for the same response costs of damages or claims as provided in this chapter.

(f) Any party found liable for any costs or expenditures under this chapter except under section 128D-5, who establishes by a preponderance of the evidence that only a portion of those costs or expenditures are attributable to that party's actions, shall be required to pay only for that portion. All recoverable costs or expenditures shall be allocated by the court. If any share of the response costs is

not paid by a liable party because of insolvency or otherwise, that share shall be assigned to an orphan share. If there is an orphan share, the court shall adjust the allocations of the remaining liable parties so that in addition to paying their allocated shares, they proportionately pay the entire orphan share.

(g) In the process of apportionment of costs among the parties found liable and the establishment of the orphan share, the court shall consider the following criteria:

- (1) The volume of hazardous substances transported to the site by each party. For purposes of determining volume, the volume of each transport of a hazardous substance shall be allocated between the arranger for the transport and the transporter of a hazardous substance in apportioning a percentage share of response costs;
- (2) The anticipated impact of the hazardous substance and control of the hazardous substance on the cost of response activity at the site;
- (3) The degree of care exercised in the disposal or treatment, or both of the hazardous substance by each party that may be liable under section 128D-6;
- (4) The manner in which the site was operated and the degree of care exercised by the owner or operator;
- (5) The degree of a party's involvement in site operations;
- (6) Whether all applicable permits and licenses required by law were obtained and complied with;
- (7) The degree to which the party cooperated with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release; and
- (8) Any other aggravating or mitigating factor that the court determines to be relevant.

(h) If the court finds the evidence insufficient to establish each party's portion of the costs or expenditures under subsection (f), the court shall apportion those costs or expenditures, to the extent practicable, according to equitable principles, among the parties.

(i) Any costs or expenditures required by this chapter made by a liable party shall be credited toward the party's apportioned share. Costs shall include reasonable attorney's fees.

§128D- Administrative review of orders. (a) Any person who receives and complies with the terms of any order issued under this chapter, within sixty days after completion of the required order, may petition the director to appoint a hearings officer for review of the order and for reimbursement from the fund or the State for the reasonable costs of complying with the order, including interest.

(b) Within thirty days of receipt of the petition, the hearings officer shall commence a contested case hearing in compliance with chapter 91, and, within thirty days of the completion of the hearing, grant in whole or in part, or deny the petition.

(c) In the contested case hearing, in order to obtain reimbursement, the petitioner shall establish by clear and convincing evidence that the petitioner is not liable under this chapter and that the costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the order.

(d) A petitioner who is liable under this chapter may recover the petitioner's reasonable costs of compliance with the order from the fund, or, if there are not sufficient moneys in the fund to satisfy the claims, then from the State, to the extent that the petitioner can demonstrate, on the administrative record, that the director's decision in selecting the action ordered was arbitrary and capricious or

was otherwise not in accordance with the law. Reimbursement awarded under this subsection shall include all costs incurred by the petitioner pursuant to the order. If only a portion of the order is found to be arbitrary and capricious or otherwise not in accordance with law, reimbursement awarded under this paragraph shall include all costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with the law.

(e) Reimbursement awarded under subsections (c) and (d) may include appropriate costs, fees, and other expenses, including reasonable attorney's fees.

§128D- De minimis settlements. (a) Whenever practicable and in the public interest, the director, in consultation with the attorney general, as promptly as possible, shall reach a final settlement with a potentially responsible party in any administrative or civil action brought under this chapter, provided that the settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the director, the conditions in either paragraph (1) or (2) are met:

- (1) Both the amount of the hazardous substances contributed by that party to the facility and the toxic or other hazardous effects of the substances contributed by that party to the facility are minimal in comparison to other hazardous substances at the facility; or
- (2) The potentially responsible party is the owner of the real property on or in which the facility is located, and did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility, and did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subsection shall not apply if the potentially responsible party purchases the real property with actual or constructive knowledge that the property was used for the generation, storage, treatment, or disposal of any hazardous substance.

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this section unless such a covenant would be inconsistent with the public interest.

(c) The director shall reach any such settlement or grant such covenant not to sue as soon as possible after the director has available the information necessary to reach such a settlement or grant such a covenant.

(d) A settlement under this section shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. Any state court with jurisdiction may enforce any such consent decree or administrative order.

(e) A party who has resolved its liability to the State under this section shall not be liable for claims for contribution or indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(f) Nothing in this section shall be construed to affect the authority of the director to reach settlements with other potentially responsible parties.

§128D- Citizen's suits. (a) Except as provided in subsections (c) and (d) and in section 128D-17, any person may commence a civil action in the circuit court on the person's own behalf against:

- (1) Any person, including the State and any other governmental instrumentality or agency, who is alleged to be in violation of any rule,

requirement, or order that has become effective pursuant to this chapter; or

- (2) The director, where there is alleged a failure of the director to perform any act or duty under this chapter, that is not discretionary with the director.

(b) The circuit court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the rule, requirement, or order concerned, to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The circuit court shall have jurisdiction in actions brought under subsection (a)(2) to order the director to perform the act or duty concerned.

(c) The following shall apply to actions brought pursuant to subsection (a)(1):

- (1) No action may be commenced before sixty days after the plaintiff has given notice in accordance with rules adopted under chapter 91 of the violation to:
 - (A) The director; and
 - (B) Any alleged violator of the rule, requirement, or order concerned; and
- (2) No action may be commenced if the director has issued a notice letter to the violator concerning the violation or has undertaken a response action, including investigation, with respect to the violation.

(d) No action may be commenced under subsection (a)(2) before the sixtieth day following the date on which the plaintiff gives notice to the director that the plaintiff will commence the action. Notice under this subsection shall be given in such manner as the director shall adopt by rule.

(e) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate.

(f) The State, if not a party to any action under this section, may intervene as a matter of right.

(g) This chapter does not affect or otherwise impair the rights of any person under federal, state, or common law, except with respect to the timing of review as provided in section 128D-17.

(h) No action shall be brought under this section for two years following the effective date of this Act.

§128D- Exemption from duplicative regulation. When there has been a response to a release pursuant to an order issued under federal law, the director may use this chapter to address the same release provided that:

- (1) The release creates an imminent and substantial harm to the public health or welfare; and
- (2) The federal law has not provided a remedy consistent with the state contingency plan.

In those circumstances, the director shall avoid actions in conflict with federal law. A single release may be addressed either by CERCLA or by this chapter, but not both, except in the case of a joint enforcement. Nothing in this chapter shall prevent the director from taking action pursuant to the common law or other statutory provisions necessary to protect the public health and welfare, safety, or the environment.

§128D- Exemption from state and county permits. No state or county permit shall be required for the portion of any removal or remedial action conducted entirely on site where such response action is carried out in compliance with this chapter.”

SECTION 2. Section 128D-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read as follows:

“Contractual relationship” means relationships involving land contracts, deeds or other instruments transferring title or possession.

“Oil” means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes, crude oil or any fraction or residue.

“Person” means any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, county, commission, political subdivision of the State, or, to the extent they are subject to this chapter, the United States or any interstate body.”

2. By amending the definition of “hazardous substance” to read as follows:

“Hazardous substance” [means any substance or mixture of substances, including but not limited to feedstock materials, products, or wastes, which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) Cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial present or potential hazard to human health, to property, or to the environment when improperly stored, transported, released, or otherwise managed.

Hazardous substance as defined in this section means:] includes any substance designated pursuant to section 311(b)(2)(A) of the Clean Water Act; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to §3001 of the [Resource Conservation and Recovery Act;] Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Clean Water Act; any hazardous air pollutant listed under section 112 of the Clean Air Act, as amended (42 U.S.C. §§7401-7626); any imminently hazardous chemical substance or mixture regulated under section 7 of the Toxic Substances Control Act, as amended (15 U.S.C. §§2601-2671), oil, trichloropropane, and any other substance or pollutant or contaminant designated by rules adopted pursuant to this chapter.

In adopting rules, the director shall consider any substance or mixture of substances, including but not limited to feedstock materials, products, or wastes, which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) Cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial present or potential hazard to human health, to property, or to the environment when improperly stored, transported, released, or otherwise managed.”

3. By amending the definition of “natural resources” to read as follows:

““Natural resources” means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by [the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. §§1801-1882),] the State of Hawaii [or], any county[.], or by the United States to the extent that the latter are subject to state law.”

4. By amending the definition of “pollutant or contaminant” to read as follows:

““Pollutant or contaminant” means any element, substance, compound, or mixture, [including disease-causing agents,] which[,] after release into the environment [is:] and upon exposure, ingestion, inhalation, or assimilation into any organism either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

- (1) Designated under any list promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act, the Comprehensive Environmental Response Compensation and Liability Act, Safe Drinking Water Act, Energy Research and Development Act, the Atomic Energy Act, the Occupational Safety and Health Act, the Toxic Substances Control Act, the Clean Water Act, federal Water Pollution Control Act, the Resource Conservation and Recovery Act, or the [Clean] Air Act; or
- (2) Listed by the National Toxicology Program, the International Agency for Research on Cancer, or the Chemical Abstracts Service Registry; or
- (3) Any substance that the director determines, based upon empirical evidence or existing scientific or documented toxicological studies to cause an imminent and substantial endangerment.

Any substance not classifiable under paragraphs (1) and (2) may be designated a pollutant or contaminant by the director under rules adopted pursuant to chapter 91. The term does not include any pollutants or contaminants for which there are environmental permits or enforcement actions issued by the department under chapter 342D.]”

5. By amending the definition of “release” to read as follows:

““Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance or pollutant or contaminant into the environment, (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant); but [does not include any of the following:] excludes:

- (1) Any release which results in exposure of persons solely within a workplace, with respect to a claim which such exposed persons may assert against their employer;
- (2) Emissions from the engine exhaust of a motor vehicle, rolling stock,

- aircraft, vessel, or pipeline pumping station engine;
- (3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. §2011), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. §2210;
 - (4) Any release resulting from the normal application of fertilizer;
 - (5) Any release resulting from the legal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act; [or]
 - (6) Releases from sewerage systems collecting and conducting primarily domestic wastewater[.]; or
 - (7) Any release permitted by any federal, state, or county permit or other legal authority.

6. By amending the definition of “remedy” or “remedial action” to read as follows:

““Remedy” or “remedial action” means those actions consistent with permanent correction taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance or pollutant or contaminant into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment.

- (1) The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or pollutants or contaminants or associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health or welfare or the environment.
- (2) The term includes the costs of permanent relocation of residents and businesses and community facilities where the director determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or pollutants or contaminants, or may otherwise be necessary to protect the public health or welfare [or the environment].
- (3) The term does not include the offsite transport of hazardous substances or pollutants or contaminants, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or pollutants or contaminants or contaminated materials unless the director determines that such actions: are more cost-effective than other remedial actions; will create new capacity to manage hazardous substances in addition to those located at the affected facility; or are necessary to protect public health or welfare or the environment from a present or potential risk which may be created

by further exposure to the continued presence of such hazardous substances or pollutants or contaminants.”

7. By amending the definition of “remove” or “removal action” to read as follows:

““Remove” or “removal action” means the cleanup of released hazardous substances or pollutants or contaminants from the environment, such actions as may be necessary to take in the event of the threat of release of hazardous substances or pollutants or contaminants into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances or pollutants or contaminants, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, and any emergency assistance.”

SECTION 3. Section 128D-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Moneys from the fund shall be expended by the department for [emergency] response actions, including removal and remedial actions, consistent with this chapter.”

SECTION 4. Section 128D-3, Hawaii Revised Statutes, is amended to read as follows:

“§128D-3 Reportable quantities[,]; duty to report. (a) The director shall adopt rules pursuant to chapter 91 [designating as hazardous substances such elements, compounds, mixtures, solutions, substances, and wastes which, when released into the environment, may present substantial danger to the public or the environment, and shall adopt rules establishing the quantities of such hazardous substances which, when released, shall be reported pursuant to this chapter.] establishing the quantities of designated hazardous substances, and specifying the periods of time within which such quantities, when released, are reportable pursuant to this chapter. The director, at a minimum, shall adopt hazardous substances and reportable quantities as designated by the United States Environmental Protection Agency pursuant to parts 117 and 302 of Title 40 of the Code of Federal Regulations, and by the United States Department of Transportation pursuant to parts 171 and 172 of Title 49 of the Code of Federal Regulations. The designated quantity released of any hazardous substance shall be a reportable quantity, regardless of the medium into which the hazardous substance is released.

(b) Any person in charge of a vessel or an offshore or onshore facility shall immediately notify the department as soon as the person has any knowledge of any release (other than a federal or state permitted release) of a hazardous substance from the vessel or facility in quantities equal to or greater than those determined pursuant to section 102 of CERCLA or rules adopted pursuant to this chapter. [Federal or state permitted releases or releases] Releases which occurred prior to July 1, 1990, are excluded from this requirement. Unless the director

requires otherwise by rule, the regulations adopted under section 103(b) of CER-CLA shall apply to the implementation of this section.

(c) Any person who fails to report a hazardous substance release to the department immediately upon knowledge of the release shall be subject to a [fine] civil penalty in an amount not to exceed \$10,000 for each day of failure to report or [imprisoned for not more than three years or for not more than five years in the case of second or subsequent convictions, or both.] subject to prosecution for a criminal misdemeanor. Notification received by the department pursuant to this section or information obtained by the exploitation of [this] such notification shall not be used against any such person in any criminal case, except for a prosecution for perjury or for giving a false statement[.]; or a violation of section 128D-10.”

SECTION 5. Section 128D-4, Hawaii Revised Statutes, is amended to read as follows:

“**§128D-4 [Response] State response authorities; uses of fund.** (a) Whenever any hazardous substance is released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of such release into the environment of any pollutant or contaminant that may present [an imminent and] a substantial danger to the public health, welfare, or the environment, the director is authorized to act, consistent with the state contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time, including its removal from any contaminated natural resources, or take any other response measure consistent with the state contingency plan which the director deems necessary to protect the public health or welfare or the environment. The director may:

- (1) Issue an administrative order or conduct any other enforcement or compliance activities necessary to compel any known responsible party or parties to take appropriate removal or remedial action necessary to protect the public health and safety and the environment;
- (2) Upon determining that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance, issue without a hearing, such orders as may be necessary to protect the public health, welfare, and the environment;
- [(2)] (3) Solicit the cooperation of responsible parties prior to issuing an order to encourage voluntary cleanup efforts; and, if necessary, negotiate enforcement agreements with responsible parties to conduct needed response actions according to deadlines established in compliance orders or settlement agreements;
- [(3)] (4) Undertake those investigations, monitoring, surveys, testing, sampling, and other information gathering necessary to identify the existence, source, nature, and extent of the hazardous substances or pollutants or contaminants involved and the extent of danger to the public health or welfare or to the environment;
- [(4)] (5) Perform any necessary removal or remedial actions so as to abate any immediate danger to the public health or welfare or to the environment; and
- [(5)] (6) Contract the services of appropriate organizations to perform the actions set forth in paragraphs (1), (2), (3), [and] (4)[.], and (5).

(b) For the purposes of determining or investigating an actual release or a suspected release, or choosing or taking any response action, or conducting any study, or enforcing this chapter, any person who has or may have information relevant to any of the following, upon the reasonable and necessary request of any duly authorized representative of the department, shall furnish information or documents in the person's possession relating to such matter:

- (1) The identification, nature, and quantity of hazardous substances or pollutants or contaminants which have been or are generated, treated, or ~~[[]stored[]]~~ or disposed of at a facility or vessel or transported to a facility or vessel.
- (2) The nature and extent of a release or threatened release of a hazardous substance or pollutant or contaminant from a facility or vessel.
- (3) Information relating to the ability of a person to pay for or perform the cleanup.

In addition, upon reasonable notice, such person shall grant any such authorized representative of the department access at all reasonable times to any facility, vessel, establishment, site, place, property, or location to inspect same and to review and copy all documents or records relating to such matters or shall copy and furnish the officer, employee, or representative of the department all such documents or records, at the option and expense of such person.

(c) Moneys in the fund may be expended by the director for any of the following purposes:

- (1) Payment of all costs of removal or remedial actions incurred by the State or the counties in response to a release or threatened release of a hazardous substance[; or]¹ pollutant or contaminant; or
- (2) Payment for the State's share of a removal or remedial action pursuant to section 104(c)(3) of CERCLA[.];
- (3) Payment of all costs incurred by the State in the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance or pollutant or contaminant;
- (4) Payment of all costs of response action for a release due to the legal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act; or
- (5) Payment of all costs or remedial action for any release permitted by any federal, state or local permit or other legal authority.

(d) No response actions taken pursuant to this chapter by the department shall duplicate federal response actions."

SECTION 6. Section 128D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Any costs] Except for costs incurred in responding to a release or threatened release of any pollutant or contaminant and except for costs incurred in accordance with section 128D-4(c)(4), and (5), and except for costs incurred in accordance with section 128D-4(c)(3) for natural resources damage occurring wholly prior to July 1990, any costs incurred and payable from the fund shall be recovered by the attorney general, upon the request of the department, from the liable person or persons. The amount of any costs which may be recovered pursuant to this section for a remedial or removal action paid from the fund shall include the amount paid from the fund and legal interest."

SECTION 7. Section 128D-6, Hawaii Revised Statutes, is amended to read as follows:

“§128D-6 Liability. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (c):

- (1) The owner or operator or both of a facility[;] or vessel;
- (2) Any person who at the time of disposal of any hazardous substance [or pollutants or contaminants] owned or operated any facility at which such hazardous substances [or pollutants or contaminants] were disposed of;
- (3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances [or pollutants or contaminants] owned or possessed by such person, by any other party or entity, at any facility or on any vessel owned or operated by another party or entity and containing such hazardous substances [or pollutants or contaminants]; and
- (4) Any person who accepts or accepted any hazardous substances [or pollutants or contaminants] for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release, which causes the incurrence of response costs [to] of a hazardous substance [or pollutant or contaminant];

shall be strictly liable for (A) all costs of removal or remedial actions [incurred by the State; any other necessary costs of response incurred by any other person] incurred by the State or any other person; to the extent such costs and actions are consistent with this chapter, the state contingency plan, [or] and any other state rules; (B) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such release; and (C) the costs of any health assessment or health effects study carried out consistent with this chapter, the state contingency plan, or any other state rules.

(b) The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (C). Such interest shall accrue from the later of (1) the date payment of a specified amount is demanded in writing, or (2) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the State's fund.

(c) There shall be no liability under subsection (a) for a defendant otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance [or pollutant or contaminant] and the damages resulting therefrom were caused solely by:

- (1) Any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effect of which could not have been prevented or avoided by the exercise of due care or foresight;
- (2) An act of war;
- (3) An act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant, if the defendant establishes by a preponderance of the evidence that [due care was exercised] the defendant

exercised due care with respect to the hazardous substance [or pollutant or contaminant] concerned, taking into consideration the characteristics of such hazardous substance [or pollutant or contaminant], in light of all relevant facts and circumstances; and [precautions were taken] the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) Any combination of the foregoing paragraphs.

(d) A defendant may also avoid liability under subsection (a) where the defendant is able to establish that the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility. In addition to establishing the foregoing, the defendant must establish that the defendant has satisfied the requirements of section 128D-6(c)(3) and one or more of the following circumstances described in paragraphs (1), (2), or (3) is also established by the defendant by a preponderance of the evidence:

(1) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed on, in, or at the facility;

(2) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or

(3) The defendant acquired the facility by inheritance or bequest.

To establish that the defendant had no reason to know, as provided in paragraph (1), the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

Nothing in this subsection or in section 128D-6(c)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this chapter. Notwithstanding this definition, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, the defendant shall be treated as liable under section 128D-6(a)(1) and no defense under section 128D-6(c)(3) shall be available to the defendant.

Nothing in this subsection shall affect the liability under this chapter of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

[(d)] (e) No person shall be liable under this chapter or otherwise under the laws of the State or any of the counties, including the common law to any government or private parties for costs, damages, or penalties as a result of actions taken or omitted in the course of rendering care, assistance, or advice in

accordance with this chapter or at the direction of an on-scene coordinator, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or pollutant or contaminant or the threat thereof. This subsection shall not preclude liability for costs, damages, or penalties as the result of gross negligence or intentional misconduct on the part of such person.

[(e)] (f) No county or local government shall be liable under this chapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance or pollutant or contaminant generated by or from a facility owned by another person. This subsection shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the county or local government.

[(f)] (g) No indemnification, hold harmless, or similar agreement or conveyances shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person, the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section. Nothing in this chapter shall bar a cause of action that an owner or operator or any person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

[(g)] (h) In the case of any injury to, destruction of, or loss of natural resources under section 128D-6(a)(4)(B), liability shall be solely to the State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to the State. The natural resource trustee for the State shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the natural resource trustee under section 128D-6(a)(4)(B) shall not be limited by the sums which can be used to restore or replace such resources. Any damages recovered by the state attorney general for damages to natural resources shall be deposited in the fund and credited to a special account for the purposes provided above.

[(h)] (i) Provided that no liability shall be imposed under this chapter, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resources. Notwithstanding any other provision of this chapter, there shall be no recovery under this chapter for natural resource damages where such damages [and the release of a hazardous substance from which such damages resulted] have occurred wholly before July 1, 1990.

[(i)] (j) No person other than a government entity may recover costs or damages under this chapter arising from a release which occurred before July 1, 1990."

SECTION 8. Section 128D-7, Hawaii Revised Statutes, is amended to read as follows:

"§128D-7 State contingency plan; rules. (a) The department shall adopt, by rules, and from time to time update a Hawaii state contingency plan which, as

nearly as the department deems appropriate and practicable, shall comport with and complement the National Contingency Plan prepared under the authority of the Clean Water Act and CERCLA. The state contingency plan shall include methods and criteria for evaluating the degree of hazard present at a site with releases of hazardous substances or pollutants or contaminants, including whether the site poses an imminent or substantial hazard, and whether it is a priority site, and whether response actions are feasible and effective. In preparing the plan, the department shall consider and take into account regionally and locally developed contingency plans.

(b) The department shall adopt, by rules, the criteria for the selection and for the priority ranking of sites pursuant to subsection (c) for removal and remedial action under this chapter, and shall adopt criteria for the ranking of sites in order of priority. The criteria shall take into account the pertinent factors relating to the public health and the environment, which shall include, but are not limited to, potential hazards to public health and the environment, the risk of fire or explosion, toxic hazards, the extent to which the deferral of remedial action will result, or is likely to result, in a rapid increase in cost or in a hazard to human health and the environment. The criteria may include a minimum hazard threshold below which sites shall not be listed pursuant to this section.

(c) The department shall publish and revise, at least annually, a listing of the sites subject to this chapter[.] and any de minimis settlements made under this chapter. The sites shall be categorized and placed on one of the following lists:

- (1) A list of the sites with releases of hazardous substances [or pollutants or contaminants] for which the department has identified a responsible party, and the responsible party is in compliance, as determined by the department, with an order issued, or an enforceable agreement entered into.
- (2) A list of the sites with releases of hazardous substances [or pollutants or contaminants] for which all of the following apply:
 - (A) The department has not been able to identify a responsible party or the responsible party is not in compliance, as determined by the department, with an order issued or an enforceable agreement entered into;
 - (B) The nature and extent of the release of hazardous substances [or pollutants or contaminants] at the site have not been adequately characterized by the responsible party or the department.

(d) Funds appropriated to the department for response actions shall be expended in conformance with the priority ranking of sites, as established on the list of sites specified in subsection (c), except that funds appropriated for removal action may be expended without conforming to the priority ranking if any of the following apply:

- (1) The funds are necessary to monitor removal actions conducted by private parties at sites listed pursuant to subsection (c)(1);
- (2) State funds are necessary for the State's share of a removal or remedial action pursuant to section 104(c)(3) of CERCLA;
- (3) The funds are used to assess, evaluate, and characterize the nature and extent of a release of hazardous substances or pollutants or contaminants at sites listed pursuant to this section; or
- (4) The director determines that immediate removal action at a facility or site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or the environment.

(e) The criminal penalties set forth in sections 128D-3 and 128D-10 shall not take effect until the state contingency plan has been adopted. Until the state contingency plan is adopted, the national contingency plan, as it exists on the effective date of this chapter, will be considered to be the state contingency plan for purposes of enforcing the remaining sections of this chapter.

[(e)] (f) The department may adopt such rules, as it deems necessary for the implementation, administration, and enforcement of this chapter, CERCLA, the Clean Water Act, and other pertinent laws.”

SECTION 9. Section 128D-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any person who is liable for a release, or threat of a release, of hazardous substances, [or pollutants or contaminants] and who fails, without sufficient cause, to properly provide removal or remedial action pursuant to an administrative order issued by the director, may be liable to the department for punitive damages up to three times the amount of any costs incurred by the fund pursuant to this chapter as a result of the failure to perform the actions specified in the order. The director is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 128D-5.

(b) In addition to liability for costs incurred by the State for the investigation, assessment, containment, and removal of a release or a threat of a release of hazardous substances [or pollutants or contaminants], any person who wilfully, knowingly, or recklessly violates or fails or refuses to comply with any provision of this chapter, or any order issued, or rule adopted under this chapter, shall be subject to a civil penalty not to exceed [\$25,000] \$50,000 for each separate violation. Each day a violation continues shall constitute a separate violation. The director is authorized to commence a civil action in the appropriate circuit court to recover such [damages.] penalties.”

SECTION 10. Section 128D-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In determining the amount of any civil penalty assessed pursuant to this section, the court shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit of savings, if any, resulting from the violation, and such other matters as justice may require. The director may compromise and settle any claim for a penalty pursuant to this chapter.”

SECTION 11. Section 128D-10, Hawaii Revised Statutes, is amended by amending the section to read as follows:

“[[§128D-10]] **Knowing releases.** Any person who knowingly releases a hazardous substance into the environment in an amount above the reportable quantity established in the rules (other than a permitted release pursuant to and in accord with a federal, state, or county permit), shall be subject to prosecution for a class C felony or shall be punished by a [fine] civil penalty of [not less than \$5,000 but] not more than [\$50,000] \$100,000 per day of violation[, or by imprisonment for not more than three years, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this section, the

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punishment shall be a fine not less than \$10,000 but not more than \$100,000 per day of violation, or imprisonment of not more than six years or both].”

SECTION 12. Section 128D-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§128D-11~~]]~~ **Recordkeeping requirements.** No person [shall], with intent to avoid, evade, prevent, or obstruct compliance in whole or in part with any investigative action or request made under this chapter, or any enforcement action taken under this chapter, shall remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any record, report, or information that is [relevant to] the subject of or who has reason to believe that they may be the subject of any investigative action or request under section 128D-4(a) and (b).”

SECTION 13. Section 128D-12, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§128D-12~~]]~~ **Confidentiality of information.** (a) Any record, report, or information obtained from any persons under section 128D-4(a) and (b) shall be available to the public, except as provided in subsection (b).

(b) Upon a showing satisfactory to the department that public disclosure of records, reports, or information, or a particular part thereof, obtained by the department, its personnel or contractors pursuant to this chapter, would divulge commercial or financial information entitled to protection under state or federal law, the department shall consider such information to be confidential and not a public record open to disclosure.

(c) No records, reports, or information for which confidentiality is claimed by the person from whom they are obtained shall be disclosed until such person has received reasonable notice under the procedures set forth in 40 C.F.R. Part 2, Section 2.201 et seq. and has had the opportunity to demonstrate why these should not be disclosed, including a reasonable opportunity to obtain judicial relief. In any such proceeding, confidentiality shall be accorded to any documents which satisfy the criteria set forth in 40 C.F.R. Part 2 or any rules adopted by the department.

~~[[~~(c)~~]]~~ (d) No confidential information, obtained pursuant to this chapter by any official or employee of the department within the scope and cause of this official’s or employee’s employment in the prevention, control, or cleanup of releases of hazardous substances or pollutants or contaminants into the environment, shall be disclosed by the official or employee with the following exception: the document or information may be disclosed to officers, employees, or authorized representatives of the State or of the United States, including local government entities, who have been charged with carrying out this chapter, including a cost recovery or an enforcement action, or to comply with any state law, CER-CLA, or the Clean Water Act, or when relevant in any proceeding under this chapter. Persons receiving information pursuant to this [paragraph] subsection shall maintain the confidentiality of the information which is provided in this section to the maximum extent allowed by law.”

SECTION 14. Section 128D-15, Hawaii Revised Statutes, is amended to read as follows:

“[§128D-15] Employee protection. No person shall terminate from employment or in any other way discriminate against, or cause to be eliminated from employment or discriminated against, any person on the grounds that the person has provided information to the State, filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of this chapter, or has refused to act because of the good faith belief that one would be acting in violation of this chapter. No criminal penalty shall be imposed under this chapter upon any person for action taken in the course and scope of his or her employment if the person does not possess managerial or supervisory authority.”

SECTION 15. Section 128D-17, Hawaii Revised Statutes, is amended to read as follows:

“[§128D-17] Judicial review. [(a) No court shall have jurisdiction to review any challenges to removal or remedial actions selected, or to renew any order issued under this chapter, except as follows:

- (1) Any action under section 128D-5 to recover response costs or damages or for contribution;
- (2) Any action to enforce an order issued under section 128D-4(a)(1);
- (3) Any action for reimbursement under section 128D-8(d); and
- (4) Any action under section 128D-16, in which the State has moved to complete a remedial action.

(b) In any judicial action under this chapter, judicial review of any issues concerning the adequacy of any response action taken or ordered by the director shall be limited to the administrative record. In those cases arising under subsection (a)(1), (a)(2), and (a)(4), the director shall establish an administrative record, as the director deems appropriate. In those cases arising under subsection (a)(1), (a)(2), and (a)(4), otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court. In cases arising under subsection (a)(3), chapter 91 shall govern.

(c) In considering objections raised in judicial action under this chapter, the court shall uphold the director’s decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with the law.

(d) If the court finds that the selection of the response actions was arbitrary and capricious or otherwise not in accordance with the law, the court shall award:

- (1) Only the response cost or damages that are not inconsistent with the state contingency plan; and
- (2) Such other relief as is consistent with the state contingency plan.]

(a) Any person who receives and complies with the terms of any order issued under this chapter may bring and maintain an action in the circuit court to review the order as provided for in this section, prior to the completion of all action required in this order, provided that the person shall not seek any form of injunctive relief and at all times is in compliance with the order.

(b) The director’s order may be issued without a hearing and shall be supported by an administrative record consisting of the documents and other papers and materials considered by the director in issuing the order. The order shall be effective immediately unless it provides otherwise. The person receiving the order may supplement the administrative record with other documents, writings,

or material within thirty days after receipt of the order. In the sole discretion of the director, the administrative record may be supplemented further by a proceeding in which testimony and other evidence may be received. A person aggrieved by the order who is and continues to be in compliance with the order may petition the circuit court for an expedited review of the order after service of a certified copy of the order. The review by the court shall be confined to the administrative record. The court shall, upon request by any party, hear oral arguments and receive written briefs. Discovery shall not be permitted. The court shall affirm the order or, if it finds that the order is arbitrary and capricious, it shall reverse or modify the order. The court's order in any expedited review shall be without prejudice to any party in any other proceeding.

(c) In an expedited review of the director's order concerning the determination that the aggrieved party is subject to liability under this chapter, the court shall affirm the order unless it is clearly shown to be arbitrary and capricious.

(d) If the court reverses the director's determination that the objecting party is subject to liability under this chapter, the court shall vacate the order of the director in its entirety and award the objecting party reimbursement from the fund, or if sufficient funds are not available, then from the State, of all costs incurred in complying with the order, which may include the party's reasonable attorney's fees.

(e) In reviewing a director's order under this section, the court shall uphold the director's decision on technical issues, including the nature and scope of the action ordered, unless the objecting party demonstrates, based on the administrative record, that the decision is arbitrary and capricious.

(f) If the court finds that the director's order is arbitrary and capricious under subsection (e), the court shall issue findings of fact and conclusions of law sufficient to advise the parties of the deficiencies in the order. The court shall thereafter allow the contesting parties a thirty-day period following the entry of its findings of fact and conclusions of law to agree to mutually acceptable technical modifications to the challenged order. However, if the contesting parties are unable to reach agreement within the thirty-day period, then the parties shall notify the court and each party shall select a technical panel member in accordance with subsection (g) at the conclusion of the thirty-day period. The court shall order that the outstanding issues be submitted to a technical panel for binding resolution of the issues identified by the court in a manner consistent with the court's findings and conclusions, and the state contingency plan.

(g) The technical panel shall consist of three members, each of whom shall have expertise in engineering, or expertise in the physical, chemical, biological, or health sciences.

(h) A majority of the technical panel members shall determine an appropriate resolution to the technical issues identified by the court in the period of time the court orders. The technical panel members shall be selected as follows:

- (1) One member shall be selected by the director;
- (2) One member shall be selected by the objecting party, or a majority of the objecting parties challenging the order; and
- (3) The foregoing two members shall select the third member of the panel within thirty days of their selection.

(i) After making a decision that resolves the technical issues, the technical panel shall submit its final decision to the court. The court shall vacate the order found arbitrary and capricious and enter an order adopting the decision submitted by the technical panel unless the court finds that:

- (1) The decision is not consistent with the court's findings of fact and conclusions of law and the state contingency plan;
- (2) The decision was procured by corruption, fraud, or undue means;
- (3) There was evident partiality or corruption in the panel, or any of the members;
- (4) The panel was guilty of misconduct by which the rights of any party have been prejudiced; or
- (5) The panel exceeded its powers or so imperfectly executed them that a mutual, final, and definite decision upon the subject matter submitted was not made.

(j) Any action for concurrent review under this section shall have priority on the civil trial calendar of the circuit court.

(k) The petitioner, in any action pursuant to section 128D-____, may seek judicial review of any partial or complete denial of the petition. The review shall be conducted pursuant to section 91-14. In addition to any other relief that may be awarded, the court may award to the petitioner reimbursement from the fund, or if there are insufficient funds then from the State, which may include appropriate costs, fees, and other expenses, including reasonable attorney's fees.

[(e)] (l) In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had the errors not been committed."

SECTION 16. Section 128D-16, Hawaii Revised Statutes, is repealed.

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 18. This Act shall take effect upon its approval.

(Approved June 17, 1991.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 281

H.B. NO. 1952

A Bill for an Act Relating to Accessory Uses on Agricultural Lands.

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

SECTION 1. The legislature finds that urban expansion in and adjacent to agricultural districts has created numerous problems for those engaging in active farming and ranching activities. The legislature notes that one of the common complaints by urban residents living near agricultural areas is the unsightliness of agricultural buildings and agricultural equipment. Accordingly, some of the counties (particularly Hawaii county) have responded to this pressure of urban growth by interpreting the present language of Hawaii law narrowly, resulting in the prohibition in the agricultural districts of many uses and activities considered a normal part of farming and ranching. Under Hawaii's present law, if a coffee mill is not located on the same tax map key parcel as the coffee trees, the mill is not a permitted use. Likewise, cattle trucks stored on a lot in the agricultural district are

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not permitted as long as the cattle are not pastured on the same parcel. Consequently, the farmer or rancher would either be prohibited from engaging in those accessory activities which are a normal part of farming or ranching, or be required to apply for a special permit to conduct normal accessory agricultural uses. A special permit allows unusual and reasonable uses within the agricultural district other than those for which the district is classified. This permit also involves a complicated and lengthy application process and was not intended to apply to activities that are a normal part of agriculture. Therefore, the purpose of this Act is to provide that accessory agricultural uses, such as mills, storage and processing facilities, and maintenance facilities, may be conducted within the agricultural districts whether or not the direct agricultural uses are conducted on the same premises.

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) 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; bona fide agricultural services and uses which support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to [living quarters or dwellings,] farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, 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.”

SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Within the agricultural district all lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry;
Farm dwelling as used in this paragraph means a single-family

- dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings which are necessary for agricultural practices;
 - (6) Public and private open area types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
 - (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment [building,] buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;
 - (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
 - (9) Roadside stands for the sale of agricultural products grown on the premises;
 - (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered [direct] directly accessory to the abovementioned uses[;] and are permitted under section 205-2(d);
 - (11) Agricultural parks; or
 - (12) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.”

SECTION 4. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the [land use] commission shall be permitted[.]; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county [through its] by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot, which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot

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size as specified by law for lots created or used for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad [easement.] easements.”

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 18, 1991.)

ACT 282

H.B. NO. 1989

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Section 514A-90, Hawaii Revised Statutes, is amended to read as follows:

“§514A-90 Priority of lien. (a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except [only] (1) liens for taxes and assessments lawfully imposed by governmental authority against the apartment, and (2) all sums unpaid on any mortgage of record which was recorded prior to the recordation of a notice of a lien by the association of apartment owners, and costs and expenses including attorneys’ fees provided in such mortgages. The lien of the association of apartment owners may be foreclosed by action by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, may, unless prohibited by the declaration, bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the same. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(b) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, the acquirer of title[,] and the acquirer’s successors and assigns[,] shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment which became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer[,] and the acquirer’s successors[,] and assigns.

(c) No apartment owner shall withhold any assessment claimed by the association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;
- (5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and
- (6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) An apartment owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the apartment owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under part VII of this chapter; provided that an apartment owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the apartment owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all association assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the association which are not owed."

SECTION 2. Section 514A-94, Hawaii Revised Statutes, is amended to read as follows:

"§514A-94 Attorneys' fees and expenses of enforcement. (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments against any owner's apartment;
- (2) Foreclosing any lien thereon; or
- (3) Enforcing any provision of the declaration, bylaws, house rules, and the Condominium Property Act; or the rules of the real estate commission;

against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to such person or persons by the association.

(b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board of directors to enforce any

provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

- (1) The owner first shall have demanded and allowed reasonable time for the board of directors to pursue such enforcement; or,
- (2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless.

If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board of directors to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless the action was filed in small claims court or prior to filing the action in a higher court the owner has first submitted the claim to mediation, or to arbitration under part VII of this chapter, and made a good faith effort to resolve the dispute under any of those procedures."

SECTION 3. Section 514A-121, Hawaii Revised Statutes, is amended to read as follows:

"§514A-121 Arbitration of disputes. (a) At the request of any party, any dispute concerning or involving one or more apartment owners and an association of apartment owners, its board of directors, managing agent, or one or more other apartment owners relating to the interpretation, application or enforcement of chapter 514A or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and the provisions of chapter 658; provided that the Horizontal Property Regime Rules on Arbitration of Disputes of the American Arbitration Association shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658, chapter 658 shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

(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; provided that an apartment owner who pays the full amount of an assessment and fulfills the requirements of section 514A-90(d) shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment:
- (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 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 18, 1991.)

ACT 283

H.B. NO. 2119

A Bill for an Act Relating to Community Health and Human Services.

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

SECTION 1. The legislature finds that there are many health and human services programs in our communities that provide a variety of services to families and individuals. The legislature also finds that in spite of a greater spirit of cooperation between and among private and public agencies, lack of adequate planning, review, community input, and coordination leads to duplication as well as gaps in services. This is an acute problem in Kalihi-Palama, where established as well as newly-formed agencies and organizations have attempted to develop a range of programs to deal with the socioeconomic problems of the community.

The purpose of this Act is to require the office of state planning to plan for the establishment of a community health and human services development corporation, the purpose of which shall be to plan, coordinate, and review health and human services programs in the Kalihi-Palama community.

SECTION 2. (a) The office of state planning shall plan for the establishment of a community health and human services development corporation for the Kalihi-Palama community. The corporation shall have a board of directors composed of representatives from the community and ex-officio, nonvoting representatives from the department of human services, department of health, and department of labor and industrial relations. The board shall be responsible for assessing and identifying community needs and for planning and developing new programs and services for families and individuals, as well as reviewing existing programs and services. The board shall help agencies and organizations, both public and private, to avoid the duplication and fragmentation of services and to coordinate services for the maximum use of governmental resources, as well as to

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develop other sources of funds to enhance the quality of services in the community.

(b) The office of state planning shall provide such staffing and technical assistance to the corporation's board of directors as may be necessary to carry out the purposes of this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for fiscal year 1991-1992, for the office of state planning to plan for the establishment of the community health and human services development corporation for the Kalihi-Palama community. The sum appropriated shall be expended by the office of state planning.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 18, 1991.)

ACT 284

S.B. NO. 8

A Bill for an Act Relating to Insurance.

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

SECTION 1. The legislature finds that the recent Kilauea volcano eruption and lava flows have caused a serious problem for residents of certain areas of the Big Island. The actual and potential losses caused by the volcanic activity has also resulted in the unavailability of basic property insurance for persons having insurable interests in properties in the vicinity which has caused great personal suffering and financial hardship and has contributed to uncertainty in the community. The legislature finds it is in the interest of the State to foster stability for people adversely affected by major natural disasters, and this purpose will be served by making basic property insurance available to such persons.

The purpose of this Act is to create an entity which will provide appropriately priced basic property insurance for owners and occupants of property in high risk areas for major natural disasters. This extraordinary action is being taken to provide limited relief to meet the unique and pressing needs of these persons who are currently unable to obtain any property insurance. It is not the intent of this Act, however, to provide insurance coverage for large-scale development, nor is it the intent to provide coverage when a lava flow or attendant loss is imminent. Moreover, it is not the intent of this Act to encourage further development in such high risk areas. To the contrary, the legislature believes that appropriate state and county agencies should modify their land use policies and take action to discourage new development in high risk areas for volcanic activity or other major natural disaster, and should further undertake actions to require and provide adequate fire protection in any developed areas.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE
HAWAII PROPERTY INSURANCE ASSOCIATION**

§431: -101 Purpose. The purpose of this article is to establish the Hawaii Property Insurance Association to:

- (1) Assure stability in the property insurance market for property located in the State;
- (2) Assure the availability of basic property insurance as defined by this article; and
- (3) Provide for the equitable distribution among member insurers of the responsibility for insuring qualified property for which basic property insurance cannot be obtained through the authorized insurers.

§431: -102 Definitions. As used in the article:

“Association” means the Hawaii Property Insurance Association created under section 431: -103.

“Basic property insurance” means insurance against direct loss to real or tangible personal property from perils insured under the standard fire policy and extended coverage endorsement.

“Member insurer” means any person who is authorized to transact property or casualty insurance in this State and is not engaged only in writing motor vehicle insurance under section 431:10C-106.

“Net direct written premiums” means the premiums taxable pursuant to section 431:7-202(a) for policies of property and casualty insurance.

§431: -103 Creation of association. (a) There is created a nonprofit unincorporated legal entity to be known as the Hawaii Property Insurance Association. All insurers included in the definition of member insurer in section 431: -102 shall be and remain members of the plan as a condition of their authority to transact the business of insurance in this State. The association shall perform its functions under a plan of operation established and approved under section 431: -106 and shall exercise its powers through a board of directors established under section 431: -104.

(b) Each member insurer shall participate in the writings, expenses, profits, and losses of the association in the proportion that its net direct written premiums during the preceding calendar year bear to the net direct written premiums for all member insurers for the preceding calendar year.

§431: -104 Board of directors. (a) The board of directors of the association shall consist of twelve persons serving terms as established in the plan of operation. The board shall be composed of:

- (1) Nine voting members selected by the member insurers subject to the approval of the commissioner;
- (2) One nonvoting member appointed by the commissioner to represent insurance agents; and
- (3) Two nonvoting members appointed by the commissioner to represent the public.

(b) The commissioner shall appoint the initial members of the board of directors. Thereafter, the commissioner shall consider whether all member insurers are fairly represented in approving selections to the board.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

§431: -105 Powers and duties of the association. (a) The association shall:

- (1) Formulate and administer a plan of operation to insure persons having an insurable interest in real or tangible personal property in the area designated by the commissioner;

- (2) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while processing applications and servicing policies on behalf of the association; and
 - (3) Collect and maintain statistical information and other information required by the commissioner.
- (b) The association may:
- (1) Add additional insurance coverages with the approval of the commissioner, including coverage for commercial risks up to the limits of coverage for residential risks as set forth in the plan of operation;
 - (2) Employ or retain persons as are necessary to perform the duties of the association;
 - (3) Contract with a member insurer to perform the duties of the association subject to the approval of the commissioner;
 - (4) Sue or be sued;
 - (5) Borrow funds necessary to effectuate the purposes of this article in accord with the plan of operation;
 - (6) If approved by the commissioner, assess member insurers amounts necessary to cover extraordinary losses incurred by the association. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two per cent of that member insurer's net direct written premiums for the preceding calendar year. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business;
 - (7) Devise a method to give credit to member insurers for homeowners and fire insurance policies individually underwritten on risks located in the area designated for coverage by the association;
 - (8) Negotiate and become a party to contracts as are necessary to carry out the purposes of this article; and
 - (9) Perform all other acts as are necessary or proper to effectuate the purpose of this article.

§431: -106 Plan of operation. (a) The association shall submit to the commissioner a plan of operation and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendment shall become effective upon approval in writing by the commissioner. If the association fails to submit a suitable plan of operation or if at any time the association fails to submit suitable amendments to the plan, the commissioner shall adopt the rules necessary to carry out this article. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved in writing by the commissioner.

- (b) All member insurers shall comply with the plan of operation.
- (c) The plan of operation shall:
 - (1) Establish procedures for performance of all the powers and duties of the association under section 431: -105;
 - (2) Establish maximum limits of liability to be placed through the association;

- (3) Establish reasonable underwriting standards for determining insurability of a risk which are comparable to the standards used to determine insurability of a risk located outside the area designated by the commissioner as eligible for association coverage;
- (4) Establish a schedule of deductibles, if appropriate;
- (5) Establish the commission to be paid to licensed agents;
- (6) Establish the rates to be charged for the insurance coverages, so that the total premium income from all association policies, when combined with the investment income, shall annually fund the administration of the association. The administration of the association shall include the expenses incurred in processing applications, conducting inspections, issuing and servicing policies, paying commissions, and paying claims, but shall not include assessments approved by the commissioner;
- (7) Establish the manner and scope of the inspection and the form of the inspection report. The inspection guidelines for inspection may include setting minimum conditions the property must meet before an inspection is required;
- (8) Establish procedures whereby selections for the board of directors will be submitted to the commissioner;
- (9) Establish procedures for records to be kept of all financial transactions of the association, its agents, and its board of directors;
- (10) Establish procedures by which applications will be received and serviced by the association;
- (11) Establish guidelines for the investigation and payment of claims; and
- (12) Establish procedures whereby the association may assume and cede reinsurance on risks written through the association.

§431: -107 Designation of area. After consultation with representatives of the United States Geological Survey, the state department of defense, and the county in which the area is located, the commissioner shall designate the geographical area eligible for coverage through the association. Those properties in the designated area that meet the standards set forth in the plan of operation shall be provided insurance through the association.

§431: -108 Renewals of existing policies. Member insurers shall renew policies in existence on the effective date of this article on property situated in the area designated by the commissioner under section 431: -107. A member insurer may choose not to renew such a policy if the insured property does not meet the member insurer's underwriting criteria.

§431: -109 Insurance coverages available under plan. All properties qualifying for coverage under the plan of operation shall be eligible for the standard fire policy and extended coverage endorsement. The association shall provide additional coverages when directed by the commissioner or when approved by the commissioner.

§431: -110 Application; inspection. (a) Any person having an insurable interest in real or tangible personal property who has been unable to obtain basic property insurance from a licensed insurer may apply to the association for coverage.

(b) Within ten days of receiving an application, the association may conduct an inspection of the property to determine the condition of the property and decide if the property qualifies for coverage under the standards set forth in the plan of operation.

(c) The inspection of the property shall include, but need not be limited to, inspection of pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph may be taken as part of the inspection.

(d) Within ten days of the inspection, an inspection report shall be filed with the member insurer designated by the association. A copy of the completed inspection report shall be sent to the applicant upon request.

§431: -111 Duties and powers of the commissioner. (a) The commissioner shall provide the association with a statement of the net direct written premiums of each member insurer.

(b) The commissioner shall approve an assessment of member insurers by the association when the association is insolvent as defined in section 431:15-103(10).

(c) The commissioner may suspend or revoke after a hearing the certificate of authority of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine shall not exceed five per cent of the unpaid assessment per month and shall not be less than \$100 per month.

§431: -112 Reports. (a) The association shall submit to the commissioner each year not later than one hundred twenty days after the association's fiscal year, a financial report in a form approved by the commissioner.

(b) The commissioner may require other reports from insurers concerning risks insured under the plan.

§431: -113 Appeals. (a) Any applicant or member insurer affected by a decision of the association shall have the right to appeal to the board of directors. A decision of the board of directors may be appealed to the commissioner in writing within thirty days after the decision. The application for appeal shall specify in what respects the person making the appeal was aggrieved and the grounds to be relied upon as a basis for the relief demanded. The commissioner shall hold the hearing within thirty days after the commissioner's receipt of the application for appeal unless postponed by mutual consent.

(b) Any final action or order of the commissioner under this article shall be subject to judicial review by the circuit court of the first judicial circuit.

§431: -114 Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this State.

§431: -115 Credits for assessments paid. A member insurer may offset against its premium tax liability to this State an assessment made with the commissioner's approval to the extent of twenty per cent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. In the event a member insurer should cease doing business in this State, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

§431: -116 Examination. For the purpose of ascertaining its condition, or compliance with this article, the commissioner, as often as the commissioner deems advisable, may examine the accounts, records, documents, and transactions of the association. The association shall pay the expenses of the examination in accordance with section 431:2-306(b).

§431: -117 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this article.

§431: -118 Status of association policies. All financial institutions shall consider a policy issued by the association to be the same as a similar policy issued by an insurer authorized to transact insurance in this State."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1991-1992, to cover expenses incurred in the operation of the Hawaii Property Insurance Association. The sum appropriated shall be expended by the association, upon approval by the insurance commissioner, only for the association's operational expenses and shall not be used to subsidize payments made on policies issued by the association under this Act.

SECTION 4. The Hawaii Property Insurance Association created by this Act shall submit a plan of operation to the commissioner for approval by August 15, 1991. The association shall commence accepting applications for insurance within thirty days of approval of the plan of operation.

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 1991.

(Approved June 18, 1991.)

ACT 285

S.B. NO. 390

A Bill for an Act Relating to Travel Agencies.

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 TRAVEL AGENCIES

§ -1 **Definitions.** As used in this chapter:

"Advertisement" includes, but is not limited to, any oral, written, graphic, or pictorial statement or representation, including those made through any electronic or print medium.

"Consumer" means any purchaser of travel services other than a retailer or wholesaler of travel services.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“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 services” includes transportation by air, sea, or rail; ground transportation; hotel accommodations; package tours; or specialized air, land, or sea tour excursions and activities, whether offered on a wholesale or retail basis.

§ -2 Registration and renewal. (a) A travel agency shall register with the director prior to engaging in the business of selling or advertising to sell travel services.

(b) Each travel agency shall renew its registration on or before December 31 of each odd-numbered year. A special report prepared and signed by a licensed public accountant or certified public accountant verifying that the practices of the travel agency are in accordance with section -5, shall be filed with the renewal. The director, by rule, may permit alternatives to the special report that provides for at least the same level of verification.

§ -3 Powers and duties of the director. The director shall have the following powers and duties:

- (1) To adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) To issue and renew registrations pursuant to this chapter and to deny or refuse to renew for failure to comply with this chapter;
- (3) To establish fees;
- (4) To do all things necessary to carry out the functions, powers, and duties set forth in this chapter;
- (5) Suspend or revoke any registration for any violation of this chapter; and
- (6) Inspect and audit the books and records of any travel agency as they pertain to the deposits to and withdrawals from the trust account. The travel agency shall immediately make available to the director such books and records as may be requested at the travel agency’s place of business or at a location designated by the director. For that purpose, the director shall have full and free access to the office and places of business of the travel agency. The director may contract with a consultant to inspect and audit the books and records of any travel agency, the cost of which shall be borne by the travel agency if a violation of this chapter is established.

§ -4 Statement required to be furnished to consumer. A travel agency shall not receive money or other valuable consideration in payment for travel services, unless at the time of receipt of money or other valuable consideration, the travel agency furnishes to the consumer making the payment a written statement conspicuously setting forth the following information:

- (1) The name, business address, and telephone number of the travel agency;
- (2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any;

- (3) The name and address of the financial institution that maintains the travel agency trust account, and the number of the trust account;
- (4) The name of the entity with which the travel agency has arranged travel services and pertinent information such as, but not limited to, the types of accommodation, dates and times of services, and all restrictions, limitations, conditions, and fee assessments that pertain to the person's right to cancel, obtain a refund, change itinerary, or make a claim for lost tickets; and
- (5) The cancellation provisions of the contract between the travel agency and the consumer, and the rights and obligations of the parties in the event of such cancellation.

§ -5 Client trust accounts; maintenance of and withdrawal from such accounts. (a) Within three business days of receipt, a travel agency shall deposit all sums received from a consumer, for travel services offered by the travel agency in a trust account maintained in a federally insured financial institution located in Hawaii.

(b) The trust account required by this section shall be established and maintained for the benefit of the consumers paying money to the travel agency. The travel agency shall not in any manner encumber the amounts in trust and shall not withdraw money therefrom except:

- (1) In partial or full payment for travel services to the entity directly providing the travel services; or
- (2) To make refunds as required by this chapter.

A travel agency may make payment through another travel agency; provided that any such payment is treated as if it were a payment by a consumer.

(c) This section shall not prevent the withdrawal from the trust account of:

- (1) The amount of the sales commission, up to a maximum of fifteen per cent;
- (2) Any interest earned and credited to the trust account; or,
- (3) Any remaining funds of a consumer once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided.

(d) At the time of registration, the agency shall file with the department the account number and the name of the financial institution at which the trust account is held. The agency shall notify the department of any change in the account number or location within one business day of the change.

(e) The director, by rule, may allow for the use of other types of funds or accounts; provided that the protection for consumers is no less than that provided by this section.

§ -6 Disclosure on airline awards. (a) In the event an airline award is purchased, the following disclosure shall be made in a sales contract, in bold face print, no less than eight-point type, and in a manner reasonably calculated to draw the attention of the reader:

“THIS CONTRACT IS FOR THE SALE OF AN AIRLINE AWARD. CERTAIN AIRLINES HAVE TAKEN THE POSITION THAT THEY MAY VOID AIRLINE AWARDS AT THEIR DISCRETION, AT ANY TIME. IF ANY SUCH VOIDING OCCURS, (name of travel agency) WILL REFUND TO PURCHASER THE PROPORTIONATE AMOUNT OF THE PRICE PAID WITHIN THIRTY (30) DAYS.”

(b) For the purposes of this section, "airline award" means any coupon, certificate, voucher, benefit, or tangible thing promised, given, sold, or otherwise transferred by any airline to a consumer in exchange for mileage, credits, bonuses, segments, or other units of value credited to the consumer as an incentive to fly on the airline.

§ -7 **Consumer's rights.** (a) Any travel agency registered under this chapter shall have the following obligations to any consumer who purchases travel services from the travel agency:

- (1) The consumer shall have the right to be informed by the travel agency, prior to the purchase of any travel services from the travel agency, of any limitations, conditions, events, circumstances, or any other business or commercial factors that may affect the availability of the travel services and the ability of the consumer to obtain a refund of moneys paid for the travel services;
- (2) The consumer shall have the right to rely on any promises, guarantees, representations, or information provided by the travel agency, regarding travel services, including but not limited to, the availability of travel services offered or sold by the travel agency, the conditions for obtaining a refund of moneys paid for the travel services, and the nature or quality of the travel services provided;
- (3) The consumer shall have the right to have the travel agency fulfill any term or condition of the contract for travel services between the consumer and the travel agency, whether the term or condition was made in writing or otherwise by the travel agency;
- (4) The consumer shall have the right to have the travel agency fulfill any promises, guarantees, or representations made regarding travel services, whether the promises, guarantees, or representations are made by the travel agency in written or verbal form;
- (5) The consumer shall have the right to be informed of all conditions, if any, upon which the contract between the travel promoter and the entity providing the transportation or related services may be cancelled, and the respective rights and obligations of all parties in the event of cancellation;
- (6) The consumer shall have the right to obtain the ticket or other similar documentation binding upon the ultimate provider of the travel services from the travel agency, upon making full payment to the travel agency for the travel services purchased; and
- (7) The consumer shall have the right to a refund, within fourteen calendar days from the date the refund is requested, of all moneys paid to a travel agency for travel services not performed in accordance with the contract for travel services, less any of the following amounts:
 - (A) Any amounts for cancellation fees that were previously disclosed to the consumer; and
 - (B) Any amounts held by the ultimate provider of the travel services, or by a representative of the ultimate provider of travel services that the travel agent was required to contract with by the ultimate provider.

(b) The travel agency shall provide a written disclosure of the consumer's rights under this section to the consumer at the time the travel agency issues the ticket for travel services to the consumer.

(c) The department may develop a form for the written disclosure of consumer rights under this chapter, and if such form is developed, all travel agencies

shall utilize the department's form in order to comply with the provisions of this section.

§ **-8 Restitution.** Any person who engages in an act or practice that violates any provision of this chapter or rules adopted pursuant hereto may be ordered by a court of proper jurisdiction to make restitution to all persons injured by the act or practice.

§ **-9 Injunctions.** In any civil proceedings brought pursuant to this chapter, the court may also enjoin any activity that violates this chapter.

§ **-10 Consumer right of action.** Any person who suffers damage as a result of a violation of this chapter shall be entitled to injunctive relief restraining further violations, and may sue to recover damages in any circuit court of the State, and, if successful, shall recover three times the actual damages or \$1,000, whichever is greater. In any action brought under this chapter, the prevailing party shall be entitled to the recovery of costs of suit, including reasonable attorney's fees.

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

§ **-12 Criminal penalties.** A person commits the criminal offense of theft if the person, being a travel agency or an agent, employee, or independent contractor of a travel agency, knowingly or intentionally violates section -5(a), (b), or (c)."

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, 1994:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 457 (Board of Nursing)
- (3) Chapter 457A (Nurse Aides)
- (4) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter (Travel Agencies)"

SECTION 3. All travel agencies licensed as of September 30, 1991 shall be deemed registered; provided that proof of compliance with section -5, Hawaii Revised Statutes, filed by October 1, 1991.

SECTION 4. Effective October 1, 1991, all funds remaining in the travel agency recovery fund shall be held for disbursement to claimants pursuant to section 468K-5, Hawaii Revised Statutes, until the fund is exhausted; provided, however, that all such claims are limited to claims arising from travel services purchased prior to October 1, 1991; provided further that no lawsuit commenced on or after October 1, 1993 shall be effective to result in a recovery from the travel agency recovery fund.

Upon being notified of a civil proceeding that may result in a claim

against the travel agency recovery fund, pursuant to section 468K-5, Hawaii Revised Statutes, the director shall reserve \$8,000 for each licensee involved in each civil proceeding. The funds reserved shall be released only upon the entry of judgment and an order of payment, and shall be released and paid in accordance with the court's orders. Any reserved funds that remain after payment pursuant to court order shall revert to being unreserved funds within the travel agency recovery fund, subject to reservation in any future case.

All funds remaining in the travel agency recovery fund after the resolution of all civil proceedings commenced prior to October 1, 1993, if any, shall become part of the compliance resolution fund for use in travel agency-related cases.

SECTION 5. The department shall use the amounts available in the education fund to alert all current licensees under chapter 468K, Hawaii Revised Statutes, to the requirements of this Act and to inform the public about the rights and remedies provided in this Act.

SECTION 6. Chapter 468K, Hawaii Revised Statutes, is repealed; provided that sections 468K-3, 468K-4, 468K-5, 468K-6, 468K-8, 468K-9, 468K-10, and 468K-11 shall remain in effect solely to receive claims pursuant to section 4 of this Act; and provided further that all references to "trustees" in those sections shall be amended to read "director" and shall mean the director of commerce and consumer affairs.

SECTION 7. New statutory material is underscored.

SECTION 8. This Act shall take effect on October 1, 1991.

(Approved June 18, 1991.)

ACT 286

S.B. NO. 1914

A Bill for an Act Relating to Insurance Taxation.

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

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237- Exemption of insurance companies. This chapter shall not apply to the gross income or gross proceeds of insurance companies authorized to do business under chapter 431; except this exemption shall not apply to any gross income or gross proceeds received after December 31, 1991, as rents from investments in real property in this State; provided that gross income or gross proceeds from investments in real property received by insurance companies after December 31, 1991, under written contracts entered into before the effective date of this Act that do not provide for the passing on of taxes or tax increases shall not be taxed until the contracts are renegotiated, renewed, or extended."

SECTION 2. Section 237-4, Hawaii Revised Statutes, is amended to read as follows:

“§237-4 “Wholesaler”, “jobber”, defined. “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities which are to be incorporated by the producer or by the cooperative association into a finished or saleable product which is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities which are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses;
- (5) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(9)] 237-23(a)(8) for sale to such producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer’s own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator’s service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section [237-23(a)(9)] 237-23(a)(8) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;
- (6) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(9)] 237-23(a)(8) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);

- (7) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(9)] 237-23(a)(8) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
- (8) Sales of tangible personal property to a licensed person engaged in the service business; provided that (A) the property is not consumed or incidental to the performance of the services; (B) there is a resale of the article at the retail rate of four per cent; and (C) the resale of the article is separately charged or billed by the person rendering the services;
- (9) Sales to a licensed leasing company of capital goods which are thereafter leased as a service to others. Capital goods means goods which have a depreciable life and which are purchased by the leasing company for lease to its customers.

If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service which buys and maintains at the person's place of business a stock or lines of merchandise which the person distributes; and which, through salesmen, advertising, or sales promotion devices, sells to licensed retailers, to institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter."

SECTION 3. Section 237-23, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) This chapter shall not apply to the following persons:

- (1) Banks taxable under chapter 241;
- (2) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;
- (3) Public utilities owned and operated by the State or any county or other political subdivision thereof;
- [4) Insurance companies which pay the State a tax upon their gross premiums under chapter 431;
- (5)] (4) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services,

- or other benefits to the members of such societies, orders, or associations, and to their dependents;
- [(6)] (5) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended by the Housing Act of 1961, the Senior Citizens Housing Act of 1962, the Housing Act of 1964, and the Housing and Urban Development Act of 1965, as well as that of operating a prepaid legal services plan;
- [(7)] (6) Business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- [(8)] (7) Hospitals, infirmaries, and sanitarium;
- [(9)] (8) Cooperative associations incorporated under chapter 421 or 422 or Code section 521 cooperatives which fully meet the requirements of section 421-23 or 422-33, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
- (A) The exemption shall apply only to the gross income derived from activities which are pursuant to purposes and powers authorized by chapter 421 or 422, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
- (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable; and
- (C) As used in this paragraph, "section 521 cooperatives" mean associations which qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
- [(10)] (9) Building and loan associations taxable under chapter 241;
- [(11)] (10) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
- [(12)] (11) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of such persons);
- [(13)] (12) Financial services loan companies taxable under chapter 241; provided that the exemption shall apply only to the gross income derived from the "engaging in the business of a financial services loan company" as defined in section 408-2;

- [(14)] (13) Development companies taxable under chapter 241; provided that the exemption shall apply only to gross income derived from interest on loans made to borrowers as provided by Title V of the federal Small Business Investment Act of 1958, Public Law 699, as amended;
- [(15)] (14) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations;
- [(16)] (15) Small business investment companies taxable under chapter 241; provided that the exemption shall apply only to the gross income derived from activities engaged in as provided by the federal Small Business Investment Act of 1958, Public Law 699, as amended; provided further that the exemption shall not apply to gross income derived from consulting and advisory services engaged in under the first sentence of section 308(b) of Public Law 699; and
- [(17)] (16) Financial corporations taxable under chapter 241; provided that the exemption shall apply only to interest, discount, points, loan fees, loan origination charges, and finance charges which are part of the computed annual percentage rate of interest and which are contracted and received for the use of money; provided further that in the case of financial corporations acting as interbank brokers taxable under chapter 241, the exemption shall apply only to gross income derived from brokerage services. As used in this paragraph, "finance charge" and "annual percentage rate" have the same meaning as defined in the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(b) The exemptions enumerated in subsection [(a)(5) to (8)] (a)(4) to (7) shall apply only:

- (1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall prescribe, shall have paid the registration fee of \$20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department; and
- (2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and
- (3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of such hospitals, infirmaries, and sanitarium as such, and not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons."

SECTION 4. Section 431:7-204, Hawaii Revised Statutes, is amended to read as follows:

"§431:7-204 In lieu provision. As to insurers, the taxes and fees imposed by section 431:7-201 to section 431:7-204, and the fees imposed by this code, when paid shall be in settlement of and in lieu of all demands for taxes, licenses, or fees of every character imposed by the laws of this State, the ordinances or other laws, rules, or regulations of any county[, city and county, or any municipality] of this State, except [as]:

- (1) As expressly otherwise provided[, and excepting also taxes];
- (2) Taxes on real property[, and taxes];
- (3) Taxes on the purchase, use, or ownership of tangible personal property[.]; and
- (4) Taxes on gross income, gross proceeds, gross rental, or gross rental proceeds under chapter 237 or 237D.

Nothing [herein] in this section shall be deemed to exempt insurers from liability for withholding taxes payable by their employees and paying the same to the proper collection officers, or from keeping such records, and making such returns and reports, as may be required in the case of other persons enjoying tax exemption."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on January 1, 1992.

(Approved June 18, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 287

H.B. NO. 675

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 237-18, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services [on the one hand] and the travel agency or tour packager [on the other hand], the tax imposed by this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection "tourism related services" means catamaran cruises, canoe rides, dinner cruises, [and] lei greetings, transportation included in a tour package, sightseeing tours not subject to chapter 239[.], admissions to luaus, dinner shows, extravaganzas, cultural and educational facilities, and other services rendered directly to the customer or tourist, but only if the providers of the services other than air transportation are subject to a four per cent tax under this chapter or chapter 239."

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

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 19, 1991.)

A Bill for an Act Relating to the High Technology Development Corporation.

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

SECTION 1. Section 206M-2, Hawaii Revised Statutes, is amended to read as follows:

“§206M-2 [High technology development corporation; established.] Establishment of the high technology development corporation: purpose. (a) There is established the high technology development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The development corporation shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the development corporation shall be to facilitate the growth and development of the commercial high technology industry in Hawaii. Its duties shall include, but not be limited to: developing industrial parks as high technology innovation centers and the developing of projects within or outside of industrial parks; providing support and services to Hawaii-based high technology companies; collecting and analyzing information on the state of commercial high technology activity in Hawaii; promoting and marketing Hawaii as a site for commercial high technology activity; and providing advice on policy and planning for technology-based economic development.

(b) The governing body of the development corporation shall consist of a board of directors having nine voting members. Seven of the members shall be appointed by the governor for staggered terms pursuant to section 26-34. Six of the appointed members shall be from the general public and selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, and telecommunications, and other high technology fields[; provided that no public member of the board shall be an officer or employee of the State or its political subdivisions]. The other appointed member shall be selected from the faculty [of the college of engineering] of the University of Hawaii. All appointed members of the board shall continue in office until their respective successors have been appointed. The director of business, economic development, and tourism and the director of finance, or their designated representatives, shall serve as ex officio voting members of the board. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect such other officers as it deems necessary.

(c) The members of the board appointed under subsection (b) shall serve without compensation, but may be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(d) The board shall appoint a chief executive officer, who shall serve at the pleasure of the board and shall be exempt from chapters 76 and 77. The board shall set the salary and duties of the executive officer.

(e) The board shall appoint a management advisory committee for each industrial park and project governed by the board. Each committee shall have five members, who shall serve without compensation but may be reimbursed for expenses incurred in the performance of their duties. The members shall be drawn from fields of activity related to each project or park.”

SECTION 2. Section 206M-3, Hawaii Revised Statutes, is amended to read as follows:

“§206M-3 Powers, generally. The development corporation shall have all the powers necessary to carry out its purposes, including the following powers:

- (1) To sue and be sued;
- (2) To have a seal and alter the same at its pleasure;
- (3) To make and execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter including, subject to approval of the governor, a project agreement with a qualified person, and any other agreement whereby the obligations of a qualified person under a project agreement shall be unconditionally guaranteed or insured by, or the performance thereof assigned to, or guaranteed or insured by, a person or persons other than the qualified person; and to grant options or renew any project agreement entered into by it in connection with any project or industrial park, on terms and conditions as it deems advisable;
- (4) To make and alter bylaws for its organization and internal management;
- (5) To adopt rules under chapter 91 necessary to effectuate this chapter in connection with industrial parks, projects, and the operations, properties, and facilities of the development corporation;
- (6) Through its chief executive officer, to appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;
- (7) To prepare or cause to be prepared development plans for industrial parks;
- (8) To acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and to assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
- (9) To construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and to designate a qualified person as its agent for such purpose, and to own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
- (10) To arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishing of improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with an industrial park;
- (11) To prepare or cause to be prepared plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or industrial park, and from time to time to modify such plans, specifications, designs, or estimates;
- (12) To engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (13) To procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;

- (14) To accept and expend gifts or grants in any form from any public agency or from any other source;
- (15) To issue bonds pursuant to this chapter in such principal amounts as may be authorized from time to time by law to finance the cost of a project or an industrial park as authorized by law and to provide for the security thereof as permitted by this chapter;
- (16) To lend or otherwise apply the proceeds of the bonds issued for a project or an industrial park either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of a project or industrial park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
- (17) With or without terminating a project agreement, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the development corporation pursuant to the project agreement;
- (18) To enter into arrangements with qualified county development entities whereby the board would provide financial support to qualified projects proposed; [and]
- (19) To create an environment in which to support high technology economic development, including but not limited to: supporting all aspects of technology-based economic development; developing instructive programs, identifying issues and impediments to the growth of high technology industry in Hawaii; and providing policy analysis and information important to the development of high technology industries in Hawaii;
- (20) To develop programs that support start-up and existing high technology companies in Hawaii and to attract new companies to relocate to or establish operations in Hawaii by assessing the needs of these companies and providing the physical and technical infrastructure to support their operations;
- (21) To coordinate its efforts with other public and private agencies involved in stimulating technology-based economic development in Hawaii, including but not limited to: the department of business, economic development, and tourism; the pacific international center for high technology research; and the office of technology transfer and economic development of the University of Hawaii;
- (22) To promote and market Hawaii as a site for commercial high technology activity;
- (23) To provide advice on policy and planning for technology-based economic development; and
- [(19)] (24) To do all things necessary or proper to carry out the purposes of this chapter.”

SECTION 3. Section 206M-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any law to the contrary, the state director of finance is authorized, with the approval of the governor, to make loans up to the aggregate sum of [\$500,000,] \$1,000,000, or so much thereof as may be necessary, to the development corporation. The loans shall be made from the state general fund moneys which are in excess of the amounts necessary for immediate state requirements, and shall be used for the purpose of paying administrative and other [predevelopment] costs associated with the development of industrial parks[.] and other projects and activities that encourage the growth of the high technology industry in Hawaii.”

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 19, 1991.)

ACT 289

S.B. NO. 154

A Bill for an Act Relating to Food Labeling.

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

SECTION 1. Kona coffee is widely recognized as one of the distinctive products of Hawaii. Because there is no standard of identity for pure Kona coffee or Kona coffee blends, current labeling practices may be confusing to consumers of roasted Kona coffee.

There are two main types of Kona coffee: pure Kona, and blends. The problem lies with the blends, as no standards are set for them. A manufacturer can call any coffee from ninety-nine per cent pure to two per cent pure Kona a “Kona blend.” Since Kona coffee has such a distinctive taste, the amount of Kona in the blend substantially changes the taste of the coffee. Some consumers may prefer the milder taste of the lighter blends, while others prefer the robust taste of a higher-percentage blend. However, because manufacturers are not required to state the percentage of Kona coffee in the finished product, the consumer cannot at present distinguish between the Kona blends. This frustrates the consumer, who does not have any way to distinguish between the packaged coffee blends. A consumer may try one blend that is too weak and decide that there is nothing special about Kona coffee, and abandon it for a different brand, or, conversely, find that a near full-strength blend is too hearty. If consumers are aware of the vast differences between blends, the consumer is more likely to make an enlightened choice, enjoy the coffee, and become a devotee.

The purpose of this Act is to establish a standard of identity for one hundred per cent Kona coffee and Kona coffee blends, and to require each manufacturer and packager to label the product in a manner that gives the consumer adequate information concerning the Kona coffee amount.

SECTION 2. Chapter 486, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§486- Kona coffee; minimum content and labeling requirements.

(a) In addition to all other labeling requirements, all roasted or instant coffee

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which is produced in whole or in part from Kona coffee beans shall meet the following:

- (1) Identity statement:
 - (A) Only roasted or instant coffee which contains one hundred per cent Kona coffee by weight may be labeled or advertised as roasted or instant Kona coffee.
 - (B) Roasted or instant coffee containing not less than ten per cent but less than one hundred per cent Kona coffee by weight shall be labeled or advertised as "Kona coffee blend," "Kona blend coffee," or "blended Kona coffee." In addition, the following statement shall appear on the front panel of the label: "contains not less than ten per cent Kona coffee"; however, the actual percentage may be substituted in the statement.
- (2) Each word in the identity statement shall be contiguous and conspicuously displayed without any intervening material. Upper and lower case letters may be used interchangeably in the identity statement.
- (b) It shall be a violation of this section:
 - (1) To use the term "Kona coffee," "100% Kona coffee," or similar terms in labeling or advertising unless the package of coffee contains one hundred per cent Kona coffee.
 - (2) To use the term "Kona" in labeling or advertising, including in conjunction with a coffee style or in any other manner, if the roasted or instant coffee contains less than ten per cent Kona coffee by weight.
- (c) For the purpose of this section:
 - (1) "Kona coffee" means coffee that is grown in the geographical regions identified as North Kona and South Kona districts on the island of Hawaii and which meets the grade standard requirements as adopted under chapter 147.
 - (2) "Per cent Kona coffee by weight" means the percentage calculated by dividing the weight in pounds of roasted Kona coffee used in a production run of roasted or instant coffee, by the total weight in pounds of the roasted coffee used in that production run of roasted or instant coffee, and multiplying the quotient by one hundred."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect January 1, 1992.

(Approved June 19, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5

ACT 290

S.B. NO. 1053

A Bill for an Act Relating to the Wildlife Revolving Fund.

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

SECTION 1. Section 183D-10.5, Hawaii Revised Statutes, is amended to read as follows:

“§183D-10.5 Wildlife revolving fund; establishment. (a) There is established a wildlife revolving fund under the department of land and natural resources.

(b) The following proceeds shall be retained by or transmitted to the department of land and natural resources for deposit into the wildlife revolving fund:

- (1) Moneys collected as fees for hunting licenses, attendance of hunter education training programs, and use of public target ranges;
- (2) Moneys collected under the provision of any law relating to the importation, taking, catching, or killing of game, wildlife, and products thereof;
- (3) Moneys, other than informers' fees authorized under section 183D-11, collected as fines or bail forfeitures for violation of this chapter or any provision of chapter 195D concerning wildlife conservation; and
- (4) Moneys collected from the sale of:
 - (A) Any article, in addition to a hunting license, which a person is required to purchase from the department in order to hunt, when the requirement is established by law or rule; and
 - (B) Any work of art upon which the article under subparagraph (A) is based.

(c) Expenditures from the wildlife revolving fund shall be limited to the following:

- (1) For programs and activities to implement or enforce this chapter, including the provision of state funds to match federal aid grants under the Pittman-Robertson Federal Aid in Wildlife Restoration Act (50 Stat. 917, 16 U.S.C. §669), as amended, for projects concerning wildlife;
- (2) For programs and activities to implement or enforce chapter 195D concerning wildlife conservation;
- (3) For acquisition of the use, development, or maintenance of trails and accessways into or through forest reserves, natural area reserves, game management areas, wildlife sanctuaries, public hunting areas, private and commercial shooting preserves, or private lands where hunting or hiking by the public is authorized; and
- (4) For research programs and activities concerning wildlife conservation and management. Research programs and activities funded under this paragraph may be conducted by personnel of the department or through grants-in-aid to or contracts with the University of Hawaii or other qualified persons.

(d) The proceeds of the wildlife revolving fund shall not be used as security for, or pledged to the payment of principal or interest on, any bonds or other instruments of indebtedness.

(e) In addition to subsections (c) and (f), the department may use moneys in the wildlife revolving fund for the importation into, and the management, preservation, propagation, and protection of, game or wildlife in the State; provided that the department prior to authorizing expenditures or expending funds from the wildlife revolving fund shall first use those funds to maximize the State's participation to secure federal funds under the Pittman-Robertson Federal Aid in Wildlife Restoration Act, as amended.

(f) Nothing in this section shall be construed as prohibiting the funding with general funds or other funds of programs and activities to implement or enforce this chapter or chapter 195D concerning wildlife conservation.

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(g) The department shall prepare and submit an annual report on the status of the wildlife revolving fund to the legislature no later than twenty days prior to the convening of each regular session. The report shall include but not be limited to:

- (1) The source and application of moneys deposited into the fund, including a description of the criteria and process used to determine funding priorities;
- (2) A description of programs and activities supported by the fund;
- (3) A summary of program highlights and accomplishments; and
- (4) A description of future program plans, including specific goals and objectives."

SECTION 2. New statutory material is underscored.

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

(Approved June 19, 1991.)

ACT 291

S.B. NO. 1329

A Bill for an Act Relating to Liquid Fuel.

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

SECTION 1. Legislative finding and declaration. The legislature finds and declares that the petroleum industry is an essential element of Hawaii's economy and is therefore of vital importance to the health and welfare of all people in the State of Hawaii.

The legislature further finds and declares that a complete and thorough understanding of the operations of the petroleum industry is required by the state government at all times to enable it to respond to possible shortages, oversupplies, and other market disruptions or impairment of competition.

The legislature further finds and declares that information and data concerning all aspects of the petroleum industry, including, but not limited to, crude oil production, supplies, refining, product output, prices, distribution, and demand are essential for the State to develop and administer energy policies which are in the interest of the State's economy and the public's well-being.

The legislature further finds that because Hawaii is a physically small and geographically remote economy, certain of its markets tend to be concentrated. Market concentration is a function of the number of firms in the market and their respective market shares. In a highly concentrated market, market prices tend to rise above competitive levels. Market prices persistently above competitive levels are harmful to consumers and the public. Barriers to competition tend to cause supracompetitive prices to persist.

The legislature further finds that the markets for oil and oil products in Hawaii are highly concentrated markets.

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

"CHAPTER PETROLEUM INDUSTRY INFORMATION REPORTING

§ -1 **Short title.** This chapter shall be known and may be cited as the Petroleum Industry Information Reporting Act of 1991.

§ -2 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Commission” means the public utilities commission.

“Energy” means work or heat that is, or may be, produced from any fuel or source whatsoever.

“Major marketer” means any person who sells natural gas, propane, synthetic natural gas or oil in amounts determined by the commission as having a major effect on energy supplies.

“Major oil producer” means any person who produces oil in amounts determined by the commission as having a major effect on energy supplies.

“Major oil storer” means any person who stores oil or other petroleum products in amounts determined by the commission as having a major effect on energy supplies.

“Major oil transporter” means any person who transports oil or other petroleum products in amounts determined by the commission as having a major effect on energy supplies.

“Person” means any person, firm, association, organization, partnership, business trust, corporation, or company. “Person” also includes any city, county, public district or agency, the State or any department or agency thereof, and the United States to the extent authorized by federal law.

“Refiner” means any person who owns, operates, or controls the operations of one or more refineries.

“Refinery” means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products.

§ -3 **Informational reports; duty; time; scope; powers of commission; alternate reports.** (a) Each refiner and major marketer shall submit to the commission, within thirty days after the end of each month and in such form as the commission shall prescribe, information which includes the following:

- (1) Refiners shall report, for each of their refineries, feedstock inputs, origin and volume of petroleum receipts, refinery outputs, refinery stocks, and finished product supply and distribution.
- (2) Major marketers shall report on petroleum and petroleum product receipts, exchanges, inventories, and distributions.

The commission shall prescribe by rule when the first report shall be submitted.

(b) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall submit to the commission, within thirty days after the end of each year and in such form as the commission shall prescribe, information which includes the following:

- (1) Major oil transporters shall report on petroleum by reporting the capacities of each major transportation system, the amount transported by each system, and inventories thereof. The provision of the information shall not be construed to increase and decrease any authority the public utilities commission may otherwise have.
- (2) Major oil storers shall report on storage capacity, inventories, receipts and distributions, and methods of transportation of receipts and distributions.
- (3) Refiners shall report on facility capacity, and utilization and method of transportation of refinery receipts and distributions.

- (4) Major oil marketers shall report on facility capacity and methods of transportation of receipts and distributions.

The commission shall prescribe by rule when the first report shall be submitted.

(c) Each person required to report pursuant to subsection (a) shall submit a projection each month of the information to be submitted pursuant to subsection (a) for the quarter following the month in which the information is submitted to the commission.

(d) In addition to the data required under subsection (a), each oil refiner who supplies retail outlets in Hawaii shall submit to the commission an annual industry forecast for Petroleum Administration for Defense, District V (covering Arizona, Nevada, Washington, Oregon, California, Alaska and Hawaii). The forecast shall include the information to be submitted under subsection (a), and shall be submitted by October 15 of each year. The commission may require Hawaii-specific forecasts. However, those forecasts shall be required only if the commission finds them necessary to carry out its responsibilities.

(e) The commission may by order or rule modify the reporting period as to any individual item of information setting forth in the order or rule its reason for so doing.

(f) The commission may request additional information as necessary to perform its responsibilities under this chapter.

(g) Any person required to submit information or data under this chapter may, in lieu thereof, submit a report made to any other governmental agency, provided, that:

- (1) The alternate report or reports contain all of the information or data required by specific request under this chapter; and
- (2) The person clearly identifies the specific request to which the alternate report is responsive.

(h) Each refiner shall submit to the commission, within thirty days after the end of each month and in such form as the commission shall prescribe, all of the following information:

- (1) Monthly Hawaii weighted average prices and sales volumes of finished leaded regular, unleaded regular, and premium motor gasoline, and of each other grade of gasoline sold through company-operated retail outlets, to other end-users, and to wholesale customers;
- (2) Monthly Hawaii weighted average prices and sales volumes for residential sales, commercial and institutional sales, industrial sales, sales through company-operated retail outlets, sales to other end-users, and wholesale sales of No. 2 diesel fuel and No. 2 fuel oil; and
- (3) Monthly Hawaii weighted average prices and sales volumes for retail sales and wholesale sales of No. 1 distillate, kerosene, finished aviation gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil with one per cent or less sulfur, residual fuel oil with greater than one per cent sulfur and consumer grade propane.

The commission shall prescribe by rule when the first report shall be submitted.

(i) Refiners that submit form EIA-800 reports to the United States Department of Energy shall provide to the commission copies of their weekly reports.

§ -4 Analysis of information; audits and inspections. (a) The commission shall, with its own staff and other support staff with expertise and experience in, or with, the petroleum industry, gather, analyze, and interpret the information submitted to it pursuant to section -3 and other information relating to the supply and price of petroleum products, with particular emphasis on motor

vehicle fuels, including, but not limited to, all of the following:

- (1) The nature, cause, and extent of any petroleum or petroleum products shortage or condition affecting supply;
- (2) The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply;
- (3) Petroleum or petroleum product demand and supply forecasting methodologies utilized by the petroleum industry in Hawaii;
- (4) The prices, with particular emphasis on retail motor fuel prices, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in Hawaii and the reasons for such changes;
- (5) The income, expenses, and profits, both before and after taxes, of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price-earnings ratio;
- (6) The emerging trends relating to supply, demand, and conservation of petroleum and petroleum products;
- (7) The nature and extent of efforts of the petroleum industry to expand refinery capacity and to make acquisitions of additional supplies of petroleum and petroleum products; and
- (8) The development of a petroleum and petroleum products information system in a manner which will enable the State to take action to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply.

(b) The commission may conduct random or periodic audits and inspections of any supplier or suppliers of oil or petroleum products to determine whether they are unnecessarily withholding supplies from the market or are violating applicable policies, laws, or rules. The commission may solicit assistance of the department of taxation in any such audit. The commission shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the commission is not duplicative of the data received by any of their audits or inspections which is available to the commission.

(c) The commission shall analyze the impacts of state and federal policies, rules, and regulations upon the supply and pricing of petroleum products.

§ -5 Summary, analysis and interpretation of information; reports.

(a) The commission shall publish annually and submit to the governor and the legislature twenty days prior to the first day of the current legislature session a summary, an analysis, and an interpretation of the information submitted to it pursuant to section -3. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted.

(b) The commission may use reasonable means necessary and available to it to seek and obtain any facts, figures, and other information from any source for the purpose of preparing and providing reports to the governor and the legislature. The commission shall specifically include in the reports its analysis of any unsuccessful attempts in obtaining information from potential sources, including the lack of cooperation or refusal to provide information.

§ -6 Failure to timely provide information; notice; false statements; civil penalties; person. (a) The commission shall notify those persons who have failed to timely provide the information specified in section -3 or requested by the commission under section -3 or section -4(b). If, within five days after

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being notified of the failure to provide the specified or requested information, the person fails to supply the specified or requested information, the person shall be subject to a civil penalty of not less than \$500 per day nor more than \$2000 per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the commission regarding the information and the commission has held a hearing and following a ruling by the commission the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) Any person who willfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the commission shall be subject to a civil penalty not to exceed \$20,000.

(c) For the purposes of this section, the term "person" shall mean, in addition to the definition contained in section -2, any responsible corporate officer.

§ -7 Confidential information. (a) Confidential commercial information presented to the commission pursuant to this chapter shall be held in confidence by the commission or aggregated to the extent necessary to assure confidentiality as governed by chapter 92F, Hawaii Revised Statutes, including its penalty provisions.

(b) No data or information submitted to the commission shall be deemed confidential if the person submitting the information or data has made it public.

(c) Unless otherwise provided by law, with respect to data provided pursuant to subsection (h) of section -3, neither the commission, nor any employee of the commission, may do any of the following:

- (1) Use the information furnished under subsection (h) for any purpose other than the statistical purposes for which it is supplied;
- (2) Make any publication whereby the data furnished by any particular establishment or individual under subsection (h) can be identified; or
- (3) Permit anyone to examine the individual reports provided under subsection (h) other than the attorney general, the director of business, economic development, and tourism, the consumer advocate, and the authorized representatives, and employees of each.

§ -8 Confidential information obtained by another state agency. Any confidential information pertinent to the responsibilities of the commission specified in this chapter which is obtained by another state agency, including the department of taxation, shall be available to the attorney general, the attorney general's authorized representatives, and the commission and shall be treated in a confidential manner.

§ -9 Sharing of information obtained by the commission. The commission shall make all information obtained by the commission under this chapter, including confidential information, available to the director of business, economic development, and tourism, the attorney general, and the consumer advocate, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received.

§ -10 Rules. The commission shall adopt, amend, or repeal such rules as it may deem proper to fully effectuate this chapter."

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 19, 1991.)

ACT 292

S.B. NO. 2008

A Bill for an Act Relating to Trust Company Powers.

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

SECTION 1. Chapter 406, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART .
INSURANCE AND SECURITIES**

§406- Authority to engage in insurance or securities business. Any trust company or trust holding company which is not a subsidiary or affiliate of a bank or bank holding company may file an application with the commissioner for authority to establish or acquire, in whole or in part, a subsidiary or affiliate that is engaged:

- (1) Solely in the business of insurance agent, subagent, or solicitor under chapter 431; or
- (2) Solely in the business of broker or dealer under chapter 485 and the Securities Exchange Act of 1934.

§406- Application to engage in insurance and securities business; procedure; filing. (a) Application to the commissioner as provided in section 406- for approval shall be on a form prescribed by the commissioner; shall include information which the commissioner requires to make the findings specified in subsection (c); and shall identify the location where the trust company or trust holding company proposes to conduct insurance or securities business. The applicant shall pay to the commissioner at the time of filing the application a fee of \$500, which shall not be refundable.

(b) The commissioner may approve the application subject to any terms and conditions which the commissioner considers necessary to protect the public interest.

(c) The commissioner shall approve an application if the commissioner finds:

- (1) That the business to be established or acquired has a formal business plan to conduct its business safely and soundly and in a manner not detrimental to the safety and soundness of the applicant or any affiliate or subsidiary of the applicant;
- (2) The trust company or trust holding company and insurance or securities subsidiary or affiliate have the necessary experience, management skills, and financial capability to engage in the respective activities;
- (3) The applicant, its executive officers, directors, and principal stockholders have a record of sound performance, efficient management, financial responsibility, and integrity so that it would be in the interest of the public to approve the application;
- (4) The financial condition of the insurance or securities subsidiary or affiliate to be acquired would not jeopardize the financial stability of the applicant or any affiliate or subsidiary of the applicant, or prejudice the interests of the clients of the applicant;

- (5) That approving the application will not tend to substantially lessen competition in the relevant market or markets unless the commissioner finds that the anticompetitive effects of approving the application are clearly outweighed by the benefit of meeting the convenience and needs of the relevant market or markets to be served;
- (6) That the character, financial responsibility and general fitness of the applicant, its officers and directors, command the confidence of the community so as to warrant the belief that the business of the trust company and its insurance and securities corporations will be honestly and efficiently conducted;
- (7) That the relationship between the applicant and the affiliate or subsidiary and the condition of the applicant and the affiliate or subsidiary will not prejudice the interests of the clients of the trust company; and
- (8) That the applicant has operated a trust company or trust holding company, in a safe and sound manner for a period of three years prior to the filing of the application.

(d) Any insurance or securities subsidiary or affiliate authorized by this chapter shall submit a report of its activities to the commissioner on July 1 of each year. The report shall contain the information required by the commissioner including:

- (1) Loans and investments made by the trust company or the trust holding company to its subsidiaries or affiliates;
- (2) Consumer complaints;
- (3) Lawsuits filed alleging a violation of chapters 406, 431, and 485; and
- (4) Income statements and balance sheets for the previous calendar year ending on December 31.

(e) After the written approval of the commissioner of financial institutions to establish an affiliate or subsidiary is given under this section, the applicant shall apply under chapter 431 to the insurance commissioner or under chapter 485 to the commissioner of securities for a license accordingly. The insurance or securities company shall be subject to primary regulation by the respective insurance commissioner or commissioner of securities; provided that the commissioner of financial institutions, in the commissioner's discretion, may examine any insurance or securities company authorized by this chapter.

(f) The applicant shall perform insurance or securities business only through a subsidiary or affiliate of a trust holding company or through a subsidiary or affiliate of a trust company, which are not subsidiaries of or affiliated with a bank or bank holding company.

§406- Requirements to engage in insurance business. A trust company or trust holding company authorized by the commissioner as provided in section 406- may engage in insurance business if the following requirements are met:

- (1) The insurance activities shall be physically separated by a partition or separate enclosure and clearly distinguishable from those parts of the premises in which the trust business activities are conducted;
- (2) The name of the insurance company and any assumed business name used by it shall not be identical to that of the trust company or the trust holding company;
- (3) Logos and advertisements of the insurance company shall not be identical to that of the trust company or trust holding company;

- (4) Any person acting on behalf of the insurance company to engage in insurance business shall not be employed by the trust company or trust holding company or perform any work for the trust company or trust holding company;
- (5) The insurance company shall not use nonpublic client information obtained by the trust company from an unaffiliated insurance agent to promote, develop, or solicit insurance business, without the consent of the insurance agent to use the client information;
- (6) The trust company or trust holding company shall not disclose any nonpublic information about a client in connection with the conduct of the insurance business without the consent of the client;
- (7) The insurance company shall not buy or sell any insurance without disclosing in writing to the client that the company is owned in whole or in part by the trust company or trust holding company and that the client cannot be required to buy any insurance from the company as a condition of doing business with the trust company or trust holding company. This disclosure shall be made in bold and in large type and shall be provided to the client;
- (8) The insurance company shall not conduct any insurance business with the trust company clients unless the trust company can conclusively demonstrate that the transaction is at least as favorable to the client of the trust company than if the transaction were carried out with a comparable company not affiliated with the trust company;
- (9) A majority of the board of directors of the insurance company shall be composed of persons who are neither directors nor officers of the trust company or trust holding company;
- (10) No subsidiary or affiliate as defined in section 406-1 may act as an "insurer" as defined in section 431:1-202;
- (11) The trust company shall not, in the exercise of its discretion as fiduciary or co-fiduciary, purchase or sell any insurance from the company; and
- (12) Assets and liabilities associated with the trust company or trust holding company shall be kept completely separate and not intermingled with the assets and liabilities of any insurance operations. In no event shall any liabilities or losses associated with the trust company or trust holding company activities be recoverable through the insurance guaranty fund.

§406- Requirements to engage in securities business. A trust company or trust holding company authorized by the commissioner as provided in section 406- may engage in securities business if the following requirements are met:

- (1) The securities activities shall be physically separated by a partition or separate enclosure and clearly distinguishable from those parts of the premises in which trust business activities are conducted;
- (2) The name of the securities company and any assumed business name used by it shall not be identical to that of the trust company or trust holding company;
- (3) Logos and advertisements of the securities company shall not be identical to that of the trust company or trust holding company;
- (4) Any person acting on behalf of the securities company to engage in its securities business shall not be employed by the trust company or

- trust holding company, or perform any work for the trust company or trust holding company;
- (5) The securities company shall not use nonpublic client information obtained by the trust company from another stock broker to promote, develop, or solicit stock brokerage business, without consent of the stock broker to use the client information;
 - (6) The trust company or trust holding company shall not disclose any nonpublic information about a client in connection with the conduct of the securities business to the securities company without the consent of the client;
 - (7) The securities company shall not buy or sell any securities without disclosing in writing to the client that the company is owned in whole or in part by the trust company or trust holding company and that the client cannot be required to buy or sell any securities through the company as a condition of doing business with the trust company or trust holding company;
 - (8) The securities company shall not conduct any securities business with the trust company clients unless the trust company can conclusively demonstrate that the transaction is at least as favorable to the client of the trust company than if the transaction were carried out with a comparable company not affiliated with the trust company;
 - (9) A majority of the board of directors of the securities company shall be composed of persons who are neither directors nor officers of the trust company or trust holding company;
 - (10) No trust company or trust holding company affiliated with a securities subsidiary or affiliate may issue a guarantee, acceptance, or letter of credit for the benefit of the securities subsidiary or affiliate;
 - (11) No trust company or trust holding company may express any opinion on the value of or the advisability of purchasing or selling securities that are being underwritten, distributed, or dealt in by the securities company without informing the client of the securities company's relationship to the trust company or trust holding company; and
 - (12) The trust company shall not, in the exercise of its discretion as fiduciary, co-fiduciary, or agent, purchase or sell any securities from the company, unless the purchase or sale is expressly authorized in writing.

§406- Revocation or restriction of trust company or trust holding company authority. If the commissioner finds that any of the requirements to engage respectively in the insurance business or in the securities business is violated, or that the condition of the trust company or trust holding company has substantially deteriorated so as to affect its ability to affiliate with an insurance business or securities business under section 406- or section 406- , or if the commissioner is informed by the insurance commissioner or the commissioner of securities that the condition of the insurance business or securities business has substantially deteriorated so as to affect its ability to affiliate with a trust company or trust holding company, the commissioner, after notice, shall suspend the authority of the trust company or trust holding company to affiliate with an insurance business or securities business. The commissioner after hearing as provided in chapter 91, may revoke or restrict the authority of the trust company or trust holding company to affiliate with an insurance business or securities

business. The commissioner may require the divestiture of any insurance or securities company by the trust company or trust holding company as a remedy.

§406- Dividend restrictions. A trust company, trust holding company, insurance affiliate, or securities affiliate, shall not pay or obligate itself to pay a cash dividend or dividend in kind to its shareholders, unless that payment is consistent with a dividend policy which has been adopted by the corporate affiliate and approved by the commissioner. This restriction shall only apply to those trust companies or trust holding companies that have received regulatory approvals to engage in the insurance or securities business in accordance with sections 406- or 406- . Within thirty days prior to the payment of any dividend between affiliates, the affiliate shall notify the commissioner in writing of the event and shall provide any additional information which the commissioner may require. Dividends shall not be paid unless the payment conforms to the written policy of the affiliate and is made with the written approval of the commissioner. The commissioner may, at any time, withdraw any previous approval of a dividend policy if the commissioner determines that the withdrawal is necessary to prevent unsafe or unsound practices.

§406- Violations. (a) Any person who violates sections 406- or 406- , shall be subjected to an administrative fine of \$1,000 for each violation, but if the commissioner finds the violation to be wilful, the commissioner shall impose an administrative fine of up to \$10,000 for each violation. The commissioner of financial institutions may institute administrative proceedings to impose and collect the administrative fine set forth in this subsection. In addition to the administrative fine, the commissioner may order any commissions or compensation collected on the transaction to be returned to the person aggrieved by the actions of the trust company or trust holding company.

(b) This section does not limit, diminish, or modify any other administrative penalties or restrictions which may be imposed by the commissioner of financial institutions.

(c) This section does not limit or prohibit the insurance commissioner or the commissioner of securities from imposing any administrative penalties set forth in chapters 431 or 485, or any administrative rules adopted under those chapters.

(d) Any person asserting a violation of sections 406- or 406- may bring an action in the appropriate court of the judicial circuit in which the person resides. In ruling upon a claim asserting a violation of sections 406- or 406- , the court may impose a civil fine of not less than \$1,000 for each violation. Additionally, the court may order any compensation or commissions collected on the transaction to be returned to the person aggrieved by the trust company or trust holding company.”

SECTION 2. Chapter 406, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§406- Transactions unlawful without approval. (a) Unless the commissioner gives prior written approval upon written application under section 406- no person may:

- (1) Acquire, directly or indirectly, a trust company or trust holding company whose operations are principally conducted in the State;
- (2) Vote the stock of a trust company or trust holding company acquired in violation of this section;

- (3) Acquire, directly or indirectly, the voting or nonvoting securities of a trust company or a trust holding company whose operations are principally conducted in the State if the acquisition would result in that person's obtaining more than twenty-five per cent of the authorized voting securities of the trust company or trust holding company if the nonvoting securities were converted into voting securities; or
- (4) Merge or consolidate with a trust company or a trust holding company whose operations are principally conducted in the State.

(b) The commissioner may obtain injunctive relief to prevent any change in control or other violation of this section.

§406- Application for approval for acquisitions and mergers. (a) Application under section 406- to the commissioner for approval shall be on a form prescribed by the commissioner and shall include:

- (1) Information which the commissioner requires to make the findings specified in subsection (c); and
- (2) Unless the applicant is a resident of the State, a corporation organized in the State, or a foreign corporation admitted to do business in the State, a written consent to service of process on a resident of the State in any action arising out of the applicant's activities in the State.

(b) The commissioner may approve the application subject to any terms and conditions which the commissioner considers necessary to protect the public interest.

(c) The commissioner may approve an application if the commissioner finds:

- (1) That the proposed transaction would not be detrimental to the safety and soundness of the applicant or to any trust company or trust holding company;
- (2) The applicant, its executive officers, directors, and principal stockholders have established a record of sound performance, efficient management, financial responsibility, and integrity so that it would be in the interest of the customers, creditors, or shareholders of the trust company or trust holding company or the public to authorize the proposed transaction;
- (3) The financial condition of the applicant or any trust company or trust holding company which is a participant in the proposed transaction would not jeopardize the financial stability of the applicant or trust company or trust holding company, or prejudice the interest of the customers of the applicant or other trust company or trust holding company;
- (4) The consummation of the proposed transaction will not tend to lessen competition in the relevant market or markets substantially, unless the commissioner finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the benefit of meeting the convenience and needs of the relevant market or markets to be served; and
- (5) The applicant has established a record of meeting the needs of the communities which it or its subsidiary or affiliates serve.

(d) No trust company or trust holding company which is not a subsidiary or affiliate of an institution whose deposits are federally-insured, shall be acquired or merged with any other company unless that trust company's or that

trust holding company's insurance or securities subsidiary or affiliate has been voluntarily divested prior to any proposed acquisition or sale."

SECTION 3. 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 commissioner of financial institutions a certificate that it is qualified to act as a trust company under section 406-1.5.] **Definitions. As used in this chapter:**

"Affiliate" means any company that controls or is controlled by or is under common control with a trust company or trust holding company.

"Company" means any corporation (other than a bank), any partnership, sole proprietorship, individual, business trust, association, joint venture, pool syndicate, or other similar business organization.

"Commissioner" means the commissioner of financial institutions.

"Control" means the power to directly or indirectly vote twenty-five per cent or more of the voting stock of a company, trust company, or trust holding company, the ability to control in any manner the election of a majority of a company's or trust company's or trust holding company's, directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company or trust company or trust holding company.

"Principal stockholder" means any person who holds twenty-five per cent or more of the stock in the trust company or trust holding company.

"Subsidiary" means any company controlled by a trust company or trust holding company.

"Trust company" means a corporation organized under the general corporate laws of this State, which has obtained from the commissioner of financial institutions a certificate of authority that it is qualified to act as a trust company under this chapter.

"Trust holding company" means any company as defined in this chapter, other than a holding company as defined in section 403-2, which has control over any trust company or over any company that is or becomes a trust holding company."

SECTION 4. Section 406-1.5, Hawaii Revised Statutes, is amended to read as follows:

"§406-1.5 Application to do a trust business; fee; contents. Any corporation [or joint-stock company] organized under the laws of the State may file an application with the commissioner for authority to do business as a trust company. The applicant shall pay to the commissioner at the time of filing the application an investigation fee of \$1,000, which fee shall in no case be refunded. The application shall be in duplicate and shall specify:

- (1) The location where the company proposes to conduct its trust business. The premises shall be occupied and used solely by the trust company[.], except as provided in sections 406-_____ and 406-_____;
- (2) That the amount of the capital stock of the trust company shall be fully paid in cash to the trust company before commencement of the trust business[.];
- (3) The names and residence addresses of all subscribers to the capital stock of the trust company, including the number of shares, the

amount of the capital stock subscribed and percentage of ownership[.];

- (4) The name of the managing officer of the trust company. A separate sheet shall be attached showing the integrity, experience, and qualification of the managing officer to conduct a trust business[.];
- (5) The names and residence addresses of the proposed officers and directors of the trust company[.]; and
- (6) Any other information which the commissioner may require.

The commissioner shall grant to any corporation [or joint-stock company,] complying with the requirements of this section and sections 406-2 and 406-3, a certificate that it is qualified to act as a trust company.”

SECTION 5. Section 406-2, Hawaii Revised Statutes, is amended to read as follows:

“§406-2 Conditions precedent to doing business. (a) No corporation [or joint-stock company] shall do business as a trust company, except on the following conditions:

- (1) Its corporate name shall contain the word “trust[.]”;
- (2) It shall be organized under the laws of this State for the purpose of doing business as a trust company, and that object shall be expressed in its charter or articles of [association.] incorporation;
- (3) Its capital stock shall be not less than \$1,000,000 fully paid in cash; provided that the foregoing requirement as to paid-up capital stock shall not apply to any corporation [or joint-stock company] qualified to do business as a trust company before July 31, 1980, and having on that date a paid-up capital stock of less than the minimum requirement, or having an application for authority to do a trust business pending with the department before July 31, 1980. However, [such] a qualified trust company with less than \$1,000,000 paid-up stock shall not open an additional office or place of business after July 31, 1980, unless or until it has attained \$1,000,000 in paid-up stock. No corporation [or joint-stock company] at any time qualified to act as a trust company shall reduce its paid-up capital stock to less than the minimum requirement, and no corporation [or joint-stock company] at any time qualified to act as a trust company and having a paid-up capital stock equal to or less than the minimum requirement shall reduce its paid-up capital stock in any amount[.]; and
- (4) Its paid-in capital shall be represented by cash.

(b) To engage in insurance or securities activities set forth in this chapter, no trust company or trust holding company may invest in insurance or securities subsidiary or affiliates unless it has attained \$1,000,000 in paid-in capital. For the purposes of this section, “investments” or “invest” includes loans, endorsements, and guarantees from the trust company or trust holding company, and “paid-in capital” means the sum of \$1,000,000 as provided in subsection (a)(3). In no event shall the total investment in the stock, assets, or operations of any insurance or securities corporation exceed \$500,000 in the aggregate.”

SECTION 6. Section 406-5, Hawaii Revised Statutes, is amended to read as follows:

“§406-5 Powers of trust companies. Every trust company shall have the

power, in addition to the general powers conferred by law upon corporations [and joint-stock companies:] applicable to and consistent with this chapter:

- (1) To take, receive, and hold, and repay, reconvey, and dispose of, any effects and property, both real and personal, which may be granted, devised, bequeathed, committed, transferred, or conveyed to it, upon any trust or trusts, at any time or times by any person or persons, including minors, body or bodies corporate, or by any state, territorial, federal, or foreign court or judge, and to administer, fulfill, and discharge the duties of the trust or trusts for such remuneration as may be agreed upon or provided by law;
- (2) To act generally as agents or attorneys in the transaction of business or management of estates, the collection of rents, interest, dividends, mortgages, bonds, bills, notes, and securities for money;
- (3) To act as agent for the purpose of buying, selling, issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality, and to manage any sinking fund therefor, on such terms as may be agreed upon;
- (4) To accept and to execute the offices of personal representative, trustee, receiver, assignee, or guardian, whether by appointment by will, by a court, or judge, or otherwise;
- (5) To loan money upon real estate and collateral security and to execute and issue its notes and debentures, payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor;
- (6) To take and receive from any individual or corporation, on deposit for safekeeping and storage, gold and silver plate, jewelry, money, stocks, securities, and other valuables and personal property;
- (7) To rent out the use of safes or other receptacles upon such terms and for such compensation as may be agreed upon;
- (8) To lease, purchase, hold, and convey all such personal estate as may be necessary to carry on its business or that it may be necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions;
- (9) To execute and issue in the transaction of its business all necessary receipts, certificates, papers, and contracts which shall be signed by such person or persons as may be designated in the bylaws;
- (10) To lease, purchase, hold, and convey real estate as its corporate property;
- (11) To purchase, hold, and sell the stocks and bonds of other corporations;
- (12) To do a general trust and security business; [and]
- (13) To transact as agents any other business or undertaking, trust, mercantile, or otherwise, which may be necessary, useful, or convenient to the main purpose of the [corporation.] trust company;
- (14) To engage, through a subsidiary or affiliate, in the business of a "general agent" as defined in section 431:9-102, a "subagent" as defined in section 431:9-103, or a "solicitor" as defined in section 431:9-104, provided that a license has been obtained pursuant to chapter 431 and the rules adopted by the insurance commissioner; and
- (15) To engage, through a subsidiary or affiliate, in the business of "broker" as defined in section c(a)(4) of the Securities Exchange Act of

1934, or "dealer" as defined in chapter 485 and section c(a)(5) of the Securities Exchange Act of 1934, provided that the subsidiary or affiliate has been registered pursuant to chapter 485 and the rules adopted by the commissioner of securities.

The commissioner shall be authorized to adopt, amend, and repeal rules limiting the exercise of powers granted by this section as the commissioner shall find to be necessary to prevent unsafe and unsound trust company practices.

Nothing [herein] in this section shall be construed as giving any trust company the right to issue bills to circulate as money or to discount commercial paper, or to do a general banking business, or to do a savings bank business.

Nothing in this section shall prohibit any authority or powers permissible under federal law or regulation for a trust company or a trust holding company affiliated with a bank or bank holding company.

After June 30, 1970, no trust company shall have power to engage, directly or indirectly, in the business of acting as a real estate broker[, stockbroker, or insurance agent]."

SECTION 7. Chapter 406, Hawaii Revised Statutes, is amended as follows:

1. Sections 406-1 to 406-7 are designated as Part I.
2. Sections 406-11 to 406-17 are designated as Part II.
3. Sections 406-21 to 406-41 are designated as Part III.
4. Sections 406-51 to 406-54 are designated as Part IV.
5. Section 406-61 is designated as Part V.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. 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 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 19, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 293

S.B. NO. 9

A Bill for an Act Relating to a Department of Environmental Protection.

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

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

“§26-4 Structure of government. Under the supervision of the governor, all executive and administrative offices, departments, and instrumentalities of the state government and their respective functions, powers, and duties shall be allocated among and within the following principal departments [which] that are hereby established:

- (1) Department of personnel services (Section 26-5)
- (2) Department of accounting and general services (Section 26-6)
- (3) Department of the attorney general (Section 26-7)
- (4) Department of budget and finance (Section 26-8)
- (5) Department of commerce and consumer affairs (Section 26-9)
- (6) Department of taxation (Section 26-10)
- (7) University of Hawaii (Section 26-11)
- (8) Department of education (Section 26-12)
- (9) Department of health (Section 26-13)
- (10) Department of human services (Section 26-14)
- (11) Department of land and natural resources (Section 26-15)
- (12) Department of agriculture (Section 26-16)
- (13) Department of Hawaiian home lands (Section 26-17)
- (14) Department of business, economic development, and tourism (Section 26-18)
- (15) Department of transportation (Section 26-19)
- (16) Department of labor and industrial relations (Section 26-20)
- (17) Department of defense (Section 26-21)
- (18) Department of public safety (Section 26-14.6)
- (19) Department of environmental protection (Section 26-)”

SECTION 2. During the interim period before the 1992 legislative session the governor shall prepare an organizational and functional plan for the new department and a plan for the orderly transition of the functions transferred by this Act. The governor shall be assisted by a task force appointed by him, consisting of representatives of the departments of health, agriculture, and land and natural resources; the office of environmental quality control, the office of state planning, the environmental center of the University of Hawaii, and organizations representing the environment, business, and tourism. The organizational and functional plan shall be submitted to the legislature no later than thirty days prior to the convening of the 1992 legislative session as part of the supplemental executive budget request.

SECTION 3. The task force shall consider and evaluate the possible duties and authority of the department, including but not limited to the following:

- (1) Develop policies and coordinate the planning and implementation of state programs relating to environmental protection;
- (2) Develop and continuously update a comprehensive environmental quality action plan consistent with the state environmental policy under chapter 344 which shall:
 - (A) Identify the state goals, objectives, and implementing actions for environmental quality;
 - (B) Include a system for monitoring ecological, environmental, and social conditions and the effects on humans, animal life, and the environment for contaminants in the air, water, and land;

- (C) Define the roles and responsibilities of all affected agencies in carrying out environmental quality goals and objectives;
 - (D) Include an environmental emergency response plan which establishes a communication and information network and delineates the responsibilities of all affected agencies in the event of emergencies or crisis situations involving contaminants in the air, water, and land;
 - (E) Include programs for long-range implementation of environmental quality control; and
 - (F) Include a public education strategy to develop environmental consciousness in this State;
- (3) Assure the preservation and enhancement of natural beauty and artificial scenic qualities;
 - (4) Provide for the prevention and abatement of all water, land, and air pollution through the regulation of the storage, and handling, of solids, liquids, and gases which may cause or contribute to pollution;
 - (5) Establish a groundwater quality monitoring network designed to detect or predict contamination of the groundwater resources of the State;
 - (6) Provide and recommend methods for the recovery, recycling, and reuse or, where recycling and reuse are not possible, the disposal of solid wastes, including domestic and industrial refuse, litter, and debris consistent with sound health, scenic, environmental quality, and land use practices;
 - (7) Formulate guides for measuring presently unquantified environmental values and relationships so they may be given appropriate consideration along with social, economic, and technical considerations in decision-making;
 - (8) Perform environmental impact statement review functions as prescribed under chapter 343;
 - (9) Encourage and undertake scientific investigations and research on the ecological process, pollution prevention and abatement, recycling and reuse of resources, environmental epidemiology, and other areas essential to achieving the State's environmental policy;
 - (10) Coordinate with the university and other agencies conducting environmental research to avoid unnecessary duplication and to ensure that the State's environmental quality research needs are being met;
 - (11) Assess new and changing technology and development patterns to identify long-range implications for the environment and encourage alternatives which minimize adverse impact;
 - (12) Monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems and to warn of emergency conditions;
 - (13) Conduct laboratory analyses to meet the monitoring and enforcement requirements of environmental protection programs;
 - (14) Encourage activities consistent with this chapter by advising and assisting local governments, institutions, industries, and individuals;
 - (15) Undertake an extensive public information and education program to inform and involve public and private organizations and groups and the general public in the commitment to the principles and practices of environmental protection and develop programs for the teaching by others of such principles and practices;

- (16) Enter and inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or noncompliance with any law or rule under this Act;
- (17) Conduct investigations, hold hearings, and compel the attendance of witnesses and the production of accounts and books;
- (18) Establish a dual permit system with the department of health for those activities which require both an environmental and health perspective;
- (19) Establish an environmental legal enforcement team to enforce current laws and write rules for the department; and
- (20) Establish an environmental data system which can correlate locations of pollution with the locations of work, residence, and recreation of people of the State who are affected by environmentally-influenced illnesses.

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

SECTION 5. This Act shall take effect upon its approval and shall be repealed on July 1, 1992, in the event that the legislature fails to enact a bill establishing the powers, duties, and other provisions of the department of environmental protection during the Regular Session of 1992.

(Approved June 20, 1991.)

ACT 294

S.B. NO. 1543

A Bill for an Act Relating to Cable Television Access Organizations.

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

SECTION 1. Section 440G-3, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Access organization” means any nonprofit organization designated by the director to oversee the development, operation, supervision, management, production, or broadcasting of programs for any channels obtained under section 440G-8, and any officers, agents, and employees of such an organization with respect to matters within the course and scope of their employment by the access organization.”

SECTION 2. Chapter 440G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§440G- Criminal and civil liability. Nothing in this chapter shall be deemed to affect the criminal and civil liability of cable programmers, cable operators, or access organizations pursuant to the federal, state, or local laws regarding libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that no access organization shall incur any such liability arising from, based on, or related to any program not created by

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the access organization, which is broadcast on any channel obtained under section 440G-8, or under similar arrangements.”

SECTION 3. New statutory material is underscored.¹

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

(Approved June 20, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 295

S.B. NO. 1757

A Bill for an Act Relating to Prohibition Against Retailing of Motor Fuel by Refiners.

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

SECTION 1. As used in this Act:

“Affiliate” means any person who, other than by means of a franchise, controls, is controlled by, or is under common control with any other person.

“Direct operation” or “directly operated” means operating through employees, through an affiliate, or through persons under any contract which is not a franchise.

“Distributor” means any person, including any affiliate of such person, who either purchases motor fuel for sale, consignment, or distribution to another, or receives motor fuel on consignment for consignment or distribution to his or her own motor fuel accounts or to accounts of his or her supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

“Franchise” means any contract between a refiner and a distributor, between a distributor and a retailer, under which a refiner or distributor authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by the refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits the use. The term “franchise” includes any of the following:

- (1) Any contract under which a retailer or distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark owned or controlled by the refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits the occupancy.
- (2) Any contract pertaining to the supply of motor fuel which is to be sold, consigned, or distributed under a trademark owned or controlled by a refiner, or under a contract which has existed

continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned, or distributed under a trademark owned or controlled on that date by a refiner.

- (3) The unexpired portion of any franchise, as defined by paragraph (1) and (2) of this subsection, which is transferred or assigned as authorized by the franchise or by any applicable law which permits the transfer or assignment without regard to any provision of the franchise.

“Motor fuel” means gasoline, diesel, and any other fuel of a type distributed for use as a fuel in self-propelled vehicles primarily for use on public streets, roads, and highways.

“Refiner” means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

“Retail motor fuel outlet” means any location where motor fuel is distributed for purposes other than resale.

“Retailer” means any person who purchases motor fuel for sale to the general public for ultimate consumption.

“Service station” means any establishment where motor fuel is sold to the general public for ultimate consumption.

SECTION 2. The attorney general shall gather and assess authoritative reports on the subject of the impact on motor fuel prices to consumers of a prohibition (better known as “divorcement”) on direct retailing of motor fuel by refiners and distributors in competition with franchised and independent service stations. The attorney general shall also collect and analyze Hawaii data on the impact of divorcement on the price of motor fuel to customers in Hawaii. The attorney general shall submit a final report no later than fifteen days prior to the convening of the 1993 session of the legislature.

SECTION 3. The department of commerce and consumer affairs shall gather data and study the impact of direct retailing of motor fuel by refiners and distributors in competition with franchised and independent service stations. The department shall review information and data related to the preservation of a mixed marketplace in terms of the level of customer service provided, the maintenance of geographical dispersed “neighborhood” stations, the level of consumer problems associated with the various types of stations, and any alternatives that consumers have for services which are otherwise lost through market changes. The department shall submit its final report no later than fifteen days prior to the convening of the 1993 session of the legislature. The department shall submit an interim report setting forth its research methods and progress to date no later than fifteen days prior to the convening of the 1992 session of the legislature.

SECTION 4. This chapter shall not be applied in a manner that would render such application preempted by the Petroleum Marketing Practices Act (15 U.S.C. §2801, et. seq.) or other applicable federal or state law.

SECTION 5. For a period beginning on the effective date of this Act, and ending August 1, 1993, refiners and distributors are prohibited from opening any

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new direct operated service stations or retail motor fuel outlets except where:

- (1) A refiner or distributor has executed a binding lease or has acquired real property in fee simple;
- (2) The land involved has been zoned appropriately to permit service station use or retail motor fuel outlet use and has received a shoreline management area permit, if applicable, as of the effective date of this Act; and
- (3) A refiner or distributor has obtained all of the other necessary permits to commence construction of real property improvements for the purpose of constructing a service station or retail motor fuel outlet, prior to the effective date of this Act.

Provided, however, a refiner shall be allowed to replace two service stations or retail motor fuel outlets within the same county where the refiner or distributor has had to close a station or outlet due to the termination of the real property lease.

SECTION 6. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity shall 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 7. This Act shall not apply to existing retailing operations of any refiner or distributor as of the effective date of this Act, but shall apply to any refiner or distributor establishing a retail operation on or after the effective date of this Act.

SECTION 8. This Act shall take effect upon its approval and be repealed August 1, 1993.

(Approved June 20, 1991.)

ACT 296

H.B. NO. 139

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 1991.

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 subdivisions 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
BED	Department of Business, Economic Development, and Tourism
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
HMS	Department of Human Services
HTH	Department of Health
LBR	Department of Labor and Industrial Relations
LNR	Department of Land and Natural Resources
LTG	Office of the Lieutenant Governor
PER	Department of Personnel Services
PSD	Department of Public Safety
SUB	Subsidies
TAX	Department of Taxation
TRN	Department of Transportation
UOH	University of Hawaii
CCH	City and County of Honolulu
COH	County of Hawaii
COK	County of Kauai
COM	County of Maui

(c) "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

ACT 296

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 means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 1991, and ending June 30, 1993. 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

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
A. ECONOMIC DEVELOPMENT							
1.	BED102	COMMERCE AND INDUSTRY					
		OPERATING	BED	45.00 *		45.00 *	
			BED	16,293,928 A		15,683,423 A	
			BED	257,400 B		708,800 B	
			BED	7,900,000 W		8,000,000 W	
		INVESTMENT CAPITAL	BED	6,181,000 C			C
2.	BED113	STATE TOURISM OFFICE					
		OPERATING	BED	5.00 *		5.00 *	
			BED	21,862,938 A		22,331,340 A	
3.	BED107	FOREIGN TRADE					
		OPERATING	BED	26.00 *		26.00 *	
			BED	1,698,488 B		1,604,899 B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
4.	AGR101	FINANCIAL ASSISTANCE FOR AGRICULTURE					
		OPERATING	AGR	15.00 *		15.00 *	
			AGR	944,591 B		985,280 B	
			AGR	2,326,000W		2,326,000W	
5.	AGR122	PLANT PEST AND DISEASE CONTROL					
		OPERATING	AGR	104.00 *		104.00 *	
			AGR	4,237,573 A		4,186,599 A	
		INVESTMENT CAPITAL	AGS	240,455 U		300,895 U	
			AGS	84,000 C		C	
6.	AGR131	ANIMAL QUARANTINE					
		OPERATING	AGR	63.00 *		63.00 *	
			AGR	2,351,728 A		2,309,545 A	
			AGR	202,127 U		230,827 U	
		INVESTMENT CAPITAL	AGS	159,000 C		2,940,000 C	
7.	AGR132	ANIMAL DISEASE CONTROL					
		OPERATING	AGR	24.50 *		24.50 *	
			AGR	1,348,536 A		1,327,865 A	
			AGR	51,648 T		54,230 T	
8.	LNR172	FORESTRY - PRODUCTS DEVELOPMENT					
		OPERATING	LNR	29.00 *		29.00 *	
			LNR	1,210,870 A		963,891 A	
			LNR	112,805 N		112,805 N	
		INVESTMENT CAPITAL	LNR	70,000 C		810,000 C	
9.	AGR151	MARKETING INFO & DISTRIBUTION SYSTEMS IMPROVEMENT FOR AGR					
		OPERATING	AGR	60.00 *		60.00 *	
			AGR	3,980,370 A		3,634,386 A	
			AGR	493,520 B		489,503 B	
			AGR	10,620 N		10,620 N	
10.	AGR141	AGRICULTURAL RESOURCE MANAGEMENT					
		OPERATING	AGR	26.00 *		26.00 *	
			AGR	475,803 A		492,662 A	
			AGR	115,950 B		129,720 B	
			AGR	546,322W		557,726W	
		INVESTMENT CAPITAL	AGS	410,000 C		C	
			LNR	280,000 C		C	
11.	AGR192	GENERAL ADMINISTRATION FOR AGR					
		OPERATING	AGR	38.00 *		38.00 *	
			AGR	2,158,174 A		1,884,284 A	
		INVESTMENT CAPITAL	AGR	8,100,000 C		2,000,000 C	
12.	AGR102	FINANCIAL ASSISTANCE FOR AQUACULTURE					
		OPERATING	AGR	80,000W		80,000W	
13.	LNR153	COMMERCIAL FISHERIES AND AQUACULTURE					
		OPERATING	LNR	21.00 *		21.00 *	
			LNR	2,242,030 A		2,010,634 A	
			LNR	267,500 N		267,500 N	
		INVESTMENT CAPITAL	LNR	2,850,000 C		C	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
14.	BED120	ENERGY DEVELOPMENT AND MANAGEMENT		10.00 *	10.00 *
	OPERATING	BED	4,168,358 A	3,739,478 A	
		BED	759,000 B	759,000 B	
		BED	199,070 N	197,920 N	
	INVESTMENT CAPITAL	BED	7,283,000 C		C
15.	BED130	ECON PLANNING & RESEARCH FOR ECON DEVELOPMENT		14.00 *	14.00 *
	OPERATING	BED	945,998 A	1,028,823 A	
16.	BED142	GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT		41.00 *	41.00 *
	OPERATING	BED	2,618,712 A	2,724,924 A	
B. EMPLOYMENT					
1.	LBR111	PLACEMENT SERVICES		3.00 *	3.00 *
	OPERATING	LBR	346,483 A	359,315 A	
		LBR	132.50 *	132.50 *	
		LBR	11,225,213 N	10,262,588 N	
2.	LBR123	APPRENTICESHIP & OTHER TRAINING PROGRAMS		7.00 *	7.00 *
	OPERATING	LBR	231,000 A	242,353 A	
3.	LBR131	EMPLOYMENT & TRAINING PROGRAMS		4.00 *	4.00 *
	OPERATING	LBR	907,640 A	481,198 A	
		LBR	8.00 *	8.00 *	
		LBR	13,774,841 N	14,463,911 N	
4.	LBR135	COMMISSION ON EMPLOYMENT & HUMAN RESOURCES		5.00 *	5.00 *
	OPERATING	LBR	301,293 A	228,153 A	
		LBR	238,050 N	198,662 N	
5.	LBR136	TRANSITION CENTER			
	OPERATING	LBR	1,755,899 A	1,849,610 A	
6.	LBR143	OCCUPATIONAL SAFETY & HEALTH		57.50 *	57.50 *
	OPERATING	LBR	1,932,732 A	2,018,661 A	
		LBR	28.50 *	28.50 *	
		LBR	1,283,006 N	1,326,988 N	
7.	LBR152	WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES		35.00 *	35.00 *
	OPERATING	LBR	1,150,677 A	1,260,374 A	
		LBR	42,698 N		N
8.	LBR153	CIVIL RIGHTS COMMISSION			

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		OPERATING	LBR		26.00 *		26.00 *
			LBR	1,139,133 A		1,147,295 A	
				61,600 N		65,330 N	
9.	LBR161	- PUBLIC AND PRIVATE EMPLOYMENT			3.00 *		3.00 *
		OPERATING	LBR	576,133 A		590,658 A	
10.	LBR171	- UNEMPLOYMENT COMPENSATION					
		OPERATING	LBR	1,780,862 A		1,734,905 A	
			LBR	60,584,106 B		63,532,929 B	
			LBR	223.90 *		223.90 *	
			LBR	9,374,353 N		9,758,961 N	
11.	LBR183	- DISABILITY COMPENSATION			142.00 *		142.00 *
		OPERATING	LBR	3,929,456 A		4,236,793 A	
			LBR	12,055,000 B		16,055,000 B	
12.	HMS802	- VOCATIONAL REHABILITATION			34.10 *		34.10 *
		OPERATING	HMS	4,366,819 A		4,079,358 A	
			HMS	736,966 B		773,814 B	
			HMS	91.90 *		91.90 *	
			HMS	4,939,477 N		5,076,127 N	
13.	LBR901	- DLIR-DATA GATHERING, RESEARCH AND ANALYSIS			15.34 *		15.34 *
		OPERATING	LBR	1,329,462 A		1,398,002 A	
			LBR	28.08 *		28.08 *	
			LBR	1,558,938 N		1,623,669 N	
14.	LBR902	- GENERAL ADMINISTRATION			37.30 *		37.30 *
		OPERATING	LBR	1,519,524 A		1,545,886 A	
			LBR	33.64 *		33.64 *	
			LBR	1,740,586 N		1,809,713 N	
15.	LBR903	- OFFICE OF COMMUNITY SERVICES			7.00 *		7.00 *
		OPERATING	LBR	8,036,293 A		6,466,321 A	
			LBR	3.00 *		3.00 *	
			LBR	1,698,143 N		1,774,027 N	
16.	LBR812	- LABOR & INDUSTRIAL RELATIONS APPEALS BOARD			9.00 *		9.00 *
		OPERATING	LBR	479,725 A		489,830 A	
C. TRANSPORTATION FACILITIES							
1.	TRN102	- HONOLULU INTERNATIONAL AIRPORT					
		OPERATING	TRN	825,000 A			A
			TRN	543.00 *		554.00 *	
		INVESTMENT CAPITAL	TRN	55,203,774 B		56,934,643 B	
			TRN	39,950,000 B		10,600,000 B	
			TRN	579,602,000 E		7,395,000 E	
			TRN	8,600,000 N		2,100,000 N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
2.	TRN104 - GENERAL AVIATION			2.00 *	2.00 *
	OPERATING	TRN		619,494 B	614,297 B
3.	TRN111 - HILO INTERNATIONAL AIRPORT			77.00 *	82.00 *
	OPERATING	TRN		6,636,625 B	6,552,349 B
	INVESTMENT CAPITAL	TRN		2,235,000 B	7,170,000 B
		TRN		100,000 N	2,000,000 N
4.	TRN114 - KE-AHOLE AIRPORT			77.00 *	77.00 *
	OPERATING	TRN		7,320,299 B	5,902,350 B
	INVESTMENT CAPITAL	TRN		74,650,000 B	2,925,000 B
		TRN		7,000,000 N	2,000,000 N
5.	TRN116 - WAIMEA-KOHALA AIRPORT			2.00 *	2.00 *
	OPERATING	TRN		109,844 B	190,204 B
6.	TRN118 - UPOLU AIRPORT				
	OPERATING	TRN		347,453 B	7,843 B
7.	TRN131 - KAHULUI AIRPORT			163.00 *	163.00 *
	OPERATING	TRN		9,249,004 B	9,963,683 B
	INVESTMENT CAPITAL	TRN		29,365,000 B	11,795,000 B
		TRN		2,000,000 N	1,000,000 N
8.	TRN133 - HANA AIRPORT			2.00 *	2.00 *
	OPERATING	TRN		174,440 B	90,004 B
9.	TRN135 - KAPALUA AIRPORT			6.00 *	6.00 *
	OPERATING	TRN		326,027 B	235,382 B
	INVESTMENT CAPITAL	TRN		300,000 B	B
10.	TRN141 - MOLOKAI AIRPORT			24.00 *	24.00 *
	OPERATING	TRN		2,137,340 B	1,379,621 B
	INVESTMENT CAPITAL	TRN		4,195,000 B	B
		TRN		100,000 N	N
11.	TRN143 - KALAUPAPA AIRPORT			1.00 *	1.00 *
	OPERATING	TRN		132,782 B	54,714 B
12.	TRN151 - LANAI AIRPORT			9.00 *	9.00 *
	OPERATING	TRN		586,378 B	646,009 B
13.	TRN161 - LIHUE AIRPORT			109.00 *	109.00 *
	OPERATING	TRN		7,971,459 B	7,535,969 B
	INVESTMENT CAPITAL	TRN		4,760,000 B	B
		TRN		1,000,000 N	N
14.	TRN163 - PORT ALLEN AIRPORT				
	OPERATING	TRN		1,569 B	1,651 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
15.	TRN195	- AIRPORTS ADMINISTRATION					
		OPERATING	TRN	290,600 A		290,600 A	
				91.00 *		91.00 *	
		INVESTMENT CAPITAL	TRN	162,517,066 B		232,775,532 B	
			TRN	12,975,000 B		600,000 B	
			TRN	600,000 N		100,000 N	
16.	TRN301	- HONOLULU HARBOR					
		OPERATING	TRN	107.00 *		107.00 *	
		INVESTMENT CAPITAL	TRN	10,824,023 B		10,345,238 B	
			TRN	2,775,000 B		210,000 B	
			TRN	11,200,000 E		23,490,000 E	
17.	TRN303	- BARBERS POINT HARBOR					
		OPERATING	TRN	3.00 *		3.00 *	
		INVESTMENT CAPITAL	TRN	525,420 B		327,897 B	
			TRN	1,600,000 B		7,150,000 B	
			TRN	1,100,000 E		10,500,000 E	
18.	TRN305	- KEWALO BASIN					
		OPERATING	TRN	3.00 *		3.00 *	
				509,183 B		515,394 B	
19.	TRN311	- HILO HARBOR					
		OPERATING	TRN	10.00 *		10.00 *	
		INVESTMENT CAPITAL	TRN	1,119,554 B		1,165,500 B	
			TRN	930,000 B		600,000 B	
			TRN			1,550,000 E	
			TRN			4,570,000 N	
20.	TRN313	- KAWAIHAE HARBOR					
		OPERATING	TRN	8.00 *		8.00 *	
		INVESTMENT CAPITAL	TRN	529,351 B		588,150 B	
				350,000 B		100,000 B	
21.	TRN331	- KAHULUI HARBOR					
		OPERATING	TRN	16.00 *		16.00 *	
		INVESTMENT CAPITAL	TRN	1,475,897 B		1,408,762 B	
			TRN	8,800,000 B		500,000 B	
			TRN			1,500,000 E	
22.	TRN341	- KAUNAKAKAI HARBOR					
		OPERATING	TRN	1.00 *		1.00 *	
		INVESTMENT CAPITAL	TRN	417,874 B		194,665 B	
				95,000 B		200,000 B	
23.	TRN361	- NAWILIWILI HARBOR					
		OPERATING	TRN	12.50 *		12.50 *	
		INVESTMENT CAPITAL	TRN	840,713 B		868,256 B	
			TRN	900,000 B		B	
			TRN	7,000,000 E		E	
24.	TRN363	- PORT ALLEN HARBOR					
		OPERATING	TRN	1.00 *		1.00 *	
		INVESTMENT CAPITAL	TRN	305,923 B		298,729 B	
				150,000 B		500,000 B	
25.	TRN395	- HARBORS ADMINISTRATION					
		OPERATING	TRN	60.00 *		60.00 *	
		INVESTMENT CAPITAL	TRN	25,772,786 B		28,244,543 B	
				825,000 B		475,000 B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
26.	TRN501	- OAHU HIGHWAYS					
				233.00 *		233.00 *	
		OPERATING	TRN	31,150,632 B		31,001,650 B	
		INVESTMENT CAPITAL	TRN	77,645,000 B		11,200,000 B	
			TRN	10,461,000 D		5,846,000 D	
			TRN	30,159,000 E		E	
			TRN	388,388,000 J		7,120,000 J	
			TRN	15,426,000 K		11,122,000 K	
27.	TRN511	- HAWAII HIGHWAYS					
				118.00 *		118.00 *	
		OPERATING	TRN	14,230,901 B		14,661,184 B	
		INVESTMENT CAPITAL	TRN	15,730,000 B		21,799,000 B	
			TRN	3,000,000 D		D	
28.	TRN531	- MAUI HIGHWAYS					
				68.00 *		68.00 *	
		OPERATING	TRN	9,581,061 B		8,435,841 B	
		INVESTMENT CAPITAL	TRN	24,985,000 B		39,525,000 B	
29.	TRN541	- MOLOKAI HIGHWAYS					
				12.00 *		12.00 *	
		OPERATING	TRN	1,883,308 B		1,956,841 B	
30.	TRN551	- LANAI HIGHWAYS					
				3.00 *		3.00 *	
		OPERATING	TRN	544,887 B		596,759 B	
		INVESTMENT CAPITAL	TRN	305,000 B		5,795,000 B	
			TRN	305,000 R		5,795,000 R	
31.	TRN561	- KAUAI HIGHWAYS					
				49.00 *		49.00 *	
		OPERATING	TRN	5,577,858 B		5,816,952 B	
		INVESTMENT CAPITAL	TRN	24,618,000 B		9,658,000 B	
32.	TRN595	- HIGHWAYS ADMINISTRATION					
				56.00 *		56.00 *	
		OPERATING	TRN	35,968,903 B		37,349,404 B	
		INVESTMENT CAPITAL	TRN	3,025,000 D		2,100,000 D	
			TRN	2,605,000 N		980,000 N	
33.	TRN597	- HIGHWAY SAFETY					
				38.00 *		38.00 *	
		OPERATING	TRN	4,652,458 B		4,730,567 B	
				4.00 *		4.00 *	
			TRN	393,859 N		415,187 N	
34.	TRN995	- GENERAL ADMINISTRATION					
				99.00 *		99.00 *	
		OPERATING	TRN	8,486,110 B		7,433,307 B	
D. ENVIRONMENTAL PROTECTION							
1.	HTH840	- ENVIRONMENTAL MANAGEMENT					
				99.00 *		101.00 *	
		OPERATING	HTH	4,832,148 A		4,365,780 A	
				29.00 *		29.00 *	
			HTH	3,315,783 N		3,544,972 N	
		INVESTMENT CAPITAL	HTH	13,000,000 C		C	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
2.	AGR846	PESTICIDES					
		OPERATING	AGR	25.00 *		25.00 *	
			AGR	821,634 A		826,675 A	
				151,947 N		158,521 N	
3.	LNR401	AQUATIC RESOURCES					
		OPERATING	LNR	26.00 *		26.00 *	
			LNR	1,430,141 A		1,294,116 A	
				462,283 N		472,889 N	
4.	LNR402	FORESTS AND WILDLIFE RESOURCES					
		OPERATING	LNR	65.50 *		65.50 *	
			LNR	3,002,809 A		2,655,884 A	
			LNR	.50 *		.50 *	
		INVESTMENT CAPITAL	LNR	536,978 N		546,245 N	
				940,000 C		540,000 C	
5.	LNR403	MINERAL RESOURCES					
		OPERATING	LNR	3.00 *		3.00 *	
				309,946 A		331,455 A	
6.	LNR404	WATER RESOURCES					
		OPERATING	LNR	25.00 *		25.00 *	
		INVESTMENT CAPITAL	LNR	3,071,158 A		2,988,600 A	
				3,520,000 C		1,700,000 C	
7.	LNR405	CONSERVATION & RESOURCES ENFORCEMENT					
		OPERATING	LNR	78.00 *		78.00 *	
			LNR	4,471,767 A		4,185,644 A	
				230,249 N		256,533 N	
			LNR	1.00 *		1.00 *	
		INVESTMENT CAPITAL	LNR	7,107 W		7,302 W	
				30,000 C		330,000 C	
8.	TRN903	COASTAL AREAS					
		OPERATING	TRN				
				17,514 A		18,389 A	
9.	HTH850	POLICY DVLPMENT,COORD & ANLYS FOR NAT P ENVR					
		OPERATING	HTH	8.00 *		8.00 *	
				346,923 A		352,594 A	
10.	LNR906	LNR-NATURAL PHYSICAL ENVIRONMENT					
		OPERATING	LNR	59.50 *		59.50 *	
			LNR	4,113,290 A		3,722,976 A	
				84,130 N		85,275 N	
11.	HTH849	ENVIRONMENTAL HEALTH ADMINISTRATION					
		OPERATING	HTH	16.50 *		16.50 *	
			HTH	1,372,479 A		1,299,859 A	
				4.50 *		4.50 *	
			HTH	1,522,349 N		1,671,938 N	

E. HEALTH

1. HTH101 - TUBERCULOSIS/HANSEN'S DISEASE CONTROL

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
					47.00 *		47.00 *
		OPERATING	HTH	2,133,974 A		2,232,764 A	
			HTH		3.00 *		3.00 *
				601,809 N		615,410 N	
2.		HTH111 - HANSEN'S DISEASE INSTITUTIONAL SERVICES					
		OPERATING	HTH		71.00 *		71.00 *
			HTH	4,577,850 A		4,715,373 A	
		INVESTMENT CAPITAL	AGS		185,000 B		185,000 B
			TRN	410,000 C			C
				200,000 C			C
3.		HTH121 - STD/AIDS PREVENTION SERVICES					
		OPERATING	HTH		15.00 *		15.00 *
			HTH	6,260,612 A		5,771,641 A	
			HTH		4.00 *		4.00 *
				2,092,781 N		2,206,116 N	
4.		HTH131 - EPIDEMIOLOGY SERVICES					
		OPERATING	HTH		13.00 *		13.00 *
			HTH	2,478,472 A		2,317,357 A	
			HTH		1.00 *		1.00 *
				272,311 N		273,453 N	
5.		HTH141 - DENTAL DISEASES					
		OPERATING	HTH		38.60 *		38.60 *
				1,274,939 A		1,323,649 A	
6.		HTH151 - PREVENTIVE HEALTH SERVICES					
		OPERATING	HTH		6.00 *		6.00 *
			HTH	1,432,768 A		1,498,546 A	
				284,871 N		295,161 N	
7.		HTH160 - NUTRITION					
		OPERATING	HTH		7.00 *		7.00 *
			HTH	362,807 A		387,812 A	
			HTH		18.00 *		18.00 *
				13,012,574 N		13,678,787 N	
8.		HTH180 - HEALTH EDUCATION & INJURY PREVENTION					
		OPERATING	HTH		27.00 *		27.00 *
			HTH	1,601,685 A		1,547,075 A	
				433,909 N		459,891 N	
9.		HTH195 - HPDP ADMINISTRATION					
		OPERATING	HTH		14.00 *		14.00 *
			HTH	682,649 A		680,185 A	
				63,011 N		66,723 N	
10.		HTH211 - HILO HOSPITAL					
		OPERATING	HTH		722.00 *		766.00 *
				42,066,000 B		47,120,000 B	
11.		HTH212 - HONOKAA HOSPITAL					
		OPERATING	HTH		788,033 A		338,683 A
			HTH		50.00 *		50.00 *
		INVESTMENT CAPITAL	AGS	2,732,179 B		3,153,579 B	
				4,812,000 C			C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
12.	HTH213 - KA'U HOSPITAL	OPERATING	HTH	493,180 A		484,459 A	
			HTH	33.00 *		33.00 *	
			HTH	1,422,520 B		1,288,560 B	
13.	HTH214 - KOHALA HOSPITAL	OPERATING	HTH	537,326 A		626,538 A	
			HTH	43.00 *		43.00 *	
			HTH	1,734,620 B		1,675,600 B	
14.	HTH215 - KONA HOSPITAL	OPERATING	HTH	5,198,492 A		5,796,973 A	
			HTH	274.25 *		317.25 *	
		INVESTMENT CAPITAL	HTH	13,175,119 B		13,970,343 B	
			AGS	929,000 C			C
15.	HTH221 - MAUI MEMORIAL HOSPITAL	OPERATING	HTH	639.50 *		639.50 *	
			HTH	42,435,316 B		46,554,065 B	
		INVESTMENT CAPITAL	AGS	799,000 C			C
16.	HTH222 - HANA MEDICAL CENTER	OPERATING	HTH	265,399 A		225,852 A	
			HTH	9.50 *		9.50 *	
		INVESTMENT CAPITAL	HTH	426,688 B		498,148 B	
			AGS	404,000 C			C
17.	HTH223 - KULA HOSPITAL	OPERATING	HTH	1,484,576 A		1,399,023 A	
			HTH	182.00 *		184.00 *	
			HTH	6,852,843 B		8,132,879 B	
18.	HTH224 - LANAI COMMUNITY HOSPITAL	OPERATING	HTH	492,914 A		269,316 A	
			HTH	28.00 *		28.00 *	
			HTH	1,317,318 B		1,647,072 B	
19.	HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL	OPERATING	HTH	3,855,237 A		3,265,318 A	
			HTH	150.50 *		150.50 *	
		INVESTMENT CAPITAL	HTH	5,340,292 B		6,069,041 B	
			AGS	5,000,000 C			C
20.	HTH232 - SAMUEL MAHELONA MEMORIAL HOSPITAL	OPERATING	HTH	2,721,000 A		2,397,010 A	
			HTH	154.50 *		154.50 *	
			HTH	4,075,098 B		4,095,954 B	
21.	HTH241 - MALUHIA HOSPITAL	OPERATING	HTH	2,263,133 A		4,668,006 A	
			HTH	194.00 *		194.00 *	
			HTH	6,437,859 B		6,591,325 B	
		INVESTMENT CAPITAL	HTH	742,037 N		742,037 N	
			AGS	1,248,000 C			C
22.	HTH242 - LEAHI HOSPITAL	OPERATING	HTH	4,118,864 A		4,346,278 A	
			HTH	308.00 *		311.00 *	
			HTH	9,444,905 B		9,446,754 B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
23.	SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES	OPERATING	SUB	5,093,923 A	2,707,230 A
24.	HTH295 - COMMUNITY HOSPITALS ADMINISTRATION	OPERATING	HTH	2,343,164 A	2,477,361 A
			HTH	39.00 *	39.00 *
			HTH	2,639,627 B	2,739,434 B
25.	HTH420 - ADULT MENTAL HEALTH	OPERATING	HTH	885.50 *	984.50 *
			HTH	42,013,095 A	44,149,965 A
		INVESTMENT CAPITAL	AGS	1,034,630 N	1,036,494 N
				5,515,000 C	C
26.	HTH440 - ALCOHOL & DRUG ABUSE	OPERATING	HTH	8.50 *	8.50 *
			HTH	6,270,335 A	6,391,903 A
			HTH	2.00 *	2.00 *
			HTH	2,366,422 N	2,368,871 N
27.	HTH460 - CHILD & ADOLESCENT MENTAL HEALTH	OPERATING	HTH	183.00 *	187.00 *
			HTH	12,272,963 A	12,845,350 A
			HTH	246,979 N	246,979 N
28.	HTH495 - BEHAVIORAL HEALTH SERVICES ADMINISTRATION	OPERATING	HTH	70.00 *	75.00 *
			HTH	5,147,458 A	5,608,298 A
			HTH	2.00 *	2.00 *
			HTH	573,580 N	169,972 N
29.	HTH501 - COMMUNITY SERVICES FOR DEV DIS & MENT RET	OPERATING	HTH	122.25 *	122.25 *
			HTH	14,351,628 A	13,938,701 A
		INVESTMENT CAPITAL	AGS	137,943 B	144,840 B
				180,000 C	C
30.	HTH511 - WAIMANO TRAINING SCHOOL AND HOSPITAL	OPERATING	HTH	402.00 *	402.00 *
			HTH	15,492,825 A	16,312,577 A
			HTH	703,404 B	738,574 B
31.	HTH530 - FAMILY HEALTH SERVICES	OPERATING	HTH	73.25 *	73.25 *
			HTH	18,742,462 A	14,728,400 A
			HTH	49.00 *	49.00 *
			HTH	3,601,951 N	3,681,552 N
32.	HTH540 - SCHOOL HEALTH SERVICES	OPERATING	HTH	365.00 *	365.00 *
			HTH	9,310,988 A	9,558,677 A
			HTH	2.00 *	2.00 *
			HTH	78,003 N	95,638 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
33.	HTH570	COMMUNITY HEALTH NURSING			
	OPERATING		HTH	168.00 *	168.00 *
			HTH	7,119,021 A	7,373,438 A
			HTH	4.00 *	4.00 *
			HTH	51,289 B	51,289 B
			HTH	1.00 *	1.00 *
			HTH	631,001 N	650,651 N
34.	HTH595	PERSONAL HEALTH SERVICES ADMINISTRATION			
	OPERATING		HTH	30.00 *	30.00 *
			HTH	3,103,528 A	3,027,997 A
			HTH	2.00 *	2.00 *
			HTH	100,601 N	105,649 N
35.	HTH610	ENVIRONMENTAL HEALTH SERVICES			
	OPERATING		HTH	199.00 *	199.00 *
			HTH	6,308,422 A	6,561,638 A
			HTH	2.00 *	2.00 *
			HTH	54,134 X	56,745 X
36.	HTH710	STATE LABORATORY SERVICES			
	OPERATING		HTH	87.00 *	87.00 *
	INVESTMENT CAPITAL		AGS	3,777,017 A	3,931,413 A
			AGS	3,500,000 C	C
37.	HTH720	MED FACILITIES - STDS, INSPECTION, LICENSING			
	OPERATING		HTH	18.00 *	18.00 *
			HTH	892,485 A	902,945 A
			HTH	14.00 *	14.00 *
			HTH	944,299 N	991,197 N
38.	HTH730	EMERGENCY MEDICAL SERVICES			
	OPERATING		HTH	16.00 *	16.00 *
			HTH	28,472,304 A	29,809,001 A
			HTH	210,515 N	210,515 N
39.	HTH760	HEALTH STATUS MONITORING			
	OPERATING		HTH	35.00 *	35.00 *
			HTH	1,960,147 A	2,026,072 A
			HTH	113,352 N	113,352 N
40.	HTH770	STATE HEALTH INSURANCE			
	OPERATING		HTH	2.00 *	2.00 *
			HTH	9,636,975 A	10,171,580 A
41.	HTH795	HEALTH RESOURCES ADMINISTRATION			
	OPERATING		HTH	16.00 *	16.00 *
			HTH	1,479,821 A	1,528,461 A
			HTH	2,675 N	2,675 N
42.	HTH906	COMPREHENSIVE HEALTH PLANNING			
	OPERATING		HTH	13.00 *	13.00 *
			HTH	700,218 A	725,637 A
43.	HTH907	GENERAL ADMINISTRATION			
	OPERATING		HTH	122.00 *	122.00 *
			HTH	5,722,289 A	6,299,354 A
			HTH	7.00 *	7.00 *

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		INVESTMENT CAPITAL	HTH AGS	407,850 N 13,162,000 C		409,435 N 2,729,000 C	
F. SOCIAL SERVICES							
1.	HMS301	CHILD WELFARE SERVICES					
		OPERATING	HMS	199.50 * 18,023,259 A 200.00 *		199.50 * 18,074,959 A 200.00 *	
			HMS	7,215,115 N		7,295,523 N	
2.	HMS302	CHILD DAY CARE SERVICES					
		OPERATING	HMS	21.00 * 1,016,862 A		21.00 * 652,753 A	
3.	HMS303	CHILD FOSTER CARE SERVICES					
		OPERATING	HMS HMS	20.00 * 12,848,421 A 931,462 N		20.00 * 12,554,218 A 931,462 N	
4.	HMS601	COMMUNITY LONG TERM CARE SERVICES					
		OPERATING	HMS HMS HMS	66.00 * 12,174,062 A 8,644,516 N 148,886 U		66.00 * 12,456,572 A 8,339,478 N 148,886 U	
5.	HMS501	YOUTH SERVICES ADMINISTRATION					
		OPERATING	HMS	18.00 * 1,402,622 A		18.00 * 1,407,030 A	
		INVESTMENT CAPITAL	AGS	8,325,000 C		C	
6.	HMS502	YOUTH SERVICES PROGRAM					
		OPERATING	HMS HMS	2,662,354 A 685,861 N		1,157,092 A 720,154 N	
7.	HMS503	YOUTH RESIDENTIAL PROGRAMS					
		OPERATING	HMS HMS	78.50 * 4,054,813 A 1,467,633 N		78.50 * 4,099,927 A 1,541,015 N	
8.	DEF112	SERVICES TO VETERANS					
		OPERATING	DEF	19.00 * 1,475,047 A		19.00 * 1,367,682 A	
		INVESTMENT CAPITAL	AGS AGS	2,550,000 C 2,550,000 N		C N	
9.	HMS201	PAYMNTS TO ASSIST FAMILIES WITH DEPDNNT CHLD					
		OPERATING	HMS HMS	45,486,539 A 53,902,549 N		45,484,503 A 53,902,549 N	
10.	HMS202	PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED					
		OPERATING	HMS	14,382,600 A		16,370,232 A	
11.	HMS204	OTHER GENERAL ASSISTANCE PAYMENTS					
		OPERATING	HMS	27,522,967 A		27,522,967 A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
12.	HMS206	OTHER FEDERAL ASSISTANCE PAYMENTS					
		OPERATING	HMS	1,491,331	N	1,491,331	N
13.	HMS220	RENTAL HOUSING AUGMENTATION AND ASSISTANCE					
		OPERATING	HMS	10.00 *		10.00 *	
				3,863,008	A	4,081,882	A
				26.50 *		26.50 *	
			HMS	1,597,587	B	1,648,889	B
				222.00 *		222.00 *	
			HMS	22,497,548	N	23,636,061	N
		INVESTMENT CAPITAL	HMS	9,890,000	C	1,075,000	C
14.	HMS807	TEACHER HOUSING					
		OPERATING	HMS	.50 *		.50 *	
		INVESTMENT CAPITAL	HMS	138,606	B	143,245	B
				349,000	C		C
15.	HMS229	HOUSING ASSISTANCE ADMINISTRATION					
		OPERATING	HMS	8.00 *		8.00 *	
				215,069	B	215,069	B
				31.00 *		31.00 *	
			HMS	1,575,471	N	1,625,228	N
		INVESTMENT CAPITAL	HMS	12,550,000	C		C
16.	BUF225	PRIVATE HOUSING DEVELOPMENT & OWNERSHIP					
		OPERATING	BUF	200,000	A		A
				19.00 *		19.00 *	
			BUF	2,968,462	B	3,160,919	B
		INVESTMENT CAPITAL	BUF	9,511,000	C		C
17.	BUF223	BROADENED HOMESITE OWNERSHIP					
		OPERATING	BUF	1.00 *		1.00 *	
				197,558	A	211,247	A
				2.00 *		2.00 *	
			BUF	274,496	B	273,586	B
18.	BUF227	HOUSING FINANCE PROGRAM					
		OPERATING	BUF	6,000,000	A		A
				8.00 *		8.00 *	
			BUF	977,558	B	1,006,737	B
19.	BUF229	HOUSING FINANCE & DEVELOPMENT ADMINISTRATION					
		OPERATING	BUF	1,000,000	A		A
				21.00 *		21.00 *	
			BUF	1,714,026	B	1,746,222	B
20.	HMS230	HEALTH CARE PAYMENTS					
		OPERATING	HMS	130,295,542	A	130,608,048	A
			HMS	118,209,610	N	110,177,691	N
			HMS	7,016,691	U	7,256,905	U
21.	HMS236	ELIGIBILITY DETERMINATION					
		OPERATING	HMS	330.57 *		330.57 *	
				11,428,122	A	12,296,837	A
				249.93 *		249.93 *	
			HMS	12,543,695	N	13,326,039	N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
22.	HMS238	- DISABILITY DETERMINATION			
	OPERATING		HMS	31.00 * 2,686,220N	31.00 * 2,815,650N
23.	ATG500	- CHILD SUPPORT ENFORCEMENT SERVICES			
	OPERATING		ATG	45.77 * 1,628,169A	45.77 * 1,643,092A
			ATG	64.23 * 5,209,647N	64.23 * 5,390,886N
24.	HMS701	- JOBS PROGRAM			
	OPERATING		HMS	43.00 * 7,655,820A	43.00 * 8,868,272A
			HMS	37.00 * 3,480,586N	37.00 * 3,304,923N
25.	HMS702	- FOOD STAMP EMPLOYMENT & TRAINING			
	OPERATING		HMS	2.25 * 794,047A	2.25 * 802,527A
			HMS	.50 * 749,492N	.50 * 752,899N
26.	HMS703	- GENERAL ASSISTANCE WORK PROGRAM			
	OPERATING		HMS	.90 * 35,550A	.90 * 37,876A
			HMS	.35 * N	.35 * N
27.	HHL602	- PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS			
	OPERATING		HHL	102.00 * 4,278,706A	102.00 * 4,104,734A
	INVESTMENT CAPITAL		HHL	13,185,000C	14,480,000C
28.	GOV861	- PLAN, PRGM DEV & COORD OF SVCS FOR CHD & YTH			
	OPERATING		GOV	11.00 * 4,335,187A	11.00 * 5,351,919A
			GOV	734,278N	482,867N
29.	GOV602	- ELDERLY			
	OPERATING		GOV	8.90 * 8,044,310A	8.90 * 6,646,274A
			GOV	9.10 * 4,918,051N	9.10 * 4,935,003N
30.	HTH520	- PLAN, PROG DEV & COORD OF SVS FOR HANDCPPD			
	OPERATING		HTH	6.00 * 720,968A	6.00 * 745,834A
			HTH	63,787N	63,787N
31.	HMS902	- GENERAL SUPPORT FOR HEALTH CARE PAYMENTS			
	OPERATING		HMS	20.39 * 2,424,668A	20.39 * 2,435,322A
			HMS	24.61 * 2,642,848N	24.61 * 2,605,118N
32.	HMS903	- GENERAL SUPPORT FOR PUBLIC WELFARE			

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		OPERATING	HMS	43.20 *		43.20 *	
			HMS	6,366,888 A		6,389,518 A	
			HMS	47.80 *		47.80 *	
			HMS	6,177,907 N		6,339,917 N	
33.	HMS904	GENERAL ADMINISTRATION (DSSH)		182.66 *		182.66 *	
		OPERATING	HMS	12,315,824 A		12,671,324 A	
			HMS	21.34 *		21.34 *	
		INVESTMENT CAPITAL	AGS	733,345 N		723,491 N	
			AGS	220,000 C			C
G. FORMAL EDUCATION							
1.	EDN105	REGULAR INSTRUCTION PROGRAM		7,154.00 *		7,257.00 *	
		OPERATING	EDN	249,213,553 A		260,533,243 A	
			EDN	18,430,000 N		18,485,000 N	
		INVESTMENT CAPITAL	AGS	81,700,000 B		80,700,000 B	
			AGS	8,329,000 C			C
2.	EDN106	OTHER REGULAR INSTRUCTION		869.50 *		871.50 *	
		OPERATING	EDN	71,467,664 A		73,192,379 A	
			EDN	3,443,193 B		3,483,736 B	
			EDN	3,198,248 N		3,327,280 N	
3.	EDN107	SPECIAL EDUCATION		1,417.50 *		1,417.50 *	
		OPERATING	EDN	45,647,786 A		47,150,772 A	
			EDN	30,000 B		30,000 B	
		INVESTMENT CAPITAL	EDN	7,631,606 N		7,784,537 N	
			AGS	8,300,000 B		9,300,000 B	
4.	EDN108	COMPENSATORY EDUCATION		183.50 *		183.50 *	
		OPERATING	EDN	9,952,558 A		10,040,256 A	
			EDN	16,097,039 N		17,321,616 N	
5.	EDN203	SCHOOL ADMINISTRATION		985.50 *		985.50 *	
		OPERATING	EDN	38,740,406 A		40,223,381 A	
		INVESTMENT CAPITAL	AGS	2,431,000 C			C
6.	EDN204	INSTRUCTIONAL MEDIA		308.50 *		308.50 *	
		OPERATING	EDN	12,694,121 A		13,031,128 A	
		INVESTMENT CAPITAL	AGS	800,000 C			C
7.	EDN205	INSTRUCTIONAL DEVELOPMENT		115.00 *		115.00 *	
		OPERATING	EDN	10,234,510 A		10,587,678 A	
			EDN	1,418,421 N		1,482,190 N	
8.	EDN206	COUNSELING		400.00 *		400.00 *	
		OPERATING	EDN	15,475,471 A		16,080,114 A	
9.	EDN207	STUDENT ACTIVITIES					

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		OPERATING	EDN	72.00 *		72.00 *	
				7,199,352 A		7,367,824 A	
10.	EDN208	- PSYCHOLOGICAL & SCHOOL SOCIAL WORK SERVICES					
		OPERATING	EDN	259.00 *		259.00 *	
				12,614,023 A		13,272,695 A	
11.	EDN303	- STATE ADMINISTRATION					
		OPERATING	EDN	286.00 *		286.00 *	
			EDN	24,835,291 A		24,576,305 A	
			EDN	1,067,426 N		1,088,731 N	
12.	EDN304	- DISTRICT ADMINISTRATION					
		OPERATING	EDN	266.50 *		266.50 *	
				12,648,414 A		12,975,091 A	
13.	EDN305	- SCHOOL FOOD SERVICES					
		OPERATING	EDN	230.00 *		232.00 *	
				21,184,169 A		23,119,751 A	
			EDN	720.50 *		720.50 *	
			EDN	12,445,232 B		12,617,252 B	
			EDN	17,575,278 N		17,957,327 N	
		INVESTMENT CAPITAL	AGS	340,000 C			C
14.	EDN306	- SAFETY AND SECURITY SERVICES					
		OPERATING	EDN	156.00 *		156.00 *	
				4,457,722 A		4,507,524 A	
15.	EDN307	- PHYSICAL PLANT OPERATIONS & MAINTENANCE					
		OPERATING	EDN	1,081.60 *		1,083.10 *	
				41,319,203 A		41,753,595 A	
16.	AGS807	- PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS					
		OPERATING	AGS	273.00 *		273.00 *	
				46,630,299 A		46,518,102 A	
17.	AGS808	- STUDENT TRANSPORTATION					
		OPERATING	AGS	11.00 *		11.00 *	
				23,041,398 A		24,449,249 A	
18.	EDN405	- AFTER SCHOOL A+ PROGRAM					
		OPERATING	EDN				
				15,668,860 A		15,668,860 A	
19.	EDN406	- ADULT EDUCATION					
		OPERATING	EDN	35.00 *		35.00 *	
			EDN	7,216,852 A		7,453,514 A	
			EDN	417,175 B		434,196 B	
			EDN	804,729 N		850,441 N	
20.	EDN407	- PUBLIC LIBRARIES					
		OPERATING	EDN	597.05 *		597.05 *	
			EDN	22,640,877 A		22,628,627 A	
			EDN	350,000 B		350,000 B	
			EDN	624,520 N		624,520 N	
		INVESTMENT CAPITAL	AGS	7,531,000 C		550,000 C	
21.	UOH101	- INSTRUCTION - UOH, MANOA					

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
		OPERATING	UOH	1,712.62 * 97,297,575 A 3.00 *	1,714.62 * 104,093,387 A 3.00 *
			UOH	5,179,814 B	5,320,832 B
		INVESTMENT CAPITAL	UOH	277,785 N	277,785 N
			AGS	36,958,000 C	11,404,000 C
			AGS	8,888,000 N	5,000,000 N
22.	UOH102	- ORGANIZED RESEARCH - UOH, MANOA			
		OPERATING	UOH	632.31 * 37,436,055 A 5.00 *	634.31 * 39,845,879 A 6.00 *
			UOH	514,996 B 34.42 *	567,046 B 34.42 *
			UOH	1,901,195 N	1,938,931 N
		INVESTMENT CAPITAL	UOH	6,808,474 W	7,493,599 W
			AGS	3,399,000 C	C
			UOH	252,000 C	C
23.	UOH103	- PUBLIC SERVICE - UOH, MANOA			
		OPERATING	UOH	108.41 * 6,906,904 A 11.00 *	108.41 * 6,952,155 A 11.00 *
			UOH	3,169,328 B 43.64 *	3,272,534 B 43.64 *
			UOH	2,059,900 N	2,108,118 N
			UOH	337,970 W	364,921 W
24.	UOH104	- ACADEMIC SUPPORT - UOH, MANOA			
		OPERATING	UOH	383.00 * 22,993,990 A 13.50 *	384.00 * 24,479,288 A 13.50 *
			UOH	1,802,469 B 6.00 *	1,865,741 B 6.00 *
		INVESTMENT CAPITAL	UOH	3,655,080 W	4,024,198 W
			AGS	1,535,000 B	B
			AGS	220,000 C	C
25.	UOH105	- STUDENT SERVICES - UOH, MANOA			
		OPERATING	UOH	268.25 * 11,835,743 A .25 *	268.75 * 12,394,103 A .25 *
			UOH	373,508 B	391,617 B
			UOH	770,000 N	770,000 N
			UOH	95.25 *	95.25 *
		INVESTMENT CAPITAL	UOH	19,590,171 W	20,497,070 W
			AGS	36,510,000 C	177,000 C
26.	UOH106	- INSTITUTIONAL SUPPORT - UOH, MANOA			
		OPERATING	UOH	406.00 * 36,420,097 A 12.50 *	419.00 * 37,088,517 A 12.50 *
			UOH	3,305,849 B 15.50 *	3,319,092 B 15.50 *
		INVESTMENT CAPITAL	UOH	3,878,075 W	3,803,025 W
			AGS	10,259,000 C	968,000 C
			AGS	2,348,000 R	245,000 R
			UOH	4,380,000 C	748,000 C
			UOH	12,000,000 E	E
			UOH	3,189,000 R	R

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
27.	UOH211	INSTRUCTION - UOH, HILO					
		OPERATING	UOH	161.00 *		162.00 *	
			UOH	10,839,778 A		11,775,429 A	
			UOH	498,883 B		503,693 B	
			UOH	165,926W		180,834W	
28.	UOH213	PUBLIC SERVICE - UOH, HILO					
		OPERATING	UOH	81,663 A		88,010 A	
			UOH	10.00 *		10.00 *	
			UOH	1,099,869 B		1,207,928 B	
29.	UOH214	ACADEMIC SUPPORT - UOH, HILO					
		OPERATING	UOH	46.00 *		48.00 *	
			UOH	2,916,328 A		3,244,296 A	
			UOH	5.00 *		5.00 *	
			UOH	313,859 B		324,032 B	
30.	UOH215	STUDENT SERVICES - UOH, HILO					
		OPERATING	UOH	32.50 *		32.50 *	
			UOH	1,875,212 A		2,057,113 A	
			UOH	394,543 N		394,543 N	
			UOH	6.00 *		6.00 *	
		INVESTMENT CAPITAL	AGS	2,477,400W		2,593,957W	
			AGS	185,000 C		C	
31.	UOH216	INSTITUTIONAL SUPPORT - UOH, HILO					
		OPERATING	UOH	56.00 *		56.00 *	
			UOH	5,080,101 A		5,204,823 A	
			UOH	113,696 B		118,418 B	
			UOH	19,557W		20,535W	
		INVESTMENT CAPITAL	AGS	2,182,000 C		C	
32.	UOH301	INSTRUCTION - HONOLULU COMMUNITY COLLEGE					
		OPERATING	UOH	155.00 *		155.00 *	
			UOH	7,778,980 A		7,926,490 A	
			UOH	180,828 N		180,828 N	
			UOH	2.00 *		2.00 *	
		INVESTMENT CAPITAL	AGS	395,382W		412,223W	
			AGS	784,000 C		C	
33.	UOH302	PUBLIC SERVICE- HONOLULU COMMUNITY COLLEGE					
		OPERATING	UOH	17.00 *		17.00 *	
			UOH	1,452,018 A		1,534,744 A	
			UOH	4.00 *		4.00 *	
			UOH	1,570,811 B		1,582,299 B	
34.	UOH303	ACADEMIC SUPPORT- HONOLULU COMMUNITY COLLEGE					
		OPERATING	UOH	33.00 *		33.00 *	
			UOH	1,257,833 A		1,315,182 A	
			UOH	62,915 B		65,811 B	
35.	UOH304	STUDENT SERVICES- HONOLULU COMMUNITY COLLEGE					
		OPERATING	UOH	29.00 *		29.00 *	
			UOH	997,593 A		1,054,061 A	
			UOH	111,000 N		111,000 N	
			UOH	114,592W		119,868W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
36.	UOH305	INSTITUTIONAL SUPPORT - HONOLULU CC					
		OPERATING	UOH	48.00 *		48.00 *	
			UOH	2,223,326 A		2,229,161 A	
			UOH	62,750 B		65,888 B	
			UOH	133,381 W		140,050 W	
37.	UOH311	INSTRUCTION -KAPIOLANI COMMUNITY COLLEGE					
		OPERATING	UOH	171.60 *		171.60 *	
			UOH	9,098,469 A		9,661,274 A	
			UOH	88,562 N		88,562 N	
			UOH	6.00 *		6.00 *	
		INVESTMENT CAPITAL	AGS	699,835 W		727,383 W	
				17,937,000 C		C	
38.	UOH312	PUBLIC SERVICE-KAPIOLANI COMMUNITY COLLEGE					
		OPERATING	UOH	5.00 *		5.00 *	
			UOH	308,385 A		318,903 A	
			UOH	16.00 *		16.00 *	
			UOH	2,076,994 B		2,136,177 B	
39.	UOH313	ACADEMIC SUPPORT-KAPIOLANI COMMUNITY COLLEGE					
		OPERATING	UOH	37.00 *		37.00 *	
			UOH	1,768,532 A		1,850,499 A	
			UOH	60,000 B		60,000 B	
40.	UOH314	STUDENT SERVICES-KAPIOLANI COMMUNITY COLLEGE					
		OPERATING	UOH	30.00 *		30.00 *	
			UOH	1,110,041 A		1,180,360 A	
			UOH	91,020 N		91,020 N	
			UOH	158,854 W		161,944 W	
41.	UOH315	INSTITUTIONAL SUPPORT - KAPIOLANI CC					
		OPERATING	UOH	51.00 *		51.00 *	
			UOH	2,393,014 A		2,467,700 A	
			UOH	21,246 B		22,308 B	
			UOH	117,738 W		123,625 W	
42.	UOH321	INSTRUCTION-LEEWARD COMMUNITY COLLEGE					
		OPERATING	UOH	164.50 *		166.50 *	
			UOH	7,958,872 A		8,508,242 A	
			UOH	54,561 N		54,561 N	
			UOH	1.00 *		1.00 *	
			UOH	247,183 W		256,528 W	
43.	UOH322	PUBLIC SERVICE-LEEWARD COMMUNITY COLLEGE					
		OPERATING	UOH	6.00 *		6.00 *	
			UOH	227,888 A		237,179 A	
			UOH	10.00 *		10.00 *	
			UOH	1,609,734 B		1,634,947 B	
44.	UOH323	ACADEMIC SUPPORT-LEEWARD COMMUNITY COLLEGE					

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		OPERATING	UOH UOH	25.00 * 1,114,974 A 60,000 B		25.00 * 1,165,044 A 60,000 B	
45.	UOH324	STUDENT SERVICES-LBEWARD COMMUNITY COLLEGE					
		OPERATING	UOH UOH UOH UOH	36.00 * 1,395,364 A 52,690 B 125,000 N 106,009 W		36.00 * 1,463,357 A 53,851 B 125,000 N 109,644 W	
46.	UOH325	INSTITUTIONAL SUPPORT - LEEWARD CC					
		OPERATING	UOH	52.00 * 2,684,168 A		52.00 * 2,668,724 A	
47.	UOH331	INSTRUCTION-WINDWARD COMMUNITY COLLEGE					
		OPERATING	UOH UOH	50.00 * 2,193,208 A 16,987 W		50.00 * 2,372,001 A 17,836 W	
		INVESTMENT CAPITAL	AGS	310,000 C		12,258,000 C	
48.	UOH332	PUBLIC SERVICE-WINDWARD COMMUNITY COLLEGE					
		OPERATING	UOH UOH	3.00 * 140,593 A 343,853 B		3.00 * 146,156 A 446,432 B	
49.	UOH333	ACADEMIC SUPPORT-WINDWARD COMMUNITY COLLEGE					
		OPERATING	UOH UOH	14.00 * 680,246 A 10,000 B		14.00 * 714,088 A 10,000 B	
50.	UOH334	STUDENT SERVICES-WINDWARD COMMUNITY COLLEGE					
		OPERATING	UOH UOH UOH	13.00 * 495,792 A 19,907 N 31,380 W		13.00 * 518,411 A 19,907 N 32,949 W	
51.	UOH335	INSTITUTIONAL SUPPORT - WINDWARD CC					
		OPERATING	UOH UOH	17.00 * 899,578 A 66,284 W		17.00 * 924,919 A 69,598 W	
52.	UOH401	INSTRUCTION - HAWAII CC					
		OPERATING	UOH UOH UOH	88.50 * 3,630,807 A 95,028 N 132,230 W		88.50 * 3,630,807 A 95,028 N 132,230 W	
53.	UOH402	PUBLIC SERVICE - HAWAII CC					
		OPERATING	UOH	2.00 * 136,608 A		2.00 * 121,608 A	
54.	UOH403	ACADEMIC SUPPORT - HAWAII CC					
				3.00 *		3.00 *	

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 1991-92	M O F FISCAL YEAR 1992-93
		OPERATING	UOH	81,320 A	81,320 A
55.	UOH404	STUDENT SERVICES - HAWAII CC		6.00 *	6.00 *
		OPERATING	UOH	181,649 A	181,649 A
56.	UOH405	INSTITUTIONAL SUPPORT - HAWAII CC		2.00 *	2.00 *
		OPERATING	UOH	90,366 A	90,366 A
57.	UOH501	INSTRUCTION-MAUI COMMUNITY COLLEGE		83.00 *	83.00 *
		OPERATING	UOH	4,238,847 A	4,496,223 A
			UOH	26,090 N	26,090 N
				1.00 *	1.00 *
		INVESTMENT CAPITAL	UOH AGS	347,521 W C	358,375 W C
					14,054,000 C
58.	UOH502	PUBLIC SERVICE-MAUI COMMUNITY COLLEGE		4.50 *	4.50 *
		OPERATING	UOH	266,625 A	287,427 A
				6.50 *	6.50 *
			UOH	1,119,131 B	1,137,757 B
59.	UOH503	ACADEMIC SUPPORT-MAUI COMMUNITY COLLEGE		20.00 *	20.00 *
		OPERATING	UOH	876,721 A	917,901 A
			UOH	25,000 B	25,000 B
60.	UOH504	STUDENT SERVICES-MAUI COMMUNITY COLLEGE		13.00 *	13.00 *
		OPERATING	UOH	530,975 A	552,511 A
			UOH	46,356 B	53,960 B
			UOH	88,000 N	88,000 N
				2.00 *	2.00 *
			UOH	261,410 W	261,730 W
61.	UOH505	INSTITUTIONAL SUPPORT-MAUI COMMUNITY COLLEGE		27.00 *	27.00 *
		OPERATING	UOH	1,482,451 A	1,509,892 A
62.	UOH601	INSTRUCTION-KAUAI COMMUNITY COLLEGE		66.00 *	66.00 *
		OPERATING	UOH	2,751,010 A	2,941,009 A
			UOH	1,735 N	1,735 N
				1.00 *	1.00 *
			UOH	127,939 W	133,581 W
63.	UOH602	PUBLIC SERVICE - KAUAI COMMUNITY COLLEGE		5.00 *	5.00 *
		OPERATING	UOH	170,404 A	176,140 A
			UOH	294,416 B	300,662 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
64.	UOH603	ACADEMIC SUPPORT-KAUAI COMMUNITY COLLEGE		21.00 *	21.00 *
	OPERATING		UOH	808,262 A	847,247 A
			UOH	25,000 B	25,000 B
65.	UOH604	STUDENT SERVICES-KAUAI COMMUNITY COLLEGE		13.00 *	13.00 *
	OPERATING		UOH	463,791 A	481,867 A
			UOH	36,000 N	36,000 N
			UOH	4,272 W	4,486 W
66.	UOH605	INSTITUTIONAL SUPPORT - KAUAI CC		29.00 *	29.00 *
	OPERATING		UOH	1,819,179 A	1,839,684 A
			UOH	30,811 B	32,213 B
67.	UOH701	INSTRUCTION-UOH AT WEST OAHU		20.00 *	20.00 *
	OPERATING		UOH	987,347 A	1,127,635 A
			UOH	54,970 B	56,283 B
68.	UOH703	PUBLIC SERVICE - UOH AT WEST OAHU			
	OPERATING				
69.	UOH704	ACADEMIC SUPPORT-UOH AT WEST OAHU		4.50 *	4.50 *
	OPERATING		UOH	249,677 A	251,307 A
70.	UOH705	STUDENT SERVICES-UOH AT WEST OAHU		5.00 *	5.00 *
	OPERATING		UOH	259,100 A	272,782 A
71.	UOH706	INSTITUTIONAL SUPPORT-UOH AT WEST OAHU		4.00 *	4.00 *
	OPERATING		UOH	375,350 A	386,004 A
72.	UOH901	ACADEMIC SUPPORT-UOH, SYSTEM-WIDE SUPPORT		46.50 *	46.50 *
	OPERATING		UOH	6,204,462 A	6,485,448 A
			UOH	652,316 B	682,433 B
	INVESTMENT CAPITAL		UOH	900,000 C	C
73.	UOH902	STUDENT SERVICES-UOH, SYSTEM-WIDE SUPPORT			
	OPERATING		UOH	639,541 A	671,237 A
74.	UOH903	INSTITUTIONAL SPPT-UOH, SYSTEM-WIDE SPPT		254.00 *	254.00 *
	OPERATING		UOH	13,187,265 A	13,863,877 A
			UOH	4.20 *	4.20 *
			UOH	339,059 B	386,191 B
			UOH	77.00 *	77.00 *
	INVESTMENT CAPITAL		AGS	22,168,601 W	23,578,070 W
				1,000,000 C	C

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
75.	UOH904	- VOCATIONAL EDUCATION, STATEWIDE COORDINATION					
		OPERATING	UOH	7.00 *		7.00 *	
				303,083 A		319,157 A	
			UOH	4.00 *		4.00 *	
				423,443 N		443,726 N	
76.	UOH905	- STATEWIDE PLAN & COORD FOR POST-SECONDARY ED					
		OPERATING	UOH				
				1,489,423 A		1,563,895 A	
77.	UOH906	- COMMUNITY COLLEGE SYSTEM-WIDE SUPPORT					
		OPERATING	UOH	84.15 *		84.15 *	
				12,131,797 A		12,593,312 A	
			UOH	10.00 *		10.00 *	
				1,025,749 B		1,043,836 B	
			UOH	19.60 *		19.60 *	
				2,032,133 N		2,062,520 N	
		INVESTMENT CAPITAL	UOH	266,060 W		278,549 W	
			AGS	150,000 C		C	
H. CULTURE AND RECREATION							
1.	UOH881	- AQUARIA					
		OPERATING	UOH	13.00 *		13.00 *	
				728,051 A		778,806 A	
		INVESTMENT CAPITAL	AGS	800,000 B		840,000 B	
				610,000 C		490,000 C	
2.	CCA701	- HAWAII PUBLIC BROADCASTING					
		OPERATING	CCA	46.00 *		46.00 *	
				2,744,425 A		2,558,978 A	
		INVESTMENT CAPITAL	CCA	1,629,923 W		1,701,916 W	
			AGS	1,543,000 C		550,000 C	
3.	AGS881	- PERFORMING & VISUAL ARTS EVENTS					
		OPERATING	AGS	17.00 *		18.00 *	
				10,000,673 A		5,718,799 A	
			AGS	1.00 *		1.00 *	
				698,495 B		727,527 B	
			AGS	553,310 N		531,231 N	
			AGS	15,000 R		15,000 R	
4.	AGS818	- ETHNIC GROUP PRESENTATIONS					
		OPERATING	AGS	1.00 *		1.00 *	
				102,869 A		106,492 A	
			AGS	7,760 B		8,148 B	
5.	LNR802	- HISTORIC PRESERVATION					
		OPERATING	LNR	16.00 *		16.00 *	
				1,624,856 A		1,243,182 A	
			LNR	158,000 B		75,000 B	
			LNR	361,403 N		371,736 N	
		INVESTMENT CAPITAL	LNR	375,000 C		C	
6.	LNR804	- FOREST RECREATION					
		OPERATING	LNR	47.00 *		47.00 *	
				2,059,463 A		2,245,125 A	

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
			LNR	567,615 N	580,506 N
		INVESTMENT CAPITAL	LNR	825,000 C	C
7.	LNR805	- RECREATIONAL FISHERIES			
				8.00 *	8.00 *
		OPERATING	LNR	291,439 A	247,704 A
			LNR	502,074 N	404,710 N
8.	LNR806	- HERITAGE & RECREATION PARKS			
				143.00 *	143.00 *
		OPERATING	LNR	7,288,886 A	6,982,332 A
		INVESTMENT CAPITAL	LNR	8,680,000 C	2,600,000 C
9.	TRN801	- OCEAN-BASED RECREATION			
				54.00 *	54.00 *
		OPERATING	TRN	8,172,520 B	8,769,149 B
		INVESTMENT CAPITAL	TRN	1,612,000 C	75,000 C
			TRN	7,085,000 D	1,405,000 D
10.	AGS889	- SPECTATOR EVENTS & SHOWS - ALOHA STADIUM			
				38.00 *	38.00 *
		OPERATING	AGS	4,638,684 B	4,752,829 B
		INVESTMENT CAPITAL	AGS	21,160,000 C	C
11.	LNR809	- GENERAL ADMIN FOR CULTURE & RECREATION			
				15.00 *	15.00 *
		OPERATING	LNR	746,180 A	637,774 A
			LNR	271,620 N	285,201 N
I. PUBLIC SAFETY					
1.	PSD402	- HALAWA CORRECTIONAL FACILITY			
				459.00 *	459.00 *
		OPERATING	PSD	18,839,576 A	19,232,487 A
		INVESTMENT CAPITAL	AGS	3,445,000 C	C
2.	PSD403	- KULANI CORRECTIONAL FACILITY			
				92.83 *	92.83 *
		OPERATING	PSD	4,168,171 A	4,142,582 A
		INVESTMENT CAPITAL	AGS	575,000 C	2,550,000 C
3.	PSD404	- WAIAWA CORRECTIONAL FACILITY			
				76.00 *	76.00 *
		OPERATING	PSD	3,376,864 A	3,370,485 A
		INVESTMENT CAPITAL	AGS	2,450,000 C	C
4.	PSD405	- HAWAII COMMUNITY CORRECTIONAL CENTER			
				69.50 *	69.50 *
		OPERATING	PSD	2,573,896 A	2,697,829 A
		INVESTMENT CAPITAL	AGS	650,000 C	250,000 C
5.	PSD406	- MAUI COMMUNITY CORRECTIONAL CENTER			
				77.00 *	77.00 *
		OPERATING	PSD	2,572,110 A	2,617,725 A
		INVESTMENT CAPITAL	AGS	1,550,000 C	C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
6.	PSD407	OAHU COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	562.10 *		565.10 *	
		INVESTMENT CAPITAL	AGS	22,736,198 A		23,314,028 A	
				475,000 C			C
7.	PSD408	KAUAI COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	48.50 *		48.50 *	
		INVESTMENT CAPITAL	AGS	1,847,762 A		1,915,792 A	
				3,066,000 C			C
8.	PSD409	WOMEN'S COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	89.00 *		89.00 *	
				4,306,022 A		4,204,991 A	
9.	PSD410	INTAKE SERVICE CENTERS					
		OPERATING	PSD	40.00 *		40.00 *	
				1,653,285 A		1,730,118 A	
10.	PSD501	PROTECTIVE SERVICES					
		OPERATING	PSD	52.00 *		52.00 *	
				1,334,979 A		1,290,977 A	
11.	PSD502	NARCOTICS ENFORCEMENT					
		OPERATING	PSD	12.00 *		12.00 *	
				489,686 A		514,127 A	
12.	PSD503	SPECIAL SERVICES					
		OPERATING	PSD	152.00 *		153.00 *	
				3,865,430 A		3,823,217 A	
13.	PSD801	HARBOR PATROL SERVICES					
		OPERATING	PSD	24.00 *		24.00 *	
				551,924 A		531,924 A	
			PSD	46.00 *		46.00 *	
				1,507,363 U		1,513,616 U	
14.	PSD411	ADULT PAROLE DETERMINATIONS					
		OPERATING	PSD	2.00 *		2.00 *	
				210,585 A		209,284 A	
15.	PSD413	ADULT PAROLE SUPERVISION & COUNSELING					
		OPERATING	PSD	40.00 *		40.00 *	
				1,191,749 A		1,224,351 A	
16.	PSD414	CRIMINAL INJURIES COMPENSATION					
		OPERATING	PSD	6.00 *		6.00 *	
				231,760 A		252,184 A	
17.	PSD900	GENERAL ADMINISTRATION					
		OPERATING	PSD	190.00 *		194.00 *	
			PSD	16,027,586 A		14,918,863 A	
		INVESTMENT CAPITAL	AGS	712,090 X		776,167 X	
				3,801,000 C			C
18.	ATG231	STATE CRIMINAL JUSTICE INFO & IDENTIFICATION					

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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93	
				37.00 *	37.00 *	
		OPERATING	ATG	1,940,279 A	2,132,961 A	
19.	LNR810	- PREVENTION OF NATURAL DISASTERS				
		OPERATING	LNR	6.00 *	6.00 *	
				316,194 A	332,516 A	
20.	DEF110	- AMELIORATION OF PHYSICAL DISASTERS				
		OPERATING	DEF	149.30 *	150.05 *	
				8,642,137 A	8,631,522 A	
			DEF	9.20 *	11.45 *	
		INVESTMENT CAPITAL	AGS	1,821,913 N	1,903,315 N	
			AGS	1,580,000 C	500,000 C	
			AGS	130,000 N	100,000 N	
J. INDIVIDUAL RIGHTS						
1.	AGR810	- TESTING & CERTIFICATION OF CONSUMER GOODS				
		OPERATING	AGR	26.25 *	26.25 *	
				831,924 A	799,036 A	
			AGR	26.25 *	26.25 *	
				1,159,000 N	1,170,835 N	
2.	CCA102	- CABLE TELEVISION				
		OPERATING	CCA	4.00 *	4.00 *	
				336,613 X	375,765 X	
3.	CCA103	- CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC				
		OPERATING	CCA	19.00 *	19.00 *	
				1,319,969 A	1,341,365 A	
4.	CCA104	- FINANCIAL INSTITUTION SERVICES				
		OPERATING	CCA	31.00 *	31.00 *	
				1,324,825 A	1,393,817 A	
5.	CCA105	- PROFESSIONAL, VOCATIONAL & PERSONAL SVCS				
		OPERATING	CCA	54.00 *	54.00 *	
				2,459,517 A	2,526,812 A	
6.	BUF901	- TRANSPORTATION, COMMUNICATIONS, & UTILITIES				
		OPERATING	BUF	42.00 *	42.00 *	
				2,069,824 A	2,205,247 A	
7.	CCA106	- INSURANCE SERVICES				
		OPERATING	CCA	37.00 *	37.00 *	
				1,979,087 A	2,011,018 A	
8.	CCA110	- OFFC OF CONSUMER PROT - ADV & TERMS OF SALE				
		OPERATING	CCA	29.00 *	29.00 *	
				1,181,818 A	1,255,579 A	
9.	AGR812	- MEASUREMENT STANDARDS				
		OPERATING	AGR	28.00 *	28.00 *	
				1,426,078 A	1,067,168 A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		INVESTMENT CAPITAL	AGR	40,000	C		C
10.	CCA111	- BUSINESS REGISTRATION					
		OPERATING	CCA	32.00 *		32.00 *	
			CCA	1,041,040	A	1,065,370	A
			CCA	14.00 *		14.00 *	
				679,996	B	686,169	B
11.	CCA191	- GENERAL SUPPORT-PROTECTION OF THE CONSUMER					
		OPERATING	CCA	59.00 *		59.00 *	
			CCA	2,824,343	A	2,747,774	A
			CCA	2,120,118	B	2,165,929	B
12.	BUF151	- LEGAL ASSISTANCE IN CRIMINAL ACTIONS					
		OPERATING	BUF	87.00 *		87.00 *	
				6,276,956	A	6,327,868	A
13.	LNR111	- CONVEYANCES AND RECORDINGS					
		OPERATING	LNR	57.00 *		57.00 *	
				2,712,346	A	2,169,318	A
14.	HMS888	- COMMISSION ON THE STATUS OF WOMEN					
		OPERATING	HMS	2.00 *		2.00 *	
				147,558	A	162,964	A

K. GOVERNMENT-WIDE SUPPORT

1.	GOV100	- OFFICE OF THE GOVERNOR					
		OPERATING	GOV	56.00 *		56.00 *	
		INVESTMENT CAPITAL	GOV	4,205,227	A	4,391,235	A
				3,000,000	C		C
2.	LTG100	- OFFICE OF THE LIEUTENANT GOVERNOR					
		OPERATING	LTG	21.00 *		21.00 *	
				3,142,023	A	4,919,598	A
3.	GOV102	- GOV - OTH POLICY DEVELOPMENT & COORDINATION					
		OPERATING	GOV	10.00 *		10.00 *	
				7,510,374	A	7,620,925	A
4.	GOV103	- STATEWIDE PLAN AND COORDINATION					
		OPERATING	GOV	47.00 *		48.00 *	
				4,352,941	A	3,899,645	A
			GOV	5.00 *		4.00 *	
		INVESTMENT CAPITAL	BED	784,992	N	791,000	N
				5,398,000	C	3,265,000	C
5.	BED103	- LAND USE AND COASTAL MANAGEMENT					
		OPERATING	BED	6.00 *		6.00 *	
				442,213	A	460,706	A
6.	BED104	- HAWAII COMMUNITY DEVELOPMENT AUTHORITY					
		OPERATING	BED	5.00 *		5.00 *	
				259,689	A	270,395	A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 1991-92	FISCAL YEAR 1992-93
		INVESTMENT CAPITAL	BED	18,665,000 C	10,495,000 C
7.	BUF101	BUF - PRGM PLANNG, ANALYSIS & BUDGETING			
		OPERATING	BUF	85.00 * 115,540,139 A	85.00 * 130,391,992 A
8.	TAX102	INCOME ASSESSMENT AND AUDIT			
		OPERATING	TAX	126.00 * 4,062,413 A	126.00 * 4,175,762 A
9.	TAX103	TAX COLLECTIONS ENFORCEMENT			
		OPERATING	TAX	87.00 * 2,481,925 A	87.00 * 2,498,563 A
10.	TAX105	TAX SERVICES & PROCESSING			
		OPERATING	TAX	107.00 * 4,949,317 A	107.00 * 5,262,306 A
11.	TAX107	SUPPORTING SERVICES - REVENUE COLLECTION			
		OPERATING	TAX	63.00 * 4,032,356 A	63.00 * 4,203,164 A
12.	AGS101	ACCT SYSTEM DEVELOPMENT & MAINTENANCE			
		OPERATING	AGS	13.00 * 485,766 A	13.00 * 504,500 A
13.	AGS102	EXPENDITURE EXAMINATION			
		OPERATING	AGS	23.00 * 1,046,929 A	23.00 * 950,922 A
14.	AGS103	RECORDING AND REPORTING			
		OPERATING	AGS	15.00 * 617,930 A	15.00 * 635,114 A
15.	AGS104	INTERNAL POST AUDIT			
		OPERATING	AGS	19.00 * 1,459,161 A	19.00 * 1,555,601 A
16.	BUF111	FINANCIAL PLANNING, POLICY & INVESTMENTS			
		OPERATING	BUF BUF	14.00 * 310,276,196 A 5,265 U	14.00 * 374,599,548 A 5,525 U
17.	BUF112	TREASURY OPERATIONS			
		OPERATING	BUF BUF	18.00 * 1,972,548 A 8,200 B	18.00 * 2,716,251 A 7,200 B
18.	ATG100	LEGAL SERVICES			
		OPERATING	ATG	212.08 * 20,270,350 A	212.08 * 20,515,696 A
			ATG	18.10 * 1,963,118 N	18.10 * 1,984,963 N
			ATG	34.82 * 3,275,192 U	34.82 * 3,285,060 U
19.	BUF131	ELECTRONIC DATA PROCESSING			

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		SERVICES					
		OPERATING	BUF	275.00 *		275.00 *	
				19,052,299 A		18,231,833 A	
				36.00 *		36.00 *	
		INVESTMENT CAPITAL	BUF	1,797,343 U		1,849,525 U	
			AGS	300,000 C			C
20.	BUF161	COMMUNICATION					
		OPERATING	BUF	16.00 *		16.00 *	
			BUF	6,300,920 A		6,342,909 A	
			BUF	1,387,035 U		1,595,370 U	
		INVESTMENT CAPITAL	AGS	1,369,000 C			C
21.	BUF162	HAWAII INFORMATION NETWORK CORP.					
		OPERATING	BUF	1,169,931 A		1,219,566 A	
22.	PER102	WORK FORCE ATTR, SELECT, CLASS, & EFFECT					
		OPERATING	PER	129.00 *		129.00 *	
			PER	18,580,772 A		19,418,200 A	
				526,500 U		552,825 U	
23.	PER191	SUPPORTING SERVICES-PERSONNEL SERVICES					
		OPERATING	PER	17.00 *		17.00 *	
				1,199,805 A		1,134,144 A	
24.	BUF141	RETIREMENT					
		OPERATING	BUF	34.90 *		34.90 *	
				159,969,427 A		224,470,613 A	
				10.10 *		10.10 *	
			BUF	634,084 S		618,621 S	
25.	BUF142	HEALTH & LIFE INSURANCE BENEFITS					
		OPERATING	BUF	15.00 *		15.00 *	
				1,036,306 A		1,002,448 A	
26.	LNR101	PUBLIC LANDS MANAGEMENT					
		OPERATING	LNR	41.00 *		41.00 *	
		INVESTMENT CAPITAL	LNR	1,295,177 A		1,327,855 A	
				10,250,000 C			C
27.	AGS203	RISK MANAGEMENT					
		OPERATING	AGS	5.00 *		5.00 *	
			AGS	6,842,962 A		6,771,635 A	
				221,130 W		232,187 W	
28.	AGS211	LAND SURVEY					
		OPERATING	AGS	28.00 *		28.00 *	
				927,561 A		973,239 A	
29.	AGS221	CONSTRUCTION					
		OPERATING	AGS	26.00 *		26.00 *	
			AGS	22,759,057 A		20,678,459 A	
			AGS	3,790,000 U		3,980,000 U	
		INVESTMENT CAPITAL	AGS	38,808,000 C		275,000 C	
30.	AGS231	CUSTODIAL SERVICES					
		OPERATING	AGS	162.50 *		163.50 *	
				9,649,725 A		9,671,347 A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
			AGS	410,001	U	430,501	U
31.	AGS232	GROUNDS MAINTENANCE					
		OPERATING	AGS	36.00 *		36.00 *	
				1,111,930	A	1,150,056	A
32.	AGS233	BUILDING REPAIRS AND ALTERATIONS					
		OPERATING	AGS	30.00 *		30.00 *	
				4,284,624	A	4,427,855	A
33.	AGS240	CENTRAL PURCHASING					
		OPERATING	AGS	16.00 *		16.00 *	
			AGS	569,298	A	539,158	A
				34,261	W	35,974	W
34.	AGS244	SURPLUS PROPERTY MANAGEMENT					
		OPERATING	AGS	27,000	A	28,350	A
				5.00 *		5.00 *	
			AGS	181,832	W	188,999	W
35.	AGS251	MOTOR POOL					
		OPERATING	AGS	11.00 *		11.00 *	
				782,032	W	828,896	W
36.	AGS252	PARKING CONTROL					
		OPERATING	AGS	20.00 *		20.00 *	
				2,798,481	W	2,682,647	W
37.	AGS111	RECORDS MANAGEMENT					
		OPERATING	AGS	28.00 *		28.00 *	
				793,788	A	828,666	A
38.	AGS901	GENRL ADM SVCS - ACCOUNTING & GENERAL SVCS					
		OPERATING	AGS	57.00 *		57.00 *	
				2,395,609	A	2,061,170	A
39.	SUB101	GRANTS-IN-AID TO COUNTIES					
		OPERATING					
40.	SUB201	CITY AND COUNTY OF HONOLULU					
		OPERATING	SUB	525,000	A	525,000	A
		INVESTMENT CAPITAL	CCH	10,000,000	C		C
41.	SUB301	COUNTY OF HAWAII					
		OPERATING	SUB	100,000	A	100,000	A
		INVESTMENT CAPITAL	COH	8,000,000	C		C
42.	SUB401	COUNTY OF MAUI					
		OPERATING	SUB	100,000	A	100,000	A
		INVESTMENT CAPITAL	COM	10,770,000	C		C
43.	SUB501	COUNTY OF KAUAI					
		OPERATING	SUB	100,000	A	100,000	A
		INVESTMENT CAPITAL	COK	4,109,000	C		C

PART III. PROGRAM APPROPRIATION PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$175,000 in fiscal year 1991-92 and \$50,000 in fiscal year 1992-93 shall be expended for the purpose of promoting International Space Year 1992 activities as follows:

	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Space Educator's Conference	\$ 55,000	\$ 25,000
Apollo Project	10,000	_____
Space Quest '92/'93	15,000	15,000
Space Age PBS Special	10,000	5,000
ISY Advisory Committee	5,000	5,000
Space Exploration Symposium	35,000	_____
Second Pacific ISY Conference	25,000	_____
Pacific International Space Pavilion	20,000	_____

SECTION 5. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$45,000 in fiscal year 1991-92 and \$45,000 in fiscal year 1992-93 shall be used for rural economic development projects; provided further that each grant shall not exceed \$15,000, and shall be matched by the applicant.

SECTION 6. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$405,405 in fiscal year 1991-92 and \$425,675 in fiscal year 1992-93 shall be used for sports promotion activities as follows:

	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Canoe/Kayak	\$ 52,650	\$ 55,283
Carol Kai Aloha Run	47,385	49,754
Honolulu Marathon	78,975	82,924
Aloha Bowl	73,710	77,395
Hula Bowl	73,710	77,395
Amateur Baseball	78,975	82,924

SECTION 7. Provided that of the general fund appropriation for commerce and industry (BED 102), the department of business, economic development, and tourism is authorized to fund the establishment and filling of two positions, exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, to effectively assist in the management of its marketing promotion and development program.

SECTION 8. Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$3,355,000 in fiscal year 1991-92 and \$3,355,000 in fiscal year 1992-93 shall be used for island destination marketing activities as follows:

	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Hawaii	\$ 795,000	\$ 795,000
Kauai	475,000	475,000
Maui	820,000	820,000
Oahu	1,000,000	1,000,000
Molokai	160,000	160,000
Lanai	105,000	105,000

provided further that the department of business, economic development, and tourism shall enter into separate contracts with qualified island destination marketing associations or organizations for the purpose of this section; provided further that of the \$795,000 appropriation in fiscal year 1991-92 and \$795,000 appropriation in fiscal year 1992-93 for island destination Hawaii, the sum of \$150,000 in fiscal year 1991-92 and \$150,000 in fiscal year 1992-93 shall be used to assist destination Hilo in its efforts to stimulate tourism activity to east Hawaii.

SECTION 9. Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$50,000 in fiscal year 1991-92 and \$50,000 in fiscal year 1992-93 shall be used to establish a tourism education and training center within the school of travel industry management at the university of Hawaii at manoa.

SECTION 10. Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$50,000 in fiscal year 1991-92 shall be used to assist the county of Hawaii to promote tourism related activities in its efforts to stimulate tourism to east Hawaii; provided further that the county of Hawaii, department of research and development shall be the expending agency.

SECTION 11. Provided that of the general fund appropriation for the state tourism office (BED 113), the department of business, economic development, and tourism is authorized to fund the establishment and filling of three positions, exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, to assist the staff of the state tourism office in promoting tourism.

SECTION 12. Provided that the state tourism office (BED 113), shall update the tourism strategic plan outlining the State's tourism goals and objectives and plan of action for implementation and management of the proposed programs; provided further that the office shall report on the allocation and expenditure of resources for fiscal year 1991-92 and the proposed allocation of resources for fiscal year 1992-93; provided further that the strategic plan, and allocation and expenditure reports shall be submitted to the legislature not less than twenty days prior to the convening of the 1992 regular session.

SECTION 13. Provided that of the general fund appropriation for marketing information and distribution systems improvement for agriculture (AGR 151), the sum of \$50,000 in fiscal year 1991-92 shall be expended to study ways to market guava puree in the U.S. Mainland, Asia (Japan), and Europe.

SECTION 14. Provided that of the general fund appropriation for marketing information and distribution systems improvement for agriculture (AGR 151), the sum of \$620,000 in fiscal year 1991-92 and \$620,000 in fiscal year 1992-93 shall be used for the promotion of agricultural products; provided further that these moneys shall be expended as follows:

	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Hawaiian Beef Products	\$ 45,000	\$ 45,000
Hawaiian Papayas	200,000	200,000
Hawaii Produced Milk	50,000	50,000
Nursery Products	30,000	30,000
Floriculture	75,000	75,000
Island Fresh Eggs	30,000	30,000
Hawaiian Grown Coffee	50,000	50,000
Hawaiian Grown Macadamia Nuts	40,000	40,000
Manufactured Agricultural Products	100,000	100,000

provided further that no funds shall be expended unless matched on a dollar-for-dollar basis by private contributions.

SECTION 15. Provided that of the general fund appropriation for energy development and management (BED 120), the sum of \$248,220 in fiscal year 1991-92 shall be used for biomass research for alternate energy uses.

SECTION 16. Provided that of the general fund appropriation for energy development and management (BED 120), the sum of \$200,000 in fiscal year 1991-92 shall be used to participate in a project to develop new wind energy devices and designs to maximize wind energy production.

SECTION 17. Provided that of the oil overcharge funds administered by the energy development and management program (BED 120), the sum of \$100,000 in fiscal year 1991-92 and \$50,000 in fiscal year 1992-93 shall be used for the solar car challenge competition between high schools in Hawaii; provided further that the sum of \$50,000 in fiscal year 1991-92 and \$50,000 in fiscal year 1992-93 shall be used to initiate an international solar car competition in Hawaii.

SECTION 18. Provided that of the general fund appropriation for economic planning and research for economic development (BED 130), the sum of \$55,000 in fiscal year 1991-92 and \$85,000 in fiscal year 1992-93 shall be used to update the Hawaii input-output model.

SECTION 19. Provided that of the general fund appropriation for economic planning and research for economic development (BED 130), the sum of \$60,000 in fiscal year 1991-92 and \$70,000 in fiscal year 1992-93 shall be used to update the Hawaii projection and simulation model.

EMPLOYMENT

SECTION 20. Provided that of the general fund appropriation for commission on employment and human resource (LBR 135), the sum of \$50,000 in fiscal year 1991-92 shall be used to contract with the university of Hawaii at Hilo small business development center network for the training and advising for tourism rural small business of Hawaii pilot project; provided further that these funds shall be used to match federal funds.

SECTION 21. Provided that of the general fund appropriation for general administration (LBR 902), the sum of \$14,447 in fiscal year 1992-93 shall be used for the operations of the state fire council, and that the various counties shall provide an equal or greater amount to support the total operating costs of the state fire council.

TRANSPORTATION

SECTION 22. Provided that of the special fund appropriation for Kapalua Airport (TRN 135), the sum of \$326,027 in fiscal year 1991-92 and \$235,382 in fiscal year 1992-93 shall be used for six positions and related expenses for the maintenance and operation of this airport; provided further that this appropriation shall only be expended on the condition that the department of transportation acquires property, title or lease to this airport.

SECTION 23. Provided that of the special fund appropriation for the department of transportation designated for debt service shall only be used for this purpose and shall not be transferred for any other purpose; provided further that the department shall submit a report of all expenditures for debt service no less than twenty days prior to the convening of the 1992 and 1993 legislative session.

SECTION 24. Provided that the department of transportation shall submit a status report on the planned use, expenditures, and transfers of all special maintenance projects appropriations; provided further that this report shall be submitted not less than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 25. Provided that the special fund appropriation for airport security for the department of transportation shall be used for this purpose only and shall not be transferred for any other use; provided further that each program ID within the airports division receiving airport security funding shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular session.

ENVIRONMENTAL PROTECTION

SECTION 26. Provided that of the general fund appropriation for the environmental management program (HTH 840), the sum of \$500,000 in fiscal year 1991-92 shall be expended for the implementation of an integrated solid waste management program; provided further that the department of health may expend such funds by agreements with other state agencies providing services specifically related to the implementation of the program.

HEALTH

SECTION 27. Provided that in the establishment of home health services for Hilo hospital (HTH 211), the Honokaa/Waimea/Kohala unit shall be comprised of no less than one fifty per cent time registered professional nurse III, one twenty per cent time registered professional nurse III, one twenty per cent time licensed practical nurse II, and one twenty per cent paramedical assistant II for the provision of home health services in fiscal year 1991-92 and fiscal year 1992-93.

SECTION 28. Provided that excess special funds for Hilo hospital (HTH 211) in fiscal year 1992-93 shall be used to replace the general funds on a dollar for dollar basis for Honokaa hospital (HTH 212), Ka'u hospital (HTH 213), and Kohala hospital (HTH 214); provided further that excess special funds shall not exceed the general fund appropriation for Honokaa hospital (HTH 212), Ka'u hospital (HTH 213), and Kohala hospital (HTH 214) in fiscal year 1992-93.

SECTION 29. Provided that excess special funds for Maui memorial hospital (HTH 221) in fiscal year 1992-93 shall be used to replace the general funds on a dollar for dollar basis for Hana medical center (HTH 222), Kula hospital (HTH 223), and Lanai hospital (HTH 224); provided further that excess special funds shall not exceed the general fund appropriation for Hana medical center (HTH 222), Kula hospital (HTH 223), and Lanai hospital (HTH 224) in fiscal year 1992-93.

SECTION 30. Provided that Hilo hospital (HTH 211), Kona hospital (HTH 215), Maui memorial hospital (HTH 221), and Kauai veterans memorial hospital (HTH 231), shall each establish an income maintenance worker to qualify patients for medicaid coverage in fiscal year 1991-92 and fiscal year 1992-93; provided further that each hospital shall be authorized to use a new or existing permanent position within the authorized position ceiling for the establishment of an income maintenance worker.

SECTION 31. Provided that of the general funds appropriated for Honoukaa hospital (HTH 212), Ka'u hospital (HTH 213), Kohala hospital (HTH 214), Kona hospital (HTH 215), Hana medical center (HTH 222), Kula hospital (HTH 223), Lanai hospital (HTH 224), Kauai veterans memorial hospital (HTH 231), Samuel Mahelona memorial hospital (HTH 232), Maluhia hospital (HTH 241), Leahi hospital (HTH 242), and community hospitals administration (HTH 295), the funds shall be expended in quarterly allotments not to exceed thirty per cent of the total appropriated sum; provided further that the allotment for each fiscal year of the 1991-93 biennium shall not exceed one hundred per cent of the available general fund appropriation for fiscal year 1991-92 or fiscal year 1992-93 respectively.

SECTION 32. Provided that of the general fund appropriation for Maluhia hospital (HTH 241), the sum of \$29,000 in fiscal year 1991-92 and \$1,035,177 in fiscal year 1992-93 and of the special fund authorization for Maluhia hospital (HTH 241), the sum of \$122,696 in fiscal year 1991-92 and \$949,013 in fiscal year 1992-93 shall be used for the program for all-inclusive care for the elderly (PACE) project; provided further that this demonstration project shall replicate the On Lok comprehensive long term care service model for the elderly; provided further that all staff positions shall be made exempt to meet staffing requirements due to fluctuating health needs of the frail elderly; provided further that the On Lok PACE model is designed to contain long term care costs and achieve financial self-sufficiency in later years.

SECTION 33. Provided that prior to any expenditures of funds appropriated for the community hospitals information processing system (CHIPS) by the community hospitals administration (HTH 295), all proper State authorizations and approvals shall be obtained in regards to the purchase of major computer systems and peripherals; provided further that the establishment of a CHIPS coordinating/monitoring/support group be formed prior to any equipment purchases.

SECTION 34. Provided that all community hospitals contained within the division of community hospitals shall not be authorized to establish temporary positions in fiscal year 1991-92 and fiscal year 1992-93.

SECTION 35. Provided that the legislative auditor shall conduct a management and financial study of the division of community hospitals; provided

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further that the study shall include, but not be limited to, a review of federal, state, and other revenues, expenditures of special funds, and all accounts maintained by the division of community hospitals; provided further that the legislative auditor shall update report number 88-8, budget review and analysis: county/state hospital program and the health care payments programs; provided further that a preliminary report of the findings and recommendations shall be submitted to the legislature not less than twenty days prior to the convening of the 1992 regular session; provided further that a final report shall be submitted to the legislature not less than twenty days prior to the convening of the 1993 regular session; provided further that each report shall contain recommendations on the budgeting and financial record keeping necessary and appropriate for the formation and operation of a hospital authority composed of the present division of community hospitals, including statutory language, if necessary, to ensure such record keeping.

SECTION 36. Provided that the department of health shall reimburse the attorney general's collections unit within legal services (ATG 100) for expenses incurred by the unit in rendering collection services; provided further that reimbursement shall be made within thirty days of receipt of notification by the collections unit.

SECTION 37. Provided that of the appropriation for child and adolescent mental health (HTH 460) and that portion of alcohol and drug abuse (HTH 440) devoted to children and adolescents, the department shall allocate funds in accordance with the following criteria:

- a) maximization of medicaid funding;
- b) consideration of the recommendations of an inter-agency youth services task force made up of representatives of the departments of health, human services, education, labor and the judiciary, and whose task shall be to avoid duplication, identify gaps and prioritize funding for chapter 42 programs;
- c) agreement by the agency to participate in regional provider's councils, as established by the department of health, to review priorities before and after future requests for proposals are made; and
- d) agreement to participate in new departmental initiatives to monitor and coordinate services.

SECTION 38. Provided that the general fund appropriation for community services for developmentally disabled/mentally retarded, (HTH 501), the sum of \$6,187,902 in fiscal year 1991-92 and \$6,250,246 in fiscal year 1992-93 shall be used for purchases of service as provided in chapter 42, Hawaii Revised Statutes, or matching funds for Title XIX Medicaid community-based programs, or both.

SECTION 39. Provided that Waimano training school and hospital (HTH 511) shall continue to accelerate community placement into the waived Title XIX home and community-based programs and other Medicaid programs; provided further that Waimano training school and hospital shall:

- (1) Continue to place residents in community based medicaid programs;
- (2) Consolidate the residential, medical and other program activities within the complex; and
- (3) Take actions to decrease total expenses to the reduced patient census at Waimano training school and hospital.

SECTION 40. Provided that of the general fund appropriation for Waimano training school and hospital, (HTH 511), the sum of \$1,000,501 in fiscal year 1991-92 and \$1,050,526 in fiscal year 1992-93 shall be used for purchases of services as provided in chapter 42, Hawaii Revised Statutes, or matching funds for Title XIX Medicaid community-based programs, or both.

SECTION 41. Provided that of the general fund appropriation for family health services (HTH 530), the sum of \$100,000 in fiscal year 1991-92 and \$100,000 in fiscal year 1992-93 shall be used by the department as medicaid matching funds for family planning services which qualify for federal matching dollars; provided further that the department shall reallocate some family planning funds so that the additional federal funds will enable our statewide family planning efforts to be as fully funded as possible.

SECTION 42. Provided that the department shall adjust the scope and amounts of purchase of service funds for family health planning (HTH 530) to place a higher priority on organizations which either already qualify as federal qualified health centers (FQHC) or FQHC look-alikes, or are likely to qualify by December 1, 1991; provided further that the department shall give high priority to programs which serve the primary health needs of native Hawaiians, immigrants, and the homeless.

SECTION 43. Provided that the early intervention service of healthy start has been funded by the legislature; has been structured to avoid duplication of services and to coordinate available public and private services to young families with an emphasis on high risk families; and has produced a ninety-nine per cent effectiveness rate; provided further that the department is required to report to the legislature twenty days before the 1992 regular session on the amount of moneys actually expended for this program during the fiscal biennium 1989 to 1991 and for the portion of fiscal year 1991-1992 includable in the report and on the number of individuals served; provided further that a determination shall be made, to the extent measurable, of the effectiveness of healthy start in preventing child abuse and neglect by addressing this problem in hospitals at the time of birth; and provided further that the report shall include a strategic plan for the next ten years identifying providers and making cost projections regarding the continued investment in healthy start in order to determine appropriate expenditure levels in expanding this service to all infants at risk and monitoring the ongoing impact of the services through indices related to child health and school readiness, as well as abuse and neglect, with the understanding that this front-end investment in services is intended to pay off in the containment of costs due to fewer social problems developing in later stages of childhood and adulthood.

SECTION 44. Provided that of the general fund appropriation for school health services (HTH 540), the sum of \$95,000 in fiscal year 1991-92 and \$75,000 in fiscal year 1992-93 shall be used for the development and implementation of school based health service centers to enhance the accessibility and delivery of primary health care services to adolescents; provided further that the site selection shall be made in accordance with specific community initiatives and a demonstrated need for the services requested; provided further that the community chosen by an agreed upon criteria of need and appropriateness shall give further input to determine the full extent of services desired and necessary and which services are deemed appropriate culturally, socially, and medically for its school.

SECTION 45. Provided that the funds and personnel utilized for noise control in environmental health services (HTH 610) shall be utilized for other environmental health initiatives to the extent possible.

SECTION 46. Provided that of the general fund appropriation for emergency medical services (HTH 730) the sum of \$5,000 in fiscal year 1991-92 shall be used to provide training for trauma stress recovery.

SECTION 47. Provided that the department shall use ten existing permanent positions or their equivalent, and the associated and necessary operating expenses in fiscal year 1991-92 and ten existing permanent positions or their equivalent, and the associated and necessary operating expenses in fiscal year 1992-93 for the office of Hawaiian health (HTH 795) in coordination with other programs to serve the health needs of native Hawaiians and communities with large numbers of native Hawaiians; provided further that the department shall submit a report on these actions and accomplishments of the office of Hawaiian health not less than twenty days prior to the convening of the 1992 regular session.

SECTION 48. Provided that in light of the repeal of the federal law mandating the State health planning and development agency (HTH 906), and the subsequent repeal of mandated provisions in other states, the legislative auditor shall conduct a management and fiscal review to determine whether the level of funding for comprehensive health planning (HTH 906) should be continued, reduced, or eliminated; provided further that the review shall include but not be limited to (1) the fiscal impact of the program on cost containment of private and public health care services, the impact of the program on the availability of public and private health services, and the fiscal impact of the program on existing health care facilities; (2) the certificate of need process including but not limited to the impact of the program's certificate of need process on new public and private health care facilities, competition and cost containment within the private health care industry and the overall impact of the certificate of need on the community hospital system; and (3) whether the program is fulfilling the purpose for which it was enacted; provided further that this study with recommendations shall be presented to the legislature at least twenty days prior to the convening of the 1992 regular session.

SECTION 49. Provided that the department of health is authorized to trade off, transfer, or establish positions within the existing authorized position counts for the purpose of maximizing the utilization of personnel resources and staff productivity for fiscal year 1991-92; provided further that the department shall submit a report to the legislature not less than twenty days prior to the convening of the 1992 regular session regarding:

- (1) the status of all positions provided for in this Act;
- (2) the status and number of temporary positions authorized by the director of health through delegated gubernatorial authority for fiscal years 1991-92 and 1992-93; 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 program efficiencies for both general fund and special fund positions;

provided further that if any of the newly approved positions created by trade off, transfer, or establishment by the department within the existing authorized position counts are not filled by the end of fiscal year 1991-92 as applicable, the

position counts and funds authorized for such positions shall lapse; provided further that the department shall submit to the legislature by January 1, 1992:

- (1) a plan for all reorganizations, if any, within which the aforementioned new positions shall be placed;
- (2) an explanation of the advantages of the reorganizations; and
- (3) a plan indicating how positions are to be traded off, transferred, or established within the provisions of this Act.

SECTION 50. Provided that the department of health shall prepare a plan to make available counseling services statewide for children and parents in those families in which domestic violence is known to exist; and provided further that the department may propose to contract out such services; provided further that the department shall submit the plan and proposed legislation as may be necessary, at least twenty days prior to the convening of the 1992 legislative session.

SOCIAL SERVICES

SECTION 51. Provided that of the general fund appropriation for housing finance and development administration (BUF 229), the sum of \$1,000,000 in fiscal year 1991-92 shall only be used to provide relocation assistance to Kalapana residents displaced by the Kilauea lava flow.

SECTION 52. Provided that in order to ensure the appropriate expenditure of funds in establishing fees for individual practitioners for health care payments (HMS 230) in fiscal year 1991-92, the department of human services shall use 60 per cent of the most recent available profile of the customary fees of health care practitioners adjusted to the 75th percentile within the limits of this appropriation; provided further that the reimbursement may not be less than the amount provided for fiscal year 1990-91; provided further that for fiscal year 1992-93, the department of human services shall use 60 per cent of the most recent available profile of the customary fees of health care practitioners adjusted within the limits of this appropriation; provided further that the reimbursement may not be less than the amount provided for fiscal year 1990-91.

SECTION 53. Provided that of the general fund appropriation for child support enforcement services (ATG 500), the sum of \$182,820 for an assistant administrator - 00059N, coordinator - 00061N, clerk-typist III - 00072N, clerk-typist III - 00073N, clerk typist II - 98121N, account clerk V - 98123N, cashier supervisor - 98124N, clerk typist III - 00008N shall only be used for this purpose and shall not be transferred for any other purpose; provided further that in order to ensure the proper expenditure of these funds, the department of the attorney general shall submit a detailed status report regarding its efforts to establish, classify and recruit for these positions at the department of personnel services; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 and 1993 sessions.

SECTION 54. Provided that the JOBS program (HMS 701) establish an imprest fund for the purpose of assisting recipients in the JOBS program with work-related expenses and emergency cash assistance to remove barriers to employment or participation in the program; provided further that the department of human services shall use other established means of cash assistance before issuance of cash from the imprest fund.

SECTION 55. Provided that of the positions and position-related funds authorized to the department of human services, the department may transfer positions within the department's authorized position ceiling for the purpose of maximizing the utilization of personnel resources and staff productivity for fiscal year 1991-92; provided further that all such actions shall be with the prior approval of the governor or the director of finance, if so delegated by the governor; provided further that the governor shall submit a report to the legislature of all transfers as of December 31, 1991 and June 30, 1992.

FORMAL EDUCATION

SECTION 56. Provided that the amounts shown for regular instruction (EDN 105) are intended for regular instruction student enrollment projections of 163,547 for fiscal year 1991-92 and 166,046 for fiscal year 1992-93; provided further that the amounts shown for special education (EDN 107) are intended for special education student enrollment projections of 9,789 for fiscal year 1991-92 and 9,971 for fiscal year 1992-93.

SECTION 57. Provided that of the general fund appropriation for regular instruction (EDN 105), the sum of \$490,720 in fiscal year 1991-92 and the sum of \$438,720 in fiscal year 1992-93 shall be expended for science equipment; provided further that of the \$490,720 in fiscal year 1991-92, the sum of \$52,000 shall be used to replace the boat at Kailua high school.

SECTION 58. Provided that of the general fund appropriation for regular instruction (EDN 105), the sum of \$375,770 in fiscal year 1991-92 and the sum of \$440,565 in fiscal year 1992-93 shall be expended for the science, agriculture, and business vocational education programs.

SECTION 59. Provided that of the general fund appropriation for other regular instruction (EDN 106), three position counts and the sum of \$277,036 in fiscal year 1991-92, and five position counts and the sum of \$416,268 in fiscal year 1992-93 shall be used for the Hawaiian language immersion program; provided further that the department of education shall conduct a study to determine an appropriate grade to introduce English into the curriculum; provided further that the study shall examine whether it is feasible and practical to continue the Hawaiian language immersion program into the intermediate school level; provided further that this study shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 60. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$505,800 in fiscal year 1991-92 and \$505,800 in fiscal year 1992-93 shall be expended to accommodate increasing enrollment, increased cost of tuition waivers due to tuition increases, subsidies to schools with smaller enrollments, and to provide support to the regular summer school programs.

SECTION 61. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$762,600 in fiscal year 1991-92 shall be expended for special needs schools in the Farrington, Molokai and Lanai complexes; provided further that the department shall submit a report on the status of these special needs schools allocations for fiscal year 1991-92 and the budgeted needs for fiscal year 1992-93; provided further that this report shall be submitted

to the legislature twenty days prior to the convening of the 1992 regular session.

SECTION 62. Provided that of the general fund appropriation for other regular instruction (EDN 106), 4.00 position counts and the sum of \$250,000 in fiscal year 1991-92, and 4.00 position counts and the sum of \$375,000 in fiscal year 1992-93 shall be used for the distance learning program; provided further that the department of education shall submit a report on the current status and accomplishments of this program to also include but not be limited to: a list of all sites benefiting from the distance learning program, the extent of the commitment of Oceanic Cable, a description of the types of programs that will be televised, and a list showing the extent of participation of all other agencies contributing to the success of this project; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 63. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$150,000 in fiscal year 1991-92 shall be expended for incentive grants; provided further that the department of education shall report to the legislature no later than twenty days prior to the convening of the 1992 regular session on related issues including, but not limited to the following: the criteria used to qualify a school for an incentive grant, the schools selected, how much each school received and for what type of innovative program, the projected length of time and financial commitment required for full implementation, and how many non-school/community-based management schools applied for incentive grants and why they were accepted or rejected.

SECTION 64. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$444,588 in fiscal year 1991-92, and the sum of \$497,212 in fiscal year 1992-93 shall be expended for the following innovative projects:

	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Honolulu Middle Schools Project	\$302,588	\$355,212
Castle High School Team		
Teaching/Core Program	10,000	10,000
Castle High School Team		
Teaching Core Program	16,000	16,000
Kapaa Elementary		
Schools-Within-Schools	45,000	45,000
Waialae Elementary		
School	50,000	50,000
Momilani School "At Risk"		
Counseling Program Conversion from half-time to full-time	21,000	21,000

SECTION 65. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$38,000 in fiscal year 1991-92 and the sum of \$36,000 in fiscal year 1992-93 shall be expended for Project Healthstart.

SECTION 66. Provided that of the general fund appropriation for other regular instruction (EDN 106) the sum of \$71,467,664 and for compensatory education (EDN 108) the sum of \$9,952,558 in fiscal year 1991-92, and of the general fund appropriation for other regular instruction (EDN 106) the sum of

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\$73,192,379 and for compensatory education (EDN 108) the sum of \$10,040,256 in fiscal year 1992-93, shall be expended at the discretion of the department of education for instructional improvements; provided further that the department of education shall determine the allocation of positions and funds; provided further that the allocation of positions for (EDN 106) shall not exceed 862.50 permanent positions and the allocation of positions for (EDN 108) shall not exceed 183.50 permanent positions in fiscal year 1991-92; provided further that the department of education shall submit a report on the usage of the positions and funds in (EDN 106) and (EDN 108) to the legislature not less than twenty days prior to the convening of the 1992 regular session.

SECTION 67. Provided that in order to best allocate positions to the special education program (EDN 107), the department of education shall evaluate the present 10.2 student to 1 teacher ratio to determine if a smaller ratio would be more appropriate for different classifications of special education students, such as severely handicapped; provided further that the department of education shall submit this evaluation reflecting different degrees of special education students, the recommended student to teacher ratio for each level, and suggestions on whether an increased educational assistant to teacher ratio would have a significant impact on the special education program; provided further that this report shall be submitted no later than twenty days prior to the convening of the 1992 regular session.

SECTION 68. Provided that of the general fund appropriation for compensatory education (EDN 108), the sum of \$12,800 in fiscal year 1991-92 and \$12,800 in fiscal year 1992-93 shall be expended for a security attendant at the Olomana youth center.

SECTION 69. Provided that of the general fund appropriation for compensatory education (EDN 108), the sum of \$60,800 in fiscal year 1991-92 shall be expended to institute the in-school suspension program to include four leeward district high schools.

SECTION 70. Provided that of the general fund appropriation for compensatory education (EDN 108), the sum of \$35,000 in fiscal year 1991-92 shall be expended for the comprehensive positive peer prevention program (SMILE Program).

SECTION 71. Provided that of the general fund appropriation for school administration (EDN 203), the sum of \$212,302 in fiscal year 1991-92 and \$270,170 in fiscal year 1992-93 shall be expended for twenty positions in both fiscal years to provide half-time registrars at the larger intermediate schools; provided further that one half-time position goes to each of the following schools: Waimanalo intermediate, Waipahu intermediate, and Highlands intermediate.

SECTION 72. Provided that of the general fund appropriation for school administration (EDN 203), seven position counts and the sum of \$251,702 in fiscal year 1991-92, and seven position counts and the sum of \$294,440 in fiscal year 1992-93 shall be used for vice-principals for six schools with enrollments exceeding five hundred fifty students; provided further that one position count and \$38,000 in fiscal years 1991-92 and one position count and \$38,000 in fiscal year 1992-93 shall be expended for a vice principal at Waipahu intermediate.

SECTION 73. Provided that of the general fund appropriation for school administration (EDN 203), thirty position counts and the sum of \$415,500 in fiscal year 1991-92, and thirty position counts and the sum of \$518,400 in fiscal year 1992-93 shall be used for school clerks; provided further that based on the department of education's 1990 school and district office clerical staffing study, twenty of the thirty positions shall go to schools with enrollments less than four hundred ninety-nine students, and who currently have only one school administrative services assistant; provided further that one position shall be allocated to the Lahainaluna boarding school.

SECTION 74. Provided that of the general fund appropriation for instructional media (EDN 204), six position counts and the sum of \$80,600 in fiscal year 1991-92 and six positions counts and the sum of \$99,720 in fiscal year 1992-93 shall be expended for six library assistant positions to alleviate the clerical workload problems in school libraries.

SECTION 75. Provided that of the general fund appropriation for instructional development (EDN 205), the sum of \$239,700 in both years of the 1991-1993 biennium shall be expended for a special certification program to increase the pool of teachers in shortage categories; provided further that the department of education shall submit a report to the legislature to include, but not be limited to the following: the number of prospective teachers recruited in each of the four (math, science, school counseling, and special education) shortage categories tied to this appropriation, an expenditure report, and what methods were used to recruit the prospective teachers; provided further that the department of education shall submit this report no later than twenty days prior to the convening of the 1992 regular session.

SECTION 76. Provided that of the general fund appropriation for instructional development (EDN 205), the sum of \$50,000 in fiscal year 1991-92 shall be expended for social studies curriculum development on civil rights.

SECTION 77. Provided that of the general fund appropriation for counseling (EDN 206), the sum of \$279,987 in fiscal year 1991-92 and \$346,735 in fiscal year 1992-93 shall be expended for thirteen counselor positions in both years to improve the counseling services at the larger elementary schools; provided further that one position count and \$35,000 in fiscal year 1991-92 and one positions count and \$35,000 in fiscal year 1992-93 shall be expended on a counselor for the no hope in dope program; provided further that the current half time position at Momilani elementary be converted to full time.

SECTION 78. Provided that of the general fund appropriation for student activities (EDN 207), two position counts and the sum of \$42,420 in fiscal year 1991-92 and two position counts and the sum of \$44,984 in fiscal year 1992-93 shall be used to convert to permanent four half-time student activity coordinators for four high schools presently operating with half-time coordinators.

SECTION 79. Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$330,000 in both years of the 1991-1993 fiscal biennium, shall be used for athletic supplies and equipment; provided further that the department of education shall submit an expenditure report as of December 31, 1991, to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 80. Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$30,000 in fiscal year 1991-92 and \$30,000 in fiscal year 1992-93 shall be expended for the conflict management program.

SECTION 81. Provided that of the general fund appropriation for state administration (EDN 303), the sum of \$250,000 in fiscal year 1991-92 shall be expended for the school-community based management program (SCBM); provided further that the department of education shall conduct a study to identify all funding sources available to the schools for SCBM implementation; provided further that an updated list shall be provided to the legislature identifying the schools that have submitted their letters of intent, and those that have also submitted their proposals; provided that the study shall include a summary describing what motivates a school to become an SCBM school, how the initial \$11,000 has been expended, and a breakdown by year to show when each school decided to become part of the SCBM program; provided further that the department of education shall submit this report to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 82. Provided that during fiscal year 1991-92, the department of education is authorized to convert to permanent status six full time equivalent general funded temporary user support technician positions for the financial management system in state administration (EDN 303); provided that incumbent employees of these six user support technician positions as well as the incumbent employees of the one full time equivalent general funded permanent user support administrator position and seven full time equivalent general funded permanent user support technician positions shall be granted permanent status in these positions without the loss of salary, seniority, prior service credit, accrued vacation, sick leave, or other prior employee benefits or privileges and without the necessity of examination; provided further that such employee possess the minimum qualifications for the position to which appointed.

SECTION 83. Provided that of the general fund appropriation for state administration (EDN 303), the sum of \$315,264 and two position counts in fiscal year 1991-92, and the sum of \$354,825 and two position counts in fiscal year 1992-93 shall be used for on-the-job training to prepare regular instruction teachers to teach special education classes; provided further that the department of education shall submit a report to the legislature on how many teachers participated in this program, the criteria used in determining whether a teacher should have their regular instruction certificates endorsed to teach special education, and how many teachers successfully received endorsements; provided further that the department of education shall submit this report to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 84. Provided that of the general fund appropriation for district administration (EDN 304), the sum of \$45,000 in both years of the 1991-1993 fiscal biennium shall be expended for a temporary administrative assistant to the district superintendent of Maui.

SECTION 85. Provided that of the general fund appropriation for district administration (EDN 304), the sum of \$97,400 for fiscal year 1991-92 shall be expended to replace items damaged by the flood at Kahuku high school.

SECTION 86. Provided that of the general fund appropriation for district administration (EDN 304), the sum of \$39,625 in fiscal year 1991-92 and \$39,625 in fiscal year 1992-93 shall be expended for one temporary Maui district museum resource teacher position and related expenses.

SECTION 87. Provided that of the general fund appropriation for physical plant operations and maintenance-AGS (AGS 807), the sum of \$29,500,000 in fiscal year 1991-92 and \$28,500,000 in fiscal year 1992-93 shall be expended to accommodate major repair and maintenance projects for the public schools; provided further that the determination of priorities are formulated jointly by schools, the department of education and the department of accounting and general services and that one of the factors in this process reflects the findings from the school inspection team.

SECTION 88. Provided that of the general fund appropriation for physical plant operations and maintenance (AGS 807), the sum of \$60,000 in fiscal year 1991-92 and the sum of \$50,000 in fiscal year 1992-93 shall be expended for two temporary super-handyperson positions to be assigned to Baldwin high school and Kihei elementary, and the Farrington complex; provided further that the department of accounting and general services (DAGS) shall submit a report detailing the impact of these positions on the following: response time, cost saving for having someone on-site versus sending out someone from the preventive maintenance section, and school safety; provided further that DAGS shall also provide recommendations on program expansion to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 89. Provided that of the general fund appropriation for adult education (EDN 406), the sum of \$301,400 in both years of the fiscal biennium of 1991-93, shall be expended for twenty additional parent-community networking centers and a training support staff of one educational officer and one resource teacher.

SECTION 90. Provided that in order to determine the best measure of need for schools to allocated vice principals, counselors, school clerical staff, and registrars, the department of education shall re-evaluate the current staffing standards that are based strictly on enrollment figures to include other items such as: enrollment fluctuations, socio-economic conditions, and location; provided further that schools with smaller enrollments will receive equal consideration in this evaluation; provided further that the department of education shall submit the findings in a report to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 91. Provided that in order to examine the severity of the lack of staff available to keep classrooms in a clean, sanitary, and presentable condition, the department of education shall determine the proper course of action necessary to address the need for classroom cleaning staff, especially in rural areas; provided further that the department of education shall evaluate the situation in totality, then determine high, medium, and low priorities with matching cost estimates for each priority level; provided further that each level shall include a list of schools that fall within that priority level; provided further that the alternatives to be evaluated shall include, but not be limited to: contractual services, additional hourly paid staff, additional permanent positions or student helpers; provided further that the department of education shall submit this report to the legislature no later that

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twenty days prior to the convening of the 1992 regular session.

SECTION 92. Provided that the legislative reference bureau is requested to conduct a study of public school funding, including such aspects as the appropriateness of the current system of resource allocation and accountability in the department of education; analysis of the amounts expended for such functions as administrative support in comparison to the amounts expended directly for students, such as classroom teaching; comparison of Hawaii's funding levels and funding systems with those of other selected school systems; and analysis of alternatives to improve the present methods of budgeting, appropriating, and allocating funds for public schools; provided further that the report of the findings and recommendations shall be submitted to the legislature prior to the convening of the 1992 regular session.

SECTION 93. Provided that of the general fund appropriation for the university of Hawaii, the sum of \$12,930,637 in fiscal year 1991-92 and \$12,930,637 in fiscal year 1992-93 shall be expended for nonrecurring repair and maintenance projects in the following institutional support programs:

<u>PROGRAM ID</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
UOH 106	\$8,511,050	\$8,407,734
UOH 216	966,491	951,875
UOH 906	3,453,096	3,571,028

provided further that in the implementation of this requirement, the university of Hawaii may use its present staff, student help, and other such temporary personnel pursuant to section 76-16, Hawaii Revised Statutes; provided further that unless otherwise prohibited by law, the university of Hawaii may make expenditures and enter into contracts for necessary equipment, supplies, materials, labor, and professional services, and technical assistance to satisfy the objective of this appropriation.

SECTION 94. Provided that of the general fund appropriation for the university of Hawaii, the sum of \$7,957,658 in fiscal year 1991-92 and \$7,897,735 in fiscal year 1992-93 shall be expended for nonrecurring equipment expenditures to (1) replace obsolete or inoperable educational classroom and scientific equipment, and (2) acquire new educational classroom or scientific equipment to keep pace with new technological advances in the following institutional support programs:

<u>PROGRAM ID</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
UOH 106	\$4,398,196	\$4,190,550
UOH 216	305,847	307,674
UOH 704	17,946	12,800
UOH 906	3,235,669	3,386,711

provided further that any remaining funds in excess of each campus' instructional or research requirements under (1) or (2) of this section may be used to meet other institutional equipment needs with the exception of administration office equipment and furniture.

SECTION 95. Provided that of the general fund appropriation for institutional support, university of Hawaii, system-wide support (UOH 903), the sum of \$15,000 in each year of the fiscal biennium 1991-93 may be expended at the discretion of the president of the University of Hawaii.

SECTION 96. Provided that of the research and training revolving fund the university shall submit a report to the governor and the legislature twenty days prior to the convening of the 1992 regular session; provided further that the report shall include a discussion on the criteria for disbursement, a listing of all items financed under the fund; provided further that the report shall discuss the benefits and additional grants generated as a result of expenditures from the fund for the fiscal years 1989-90 and 1990-91; provided further that the university shall review the budget authorized and requested for fiscal year 1992-93 and shall identify all areas or items which may be funded through the research and training revolving fund.

SECTION 97. Provided that of the general fund appropriation for organized research, the university of Hawaii at Manoa (UOH 102), \$1,037,536 in fiscal year 1991-92 and \$879,412 in fiscal year 1992-93 shall be expended for the research corporation of the university of hawaii (RCUH) management fee; provided further that the university shall submit a report to the governor and the legislature twenty days prior to the convening of the 1992 regular session which shall include a listing of the projects to be service ordered to the RCUH, a brief description of each project and its objective, and the management fee and the cost of each project by means of financing; provided further that the report shall cover fiscal years 1991 and 1992, providing further actual amounts for fiscal year 1991 and the first quarter of fiscal year 1992, with estimated amounts for the last three quarters of fiscal year 1992.

SECTION 98. Provided that of the general fund appropriation for community colleges system-wide support program, the university of Hawaii (UOH 906), the sum of \$7,500 in each fiscal year may be expended at the discretion of the chancellor of community colleges.

SECTION 99. Provided that the university of Hawaii may use their general fund appropriation as an advance, or the director of finance may make loans when required to the university of Hawaii, to meet costs incurred in connection with federally financed research and training projects.

SECTION 100. Provided that of the general fund appropriation for student services (UOH 105), the amount of \$53,825 in FY 1991-92 and \$54,316 in FY 1992-93 may be expended for a student advocate position which shall be assigned to the dean of students in the office of the vice president of student affairs; provided further that a sexual harassment unit shall not be established until such time that a comprehensive plan on sexual harassment, equal opportunity, and affirmative action has been prepared and submitted to the legislature and in which the roles, responsibilities, functions and relationships are specified between units within the university and other state agencies having jurisdiction over sexual harassment, equal employment opportunity and affirmative action issues.

SECTION 101. Provided that of the general fund appropriation for instruction, Honolulu community college, (UOH 301), the sum of \$100,000 in fiscal year 1991-92 shall be expended for the acquisition of new technology automotive painting equipment and supplies such as electrostatic painting equipment, high volume low pressure (HVL) spraying devices, and powered or water based paints and solvents which are designed to, or capable of, reducing the volume of volatile organic compounds (VOCs) in the air.

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SECTION 102. Provided that the university of Hawaii shall conduct a study of the undergraduate advising programs which shall be submitted to the legislature not less than twenty days prior to the convening of the 1993 regular session; provided further that this study shall include the perceptions and opinions of undergraduate students concerning the effectiveness of the program and a listing and description of other undergraduate programs offered by other comparable institutions of higher education; provided further that this study shall include the responsibilities and duties of existing undergraduate advising entities and persons within the university of Hawaii and their roles relative to the function of the newly established undergraduate advising program.

SECTION 103. Provided that of the general fund appropriation for research, university of Hawaii, Manoa (UOH 102), the sum of \$41,395 and 1.50 positions in fiscal year 1991-92 and \$42,972 and 1.50 positions in fiscal year 1992-93 shall be expended in support of the Pacific Biomedical Research Center's graduate program in ecology, evolution, and conservation biology.

SECTION 104. Provided that of the general fund appropriation for research, university of Hawaii, Manoa (UOH 102), the sum of \$102,055 and 3.50 positions in fiscal year 1991-92 and \$102,639 and 3.50 positions in fiscal year 1992-93 shall be expended on core research and training facilities for the Pacific Biomedical Research Center.

SECTION 105. Provided that the university of Hawaii shall develop and implement an action plan consistent with the recommendation contained in the "Report to the President from the Administrative Task Force on Administrative, Professional, and Technical Employees"; provided that the university of Hawaii shall develop assessment tools to measure the progress and effectiveness of the plan; provided further that the university of Hawaii, in consultation with the collective bargaining representative for APT employees, shall prepare and submit to the Legislature a status report twenty days prior to each regular session on specific actions taken and progress made each year until all recommendations are fully implemented.

SECTION 106. Provided that of the general fund appropriation for institutional support, university of Hawaii, system-wide support, (UOH 903), the sum of \$425,000 in fiscal year 1991-92 and \$475,000 in fiscal year 1992-93 shall be deposited into the Discoveries and Inventions Revolving Fund; provided further that of the amount deposited, \$250,000 in fiscal year 1991-92 and \$300,000 in fiscal year 1992-93 shall be used to support technical assistance services for Hawaii's businesses and \$175,000 in each year of the 1991-93 fiscal biennium shall be used for seed capital.

CULTURE AND RECREATION

SECTION 107. Provided that of the general fund appropriation for historic preservation (LNR 802), the sum of \$200,000 in fiscal year 1991-92 shall be expended for the design and construction of a facility at Mauna 'Ala to serve as a repository for royal native Hawaiian remains currently stored at Bishop Museum; provided further that no money shall be expended for this purpose unless matched on a dollar-for-dollar basis by the office of Hawaiian Affairs.

SECTION 108. Provided that of the general fund appropriation for heritage and recreation parks (LNR 806), the sum of \$193,000 in fiscal year 1991-92 and \$212,520 in fiscal year 1992-93 shall be expended to repair and improve designated state parks needing urgent repair work.

SECTION 109. Provided that of the special fund appropriation for spectator events and shows (AGS 889), the sum of \$7,500 in fiscal year 1991-92 and \$7,500 in fiscal year 1992-93 may be expended at the discretion of the stadium manager for promotion and other stadium-related purposes.

PUBLIC SAFETY

SECTION 110. Provided that of the general fund appropriation for women's community correctional center (PSD 409), the sum of \$250,000 in fiscal year 1991-92 shall be expended for the purpose of renovating and maintaining the women's community correctional center.

SECTION 111. Provided that of the general fund appropriation for intake service centers (PSD 410), the sum of \$149,057 in fiscal year 1991-92 and \$149,057 in fiscal year 1992-93 shall be expended to continue the Oahu and Maui electronic monitoring intensive supervision project.

SECTION 112. Provided that of the general fund appropriation for protective services (PSD 501), the sum of \$261,027 in fiscal year 1991-92 and \$233,280 in fiscal year 1992-93 shall be used for nine state security guards; provided further that these positions shall be used to provide additional security services for the state office tower, capitol center, and the Hemmeter building.

SECTION 113. Provided that of the general fund appropriation for special services (PSD 503), ten position counts and the sum of \$220,890 in fiscal year 1991-92 and \$266,520 in fiscal year 1992-93 shall be used to provide additional sheriff positions and related expenses for the Oahu warrants section; provided further that \$113,750 in fiscal year 1991-92 shall be expended for the purchase of five motor vehicles for the Oahu warrants section.

SECTION 114. Provided that of the general fund appropriation for the special services (PSD 503), two position counts and the sum of \$44,178 in fiscal year 1991-92 and \$53,304 in fiscal year 1992-93 shall be used to provide additional sheriff positions and related expenses for the Maui warrants section; provided further that \$22,500 shall be for the purchase of one motor vehicle for the Maui warrants section.

SECTION 115. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$1,500,000 in fiscal year 1991-92 and \$250,000 in fiscal year 1992-93 shall be expended for the following nonrecurring repair and maintenance projects:

PROJECT DESCRIPTION:

	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Halawa correctional facility		
Replacement of air conditioning chiller	\$200,000	\$150,000

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Kulani correctional facility		
Industrial area repairs	165,000	0
Waiawa correctional facility		
Fuel storage tank replacement	0	75,000
Effluent infiltration basin construction	145,000	0
Hawaii community correction center		
Repair of maintenance shop building	50,000	25,000
Laundry area retrofit	25,000	0
Maui community correction center		
Roofing and air conditioning repairs	500,000	0
Oahu community correctional center		
Parking facilities alterations	135,000	0
Kauai community correctional center		
Partial replacement of a/c system	80,000	0
Women's community correctional center		
Vehicle and equipment repair	25,000	0
Interim sewer measures	75,000	0
Training center		
Building repair of training facilities	100,000	0

provided further that, unless otherwise prohibited by law, the department of public safety may make expenditures and enter into contracts for necessary equipment, supplies, materials, labor, professional services, and technical assistance to satisfy the objectives of this appropriation; provided further that unrequired funds from the repair and maintenance projects authorized under the terms of this section may be expended for other institutional repair and maintenance needs; provided further that the funds shall not be expended for any purpose other than repair and maintenance; provided further that the department of public safety shall submit a detailed expenditure and status report of each of these repair and maintenance projects and expenditures to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 116. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$984,161 for fiscal year 1991-92 and \$916,181 for fiscal year 1992-93 shall be expended for the basic training and staff development of department personnel; provided further that, of the sums indicated, only \$367,389 in fiscal year 1991-92 and \$385,209 in fiscal year 1992-93 shall be expended for personal services related to the in-service training of department personnel and the basic training of adult corrections and law enforcement officers; provided further that the funds shall not be expended for any other purpose; provided further that in order to ensure the proper expenditure of appropriate funds the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 117. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$2,894,047 for fiscal year 1991-92 and the sum of \$3,096,631 for fiscal year 1992-93 shall be expended for the salary adjustments of adult corrections officers pursuant to the recommendations of the department of personnel services and section 77-9, Hawaii Revised Statutes; provided further that the funds shall not be expended for any other purpose; provided further that the department of public safety shall submit a detailed expenditure

and status report to the legislature no later than twenty days prior to the 1992 and 1993 regular sessions.

SECTION 118. Provided that of the positions and funds authorized to the department of public safety, the department may transfer positions within the department's authorized position ceiling for the purpose of maximizing the utilization of personnel resources and staff productivity in fiscal year 1991-92; provided further that all such actions shall be with the prior approval of the governor or the director of finance if so delegated by the governor; provided further that the governor shall submit a report to the legislature of all transfers as of December 31, 1991 and June 30, 1992.

SECTION 119. Provided that the department of public safety shall conduct an in-house study to determine the statewide staffing requirements of the sheriff's office; provided further that the study shall address and include, but not be limited to staffing requirements caused by the transfer of functions to the sheriff's office either from external or internal agencies; provided further that the study shall focus on, but not be limited, to the warrants section of the sheriff's office statewide; provided further that the department of public safety shall submit the study to legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 120. Provided that of the general fund appropriation for the department of public safety, the sum of \$424,858 for fiscal year 1991-92 and \$424,918 for fiscal year 1992-93 shall be expended for the administration and staffing of the substance abuse treatment program and shall not be expended for any other purpose; provided further that in order to ensure the proper expenditure of appropriate funds the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 121. Provided that of the general fund appropriation for the department of public safety, the sum of \$139,698 for fiscal year 1991-92 and \$133,581 for fiscal year 1992-93 shall be expended for the administration and staffing of the sex offender assessment and treatment program and shall not be expended for any other purpose; provided further that in order to ensure the proper expenditure of appropriate funds the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 122. Provided that of the general fund appropriation for the department of public safety, the sum of \$1,954,239 for fiscal year 1991-92 and \$1,846,558 for fiscal year 1992-93 shall be expended for the educational services program and shall not be expended for any other purpose; provided further that in order to ensure the proper expenditure of appropriate funds, the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 123. Provided that of the general fund appropriation for the department of public safety, the sum of \$1,334,216 for fiscal year 1991-92 and \$1,035,993 for fiscal year 1992-93 shall be expended for the library services program and shall not be expended for any other purpose; provided further that in

order to ensure the proper expenditure of appropriate funds, the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 124. Provided that of the general fund appropriation for the department of public safety, the sum of \$7,253,010 for fiscal year 1991-92 and \$7,683,748 for fiscal year 1992-93 shall be expended for the health care services program and shall not be expended for any other purpose; provided further that in order to ensure the proper expenditure of appropriate funds the department of public safety shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 125. Provided that, for every level IV program for which funds are appropriated for adult corrections officer positions, the department of public safety shall designate and utilize a separate organization code for the budgeting of all funds appropriated for adult corrections officer positions distinct from all other appropriated positions; provided further that the designated organization code for adult corrections officer positions shall include all related funds for personal services, other current expenses, equipment, and motor vehicles.

SECTION 126. Provided that in order to ensure the proper and efficient expenditure of public funds, the department of the attorney general shall conduct a study related to the possible integration, or the cooperative development of the offender based transaction statistics/computerized criminal history system (OBTS/CCH) and the juvenile justice information system (JJIS); provided further that this study shall include, but not be limited to:

- (1) a statement of the similarity between these two systems conceptually, in the areas of functionality, data requirements, users, user interaction with system, security requirements, data manipulation and report generation;
- (2) A statement of the technical differences between these two systems conceptually, in the areas of functionality, data requirements, users, user interaction with system, security requirements, data manipulation and report generation;
- (3) A statement as to the feasibility of developing a common system or common core system with agency specific sub-systems or modules that will be able to serve the needs of both agencies now, and allow for any other reasonable future expansion or growth;
- (4) A statement reflecting any other system proposal that will satisfy the needs of the affected agencies while still offering the largest practical amount of shared resources;
- (5) An assessment as to the potential problems to be encountered, and general agency comments in both of the above proposed scenarios;
- (6) A statement of the projected costs for a common system or common core system with related sub-systems, to include continuing costs;
- (7) A statement of the projected costs if each agency developed separate systems, to include continuing costs for both systems;

provided further that this study shall be done in consultation and cooperation with the department of budget and finance; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session.

INDIVIDUAL RIGHTS

SECTION 127. Provided that of the general fund appropriation for insurance services (CCA 106), the sum of \$200,000 in fiscal year 1991-92 and \$200,000 in fiscal year 1992-93 shall be expended for subsidy payments of medical liability insurance premiums of certain obstetricians, gynecologists, family physicians, and nurse midwives as the insurance commissioner shall designate; provided further that the recipients of said subsidies shall be licensed by and practicing in the State of Hawaii.

SECTION 128. Provided that of the general fund appropriation for measurement standards (AGR 812), the sum of \$499,475 and four positions in fiscal year 1991-92 and \$164,920 and four positions in fiscal year 1992-93 shall be used for the establishment of a pesticide analysis program within the department of agriculture; provided further that the department of agriculture shall make every effort to have its pesticide analysis program fully established and ready for analysis work by the end of fiscal year 1991-92.

GOVERNMENT-WIDE SUPPORT

SECTION 129. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$25,000 in fiscal year 1991-92 and \$25,000 in fiscal year 1992-93 shall be expended for the celebration of the Martin Luther King Jr. holiday.

SECTION 130. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$300,000 in fiscal year 1991-92 and \$300,000 in fiscal year 1992-93 shall be expended for the governor's contingency fund, which may be transferred to other programs and agencies and allotted, with the approval of the governor, for unexpected or unforeseen needs.

SECTION 131. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$7,500 in fiscal year 1991-92 and \$7,500 in fiscal year 1992-93 may be used by its administrative director for protocol purposes; provided further that the sum of \$7,500 in fiscal year 1991-92 and \$7,500 in fiscal year 1992-93 may be used by the director of the office of international relations for protocol purposes.

SECTION 132. Except as otherwise provided, the appropriation for the office of the governor (GOV 100) shall be expended at the discretion of the governor.

SECTION 133. Provided that of the general fund appropriation for the office of the lieutenant governor (LTG 100), the sum of \$200,000 in fiscal year 1991-92 shall be used for expenses related to the renovation of new counting centers on Oahu and Kauai; provided further that the office of the lieutenant governor shall submit an expenditure report to the legislature no less than twenty days prior to the convening of the 1992 regular session.

SECTION 134. Provided that of the general fund appropriation to the office of the lieutenant governor (LTG 100), the sum of \$275,000 or so much thereof as may be necessary, may be expended in each fiscal year of the fiscal biennium 1991-93 to conduct any special election which may be required by law; provided further that if no special election is required, such sums shall not be

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expended and shall lapse into the general fund at the end of the respective fiscal year.

SECTION 135. Provided that any reimbursement of the sums expended from the general fund appropriation to the office of the lieutenant governor (LTG 100) for the purpose of conducting any county-associated elections in fiscal biennium 1991-93, shall be deposited into the general fund.

SECTION 136. Provided that of the general fund appropriation for the office of the lieutenant governor (LTG 100 AA) the sum of \$1,205,564 in fiscal year 1991-92 and \$706,161 in fiscal year 1992-93 shall be expended at the discretion of the lieutenant governor, except as otherwise provided in this Act.

SECTION 137. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$300,000 in fiscal year 1991-92 and \$300,000 in fiscal year 1992-93 shall be expended for the pesticide re-registration program; provided further that these funds shall be expended by the governor's agriculture coordinating committee; provided further that the governor's agriculture coordinating committee shall submit a progress report on this provision; provided further that this report shall include but not be limited to: the progress being made with the re-registration program and each specific pesticide under consideration, and the projected funding level (if necessary) for the continuation of this project with justification for the recommended funding in future years; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session; provided further that a complete and final report of this provision shall also be submitted to the legislature at the end of each fiscal year.

SECTION 138. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$120,000 in fiscal year 1991-92 and \$120,000 in fiscal year 1992-93 shall be expended for research on low input sustainable agriculture (LISA); provided further that these funds shall be expended by the governor's agriculture coordinating committee; provided further that the governor's agriculture coordinating committee shall submit a progress report on this provision; provided further that this report shall include but not be limited to: the progress being made with LISA research, specific examples identifying progress with LISA, and projected funding (if necessary) for the continuation of this project with justification for the recommended funding in future years; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session; provided further that a complete and final report of this provision shall also be submitted to the legislature at the end of each fiscal year.

SECTION 139. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$50,000 in fiscal year 1991-92 and \$50,000 in fiscal year 1992-93 shall be expended for research on Chinese tallow; provided further that these funds shall be expended by the governor's agriculture coordinating committee (GACC).

SECTION 140. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$89,900 in fiscal year 1991-92 and \$90,300 in fiscal year 1992-93 shall be expended for firetree research and control; provided further that these funds shall be expended by the

governor's agriculture coordinating committee (GACC); provided further that the governor's agriculture coordinating committee shall submit a progress report on this provision; provided further that this report shall include, but not be limited to: the progress being made on the firetree research and control program, and the projected funding level (if necessary) for the continuation of this project with justification for the recommended funding in future years; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session; provided further that a complete and final report of this provision shall also be submitted to the legislature at the end of each fiscal year.

SECTION 141. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$263,322 for fiscal year 1991-92 and \$239,966 for fiscal year 1992-93 shall be expended for fruit fly control and eradication projects; provided further that these funds shall be expended by the governor's agriculture coordinating committee (GACC); provided further that the governor's agriculture coordinating committee shall submit a progress report on this provision; provided further that this report shall include, but not be limited to: the progress being made with fruit fly control and eradication projects, and the projected funding level (if necessary) for the continuation of these projects with justification for the recommended funding in future years; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session; provided further that a complete and final report of this provision shall also be submitted to the legislature at the end of each fiscal year.

SECTION 142. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$5,201,918 in fiscal year 1991-92 and \$5,184,511 in fiscal year 1992-93 shall be expended for research on agricultural commodities; provided further that the governor's agriculture coordinating committee (GACC) shall be the expending agency; provided further that the sum of \$2,500,000 in fiscal year 1991-92 and \$2,500,000 in fiscal year 1992-93 shall be used to assist the sugar industry through a contract with the Hawaiian sugar planters association; provided further that the sum of \$250,000 in fiscal year 1991-92 and \$250,000 in fiscal year 1992-93 shall be expended for research on anthuriums; provided further that the sum of \$404,388 in fiscal year 1991-92 and \$387,786 in fiscal year 1992-93 shall be used as a contingency fund to be expended only to address emergency situations needing funding and deemed necessary by the department of agriculture and the governor's agriculture coordinating committee, with the approval of the director of finance; provided further that the expenditure of these funds shall be itemized and reported to the legislature no later than twenty days prior to the convening of the 1992 regular session; provided further that an up-dated itemized report on this provision shall also be submitted to the legislature at the end of each fiscal year; provided further that the governor's agriculture coordinating committee shall submit a progress report which shall include but not be limited to: the progress being made with each specific commodity that is funded for research, and projected funding (if necessary) for the continuation of each of these research projects with justification for the recommended funding in future years; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session; provided further that a complete and final report of this provision shall also be submitted to the legislature at the end of each fiscal year.

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SECTION 143. Provided that of the general funds appropriation for other policy development and coordination (GOV 102), the sum of \$24,000 in fiscal year 1991-92 shall be expended for the preparation of an action plan for the development of farm lots and/or dairies in North Kohala; provided further that these funds shall be expended by the governor's agriculture coordinating committee; provided further that the governor's agriculture coordinating committee shall submit a progress report on this provision no later than twenty days prior to the convening of the 1992 regular session.

SECTION 144. Provided that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$459,901 in fiscal year 1991-92 and \$171,065 in fiscal year 1992-93 shall be used to address controversies under the native Hawaiian home lands and public land trusts and to support the State's planning activities to prepare for the return of the island of Kahoolawe to the State; provided further that the office of state planning will continue to identify parcels of public land which may be conveyed to the office of hawaiian affairs; provided further that a report on proposed resolutions addressing the trust relief projects shall be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 145. Provided that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$7,500 in fiscal year 1991-92 and \$7,500 in fiscal year 1992-93 may be used by the director of the office of state planning for protocol purposes.

SECTION 146. Provided that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$75,000 in fiscal year 1991-1992 shall be expended by the office of state planning to conduct a study on the social, economic, and environmental impacts of golf courses, driving ranges, and related facilities and to formulate consistent standards and criteria for the mitigation of adverse impacts including compensatory payments for use by appropriate state and county agencies in the review and [Aapproval of proposed golf courses, driving ranges and related facilities; provided further that the office of state planning shall submit a report on its findings and recommendations to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 147. 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 appropriation made to the program planning, analysis and budgeting program (BUF 101) in fiscal year 1991-92 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 the governor shall submit a report to the legislature of all transfers as of December 31, 1991 and June 30, 1992.

SECTION 148. Provided that of the general fund appropriation for supporting services, revenue collection (TAX 107), the sum of \$35,000 in fiscal year 1991-92 and \$35,000 in fiscal year 1992-93 shall be used for the requirements of litigated tax claims pursuant to section 40-35, Hawaii Revised Statutes.

SECTION 149. Provided that of the general fund appropriation for cash and debt management (BUF 112), the sum of \$300,000 in fiscal year 1991-92 and \$315,000 in fiscal year 1992-93 shall be used to meet the 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 150. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$1,700,000 in fiscal year 1991-92 and \$1,700,000 in fiscal year 1992-93 shall be expended for litigation expenses; provided further that the attorney general shall submit a quarterly accountability report on all expenses incurred for litigation expenses and the hire of special deputies to the governor; provided further that the report shall identify such litigation expenses and costs of special deputies incurred by any general funded and any non-general funded state department, agency, or program by program identification and organization code.

SECTION 151. Provided that of the general fund appropriation for electronic data processing services (BUF 131), nine position counts and \$690,699 in fiscal year 1991-92 and nine position counts and \$592,942 in fiscal year 1992-93 shall be used to establish a cost effective maintenance support program for end user computing and select telecommunication equipment.

SECTION 152. Provided that, notwithstanding any appropriation or position ceiling, the governor may transfer positions and funds between existing programs of the state government to work force attraction, selection, classification and effectiveness (PER 102), for the purpose of implementing a centralized workers' compensation program during fiscal year 1991-92; provided further that the governor shall submit a report to the legislature of all transfers as of December 31, 1991 and June 30, 1992.

SECTION 153. Provided that of the general fund appropriation for work force attraction selection, classification and effectiveness (PER 102), the sum of \$13,303,034 in fiscal year 1991-92 and \$13,968,213 in fiscal year 1992-93 shall be expended to cover workers' compensation claims; provided further that, in the event such claims exceed general fund appropriations, the governor is authorized to utilize savings as may be available from any other state program for the purpose of meeting deficits incurred by the department of personnel services; provided further that the governor shall submit a report to the legislature of all transfers as of December 31, 1991 and June 30 of each fiscal year.

SECTION 154. Provided that of the general fund appropriation for work-force attraction, selection, classification, and effectiveness (PER 102), the sum of \$22,660 in fiscal year 1991-92 and \$24,140 in fiscal year 1992-93 shall be expended for three annual pilot job fairs; provided further that the department of personnel services shall submit a detailed assessment of the pilot program to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

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SECTION 155. Provided that of the general fund appropriation for work-force attraction, selection, classification and effectiveness (PER 102), the sum of \$350,000 in fiscal year 1991-92 and \$350,000 in fiscal year 1992-93 shall be expended for the continued implementation of the market-based recruitment plan and shall not be expended for any other purpose; provided further that in order to ensure the proper expenditure of appropriate funds the department of personnel services shall submit a detailed expenditure and comprehensive status report to the legislature no later than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 156. Provided that of the general fund appropriation for supporting services-personnel services (PER 191) the sum of \$100,000 in fiscal year 1991-92 shall be used for a consultant study to determine the feasibility of and need for creating a center for excellence; provided further that this study shall be submitted to the legislature no less than twenty days prior to the convening of the 1992 regular session.

SECTION 157. Provided that of the general fund appropriation for construction (AGS 221), the sum of \$519,000 for fiscal year 1991-92 shall be expended for construction, and furniture and equipment relating to the move out of the state capitol; provided further that the sum of \$70,000 in fiscal year 1991-92 shall be expended for work on the fifth floor of the state office tower for the Senate; provided further that \$70,000 in fiscal year 1991-92 shall be expended for work on the seventh floor of the state office tower for the House of Representatives.

SECTION 158. Provided that of the general fund appropriation for construction (AGS 221), the sum of \$905,438 in fiscal year 1991-92, and the sum of \$857,123 in fiscal year 1992-93 shall be expended for additional office space leases for the following state agencies:

AGENCY	<u>FY 1991-92</u>	<u>FY 1992-93</u>
Dept. of Budget & Finance		
Hawaii Public Emp. Health Fund	\$170,400	\$178,920
Dept. of Education		
ETV & Office of Information & Space Technology	240,000	240,000
Dept. of Health		
West Hawaii Staff	163,875	163,875
Litter Control Office	88,800	88,800
Dept. of Personnel Services	50,000	50,000
Dept. of Public Safety		
Maui Parole Section	15,360	15,840
Kauai Intake Service Center	38,938	38,938
Hawaii State Public Library System Administrative Services Branch	58,065	—
Kauai Library District	15,000	15,750
Office of International Relations	65,000	65,000

provided further that the department of accounting and general services (DAGS) shall submit an updated listing of all leases centralized within DAGS for other state agencies no later than twenty days prior to the convening of the 1992 regular session.

SECTION 159. Provided that of the general fund appropriation for surplus property management (AGS 244), the sum of \$27,000 in fiscal year 1991-92, and the sum of \$28,350 in fiscal year 1992-93 shall be expended for administrative support to reimburse the federal surplus property program; provided further that the department of accounting and general services (DAGS) shall provide cost/benefit evaluations on the motor vehicle sales program up to December 31, 1991 in determining the feasibility of expanding the program; provided further that all executive branch agencies on the island of Oahu will comply with the provisions of comptroller memorandum 1991-1 dated January 10, 1991; provided further that this report be submitted to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 160. Provided that of the general fund appropriation for general administrative services (AGS 901), the sum of \$450,000 in fiscal year 1991-92 shall be expended for the development of a Kulani master plan; provided further that the study shall include, but not be limited to: water transmission, infrastructure, and the possibilities of other state agencies utilizing this project site; provided further that the department of accounting and general services shall submit this study to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 161. Provided that of the general fund appropriation for grant-in-aid to counties (SUB 201), the amount apportioned to the city and county of Honolulu; and shall include \$225,000 for fiscal year 1991-92 and \$225,000 for fiscal year 1992-93 for the purchase of necessary equipment and operating costs for the parking violations enforcement programs within the department of transportation services of the city and county of Honolulu; provided further that these funds shall be matched on a dollar-for-dollar basis by the city and county of Honolulu.

SECTION 162. Provided that in order to ensure that the state executive departments are appropriately and efficiently expending funds for computer systems, information systems and information/communication technology projects under this Act, all departments shall issue a request for proposal and invitation for bid in order to select consultants for such applications when the system or project cost is over \$100,000; provided further that the department of budget and finance shall review all requests for proposals prior to their release, and all consulting service contracts prior to issuance for the purpose of determining whether the action represents an appropriate and efficient use of funding.

SECTION 163. Provided that all executive departments shall prepare a report of all computer systems, information systems and information/communication technology projects planned for the 1991-93 fiscal biennium when the biennium cost is projected to exceed \$100,000; provided further that this report shall

include, but not be limited to: detailed project descriptions; scope; specific project phases; goals and objectives for the project and for each phase of the project; budget and personnel needs for the development and maintenance of the project once completed and for each phase individually; and timetables for implementation; provided further that should a revision become necessary to the planning or implementation of a project for which a report was already previously submitted to the 1991 legislature, that this revision shall clearly point out the differences between the revision and the original report; provided further that the department of budget and finance shall coordinate and compile these reports and submit them to the legislature no later than twenty days prior to the convening of the 1992 regular session.

SECTION 164. Provided that in an effort to obtain more efficient state government operations, the legislative reference bureau (LRB) shall conduct a study to assess the feasibility of establishing a state travel agency; provided further that this study shall:

- (1) Examine the feasibility and the costs and benefits of establishing a state travel agency to handle all travel arrangements of state employees conducting official state business that will allow for cost savings with a minimum loss in service;
- (2) Examine whether the securing of a single or multiple vendors to obtain discount rates would be a more feasible alternative; and
- (3) Examine any other arrangement which may be superior to either a state travel agency or the securing of a single or multiple vendors;

provided further that LRB shall consult with the department of accounting and general services and the university of Hawaii regarding their experience in obtaining travel cost savings; and provided further that LRB shall submit findings, recommendations, and proposed legislation, if necessary, to the legislature twenty days prior to the convening of the regular session of 1992.

PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 165. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED.

The sums of money appropriated or authorized in Part II of this Act for capital improvement shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be 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 further that the total cost of the project 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

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
A. ECONOMIC DEVELOPMENT							
BED102 - COMMERCE AND INDUSTRY							
1.		HTDC-2 MANOA INNOVATION CENTER, OAHU					
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE BUILDING WING, INCUBATION WALLS, TELECOMMUNICATIONS/ CABLING, UNINTERRUPTED POWER AND LANDSCAPING.					
		LAND			1		
		DESIGN			40		
		CONSTRUCTION			2,140		
		EQUIPMENT			1		
		TOTAL FUNDING	BED		2,182 C		C
2.		TELECOMMUNICATIONS GROUND STATION, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ADVANCED TELECOMMUNICATIONS GROUND STATION FOR THE STATE OF HAWAII.					
		PLANS			58		
		DESIGN			25		
		CONSTRUCTION			73		
		EQUIPMENT			393		
		TOTAL FUNDING	BED		549 C		C
3.		FILMING FACILITY, PHASE I, OAHU					
		CONSTRUCTION FOR THE FILMING FACILITY, PHASE I.					
		CONSTRUCTION			3,000		
		TOTAL FUNDING	BED		3,000 C		C
4.		KAUAI TROPICAL FRUIT DISINFESTATION FACILITY, KAUAI					
		LAND ACQUISITION AND CONSTRUCTION FOR THE DEVELOPMENT OF A TROPICAL FRUIT DISINFESTATION FACILITY.					
		LAND			200		
		CONSTRUCTION			250		
		TOTAL FUNDING	BED		450 C		C
AGR122 - PLANT PEST AND DISEASE CONTROL							
5.		PPC-01 QUARANTINE AND PROPAGATION INSECTARY BUILDINGS ADDITIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR ADDITIONS					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TO EXISTING QUARANTINE AND PROPAGATION INSECTARY BUILDINGS WHICH WILL INCLUDE AN EXTENSION OF MOATS SURROUNDING BOTH BUILDINGS AND AN ESCAPE PROOF DESIGN FOR THE QUARANTINE FACILITY.					
					12		
					72		
			AGS		84 C		C

AGR131 - ANIMAL QUARANTINE

- 6. AQS-01 ANIMAL QUARANTINE STATION, RENOVATIONS AND IMPROVEMENTS, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR AQS RENOVATIONS TO ADD/REPLACE/RENOVATE ANIMAL KENNELS, IMPROVE INFRASTRUCTURE, PROVIDE NEW TEAMLEADER WORKSHEDS, RENOVATE LIGHTING AND PA SYSTEMS, IMPROVE LANDSCAPING, RENOVATE SEWAGE TREATMENT PLANT/BACKUP GENERATOR, AND OTHER IMPROVEMENTS.

PLANS			7	
DESIGN			152	
CONSTRUCTION				2,940
TOTAL FUNDING	AGS		159 C	2,940 C

LNR172 - FORESTRY - PRODUCTS DEVELOPMENT

- 7. D42A STATE TREE NURSERY OPERATIONS BUILDING, KAMUELA, HAWAII

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF AN OLD QUONSET BUILDING WITH A NEW STEEL STRUCTURE. PROJECT WILL REQUIRE THE REMOVAL OF THE EXISTING BUILDING AND CONSTRUCTION OF THE NEW BUILDING OVER THE EXISTING 40 FEET BY 100 FEET CONCRETE FLOOR AREA; PAVING OF DRIVEWAY AND PARKING AREA; OTHER RELATED WORK.

PLANS			10	
DESIGN			60	
CONSTRUCTION				750
EQUIPMENT				60
TOTAL FUNDING	LNR		70 C	810 C

AGR141 - AGRICULTURAL RESOURCE MANAGEMENT

- 8. 920001 PANAWEA AGRICULTURAL PARK, MARSHALLING & PROCESSING FACILITY, HAWAII

PLANS AND DESIGN FOR INCREMENTAL

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DEVELOPMENT OF MARSHALLING AND PROCESSING FACILITIES INCLUDING OTHER APPURTENANT WORK.					
		PLANS DESIGN			50		
		TOTAL FUNDING	AGS		150		
					200 C		C
9.	920002	WAIMEA IRRIGATION OFFICE ADDITION, KAMUELA, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ADDITION TO EXISTING STOREROOM AND RENOVATION OF EXISTING STOREROOM INTO OFFICE SPACE AT THE WAIMEA IRRIGATION OFFICE.					
		PLANS DESIGN			25		
		CONSTRUCTION EQUIPMENT			35		
		TOTAL FUNDING	AGS		125		
					25		
					210 C		C
10.	920008	MOLOKAI IRRIGATION SYSTEM, KUALAPUU RESERVOIR SECURITY FENCING, MOLOKAI					
		PLANS, DESIGN, AND CONSTRUCTION FOR SECURITY FENCING TOGETHER WITH APPURTENANT WORKS FOR RESERVOIR PERIMETER INCLUDING REMOVAL AND DISPOSAL OF EXISTING FENCING.					
		PLANS DESIGN			15		
		CONSTRUCTION			25		
		TOTAL FUNDING	LNR		200		
					240 C		C
11.	920011	WAIMEA IRRIGATION SYSTEM, IMPROVEMENTS TO LALAMILO DISTRIBUTION SYSTEM, HAWAII					
		PLANS AND DESIGN FOR THE REPLACEMENT OF PIPELINES TOGETHER WITH APPURTENANT WORKS IN THE LALAMILO FARM LOT SECTION TO INCLUDE PIPE LOOP, SERVICE LATERAL IMPROVEMENTS AND METER UPGRADING.					
		PLANS DESIGN			15		
		TOTAL FUNDING	LNR		25		
					40 C		C
AGR192 - GENERAL ADMINISTRATION FOR AGR							
12.	A01	AGRICULTURAL PARK SUBDIVISION, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR ON AND OFF SITE IMPROVEMENTS FOR DEVELOPMENT OF AGRICULTURAL PARK, SUBDIVISIONS,					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		STATEWIDE. TO INCLUDE ACQUISITION OF LAND BY FEE SIMPLE PURCHASE OR LEASE.					
		PLANS			200		
		LAND			7,600		
		DESIGN			300		
		CONSTRUCTION					2,000
		TOTAL FUNDING	AGR		8,100 C		2,000 C
LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE							
13.		C36 LARGE-SCALE POND RESEARCH, TRAINING AND DEMONSTRATION FACILITY, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A POND RESEARCH FACILITY TO PROVIDE BETWEEN 15-50 ACRES OF VARIOUS SIZED PONDS OF UP TO 1 ACRE IN SIZE WITH REQUIRED EQUIPMENT AND PLUMBING. FACILITY TO CONSIST OF CLASSROOMS, LABS, DORMS, FEED AREA, AND MECHANICAL/ MAINTENANCE AREAS. FACILITY TO REQUIRE FRESH, BRACKISH, AND SALTWATER.					
		DESIGN			300		
		CONSTRUCTION			1,400		
		EQUIPMENT			300		
		TOTAL FUNDING	LNR		2,000 C		C
14.		FEED MILL LABORATORY, OAHU					
		CONSTRUCTION FOR A FEED MILL LABORATORY AT THE OCEANIC INSTITUTE'S MAKAPUU FACILITY. (GRANT-IN-AID)					
		CONSTRUCTION			850		
		TOTAL FUNDING	LNR		850 C		C
BED120 - ENERGY DEVELOPMENT AND MANAGEMENT							
15.		AEB001 GEOTHERMAL/TRANSMISSION SYSTEM MASTER PLAN AND EIS, STATEWIDE					
		PLANS FOR MASTER PLAN & PROGRAMMATIC EIS, NEPA OR STATE, AS DETERMINED, FOR GEOTHERMAL DEVELOPMENT & ELECTRICAL TRANSMISSION; ESTABLISH A COORDINATED PLANNING FRAMEWORK FOR DEVELOPING GEOTHERMAL RESOURCES, FIRST TO MEET THE ISLAND OF HAWAII'S FUTURE BASELOAD ENERGY REQUIREMENTS, & 2ND TO PROVIDE FOR POSSIBLE EXPORT OF ENERGY TO MAUI & OAHU; INCORPORATE INPUT FROM CITIZENS, DEVELOPERS, INDUSTRY, & GOVERNMENT.					
		PLANS			400		
		TOTAL FUNDING	BED		400 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
16.		GEO91A GEOTHERMAL RESOURCE ASSESSMENT, HAWAII					
		CONSTRUCTION FOR EXPLORATORY GEOTHERMAL DRILLING AND RESERVOIR ASSESSMENT TO DETERMINE IF AND WHERE SUFFICIENT RETRIEVABLE RESOURCES ARE AVAILABLE, FIRST TO SATISFY THE ISLAND OF HAWAII'S FUTURE BASELOAD ENERGY REQUIREMENTS, AND SECOND TO EXPORT ENERGY TO MAUI AND OAHU.					
			CONSTRUCTION			1,500	
			TOTAL FUNDING	BED		1,500 C	C
17.		SHPA92 SOLAR AND HEAT PIPE-ASSISTED AIR CONDITIONING OF STATE OFFICE BUILDINGS					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RETROFIT OF AIR CONDITIONING SYSTEMS, USING HEAT PIPE OR SOLAR ASSISTED SYSTEMS, IN THREE REPRESENTATIVE STATE OFFICE BUILDINGS.					
			PLANS			20	
			DESIGN			20	
			CONSTRUCTION			60	
			EQUIPMENT			120	
			TOTAL FUNDING	BED		220 C	C
18.		HTDC-1 HAWAII OCEAN SCIENCE AND TECHNOLOGY PARK, HAWAII					
		PLANS AND DESIGN FOR SECONDARY ROADS AND UTILITY DISTRIBUTION SYSTEMS.					
			PLANS			23	
			DESIGN			290	
			TOTAL FUNDING	BED		313 C	C
19.		HTDC-6 HAWAII OCEAN SCIENCE AND TECHNOLOGY (HOST) PARK WARM WATER PIPE, HAWAII					
		CONSTRUCTION FOR A SURFACE SEAWATER PIPE TO SERVICE THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY, KEAHOLE, KONA, HAWAII.					
			CONSTRUCTION			100	
			TOTAL FUNDING	BED		100 C	C
20.		HTDC-7 HAWAII OCEAN SCIENCE AND TECHNOLOGY (HOST) PARK ON-SITE BUILDING, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR A LABORATORY/OFFICE BUILDING AT THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY, KEAHOLE, KONA, HAWAII.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION EQUIPMENT			600		
		TOTAL FUNDING	BED		50		
					650 C		C
21.		NELH10 OFFSHORE SEAWATER PIPELINES, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FOUR OFFSHORE SEAWATER PIPELINES AND RELATED PUMP STATIONS TO SUPPLY OTEC PLANT(S) AND OTHER OCEAN-RELATED INDUSTRIES WITH UP TO 35,000 GALLONS PER MINUTE DEEP COLD SEAWATER AND UP TO 25,000 GALLONS PER MINUTE SURFACE WARM SEAWATER IN THE HOST PARK AREA OF NELHA.					
		DESIGN			1		
		CONSTRUCTION			1		
		EQUIPMENT			3,598		
		TOTAL FUNDING	BED		3,600 C		C
22.		OCEAN THERMAL ENERGY CONVERSION (OTEC) PROJECT, HAWAII					
		DESIGN AND CONSTRUCTION TO BUILD AND TEST A PRECOMMERCIAL CLOSED-CYCLE OCEAN THERMAL ENERGY CONVERSION (OTEC) PLANT AT KEAHOLE, HAWAII.					
		DESIGN			50		
		CONSTRUCTION			450		
		TOTAL FUNDING	BED		500 C		C

C. TRANSPORTATION FACILITIES

TRN102 - HONOLULU INTERNATIONAL AIRPORT

1. A11 HIA INTERISLAND COMPLEX, OAHU

DESIGN & CONSTRUCTION FOR INTERISLAND COMPLEX INCLUDING BUILDINGS, APRONS & TAXIWAYS, ROADWAYS, PARKING AND OTHER MISC IMPROVEMENTS. RELOCATE EXISTING INTERISLAND MAINTENANCE, CARGO AND ADMIN OFFICES. ALTERATIONS TO EXISTING BLDGS, APRONS, ROADWAYS AND PARKING. INSTALL FURNITURE, LANDSCAPING, AND MISC EQUIPMENT.

DESIGN		3,055	2,635
CONSTRUCTION		28,495	9,965
TOTAL FUNDING	TRN	27,050 B	10,600 B
	TRN	4,500 N	2,000 N

2. A16 HIA INTERNATIONAL TERMINAL COMPLEX, OAHU

DESIGN AND CONSTRUCTION FOR INTERNATIONAL TERMINAL BUILDING COMPLEX

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		INCLUDING BUILDINGS, APRONS & TAXIWAYS, ROADWAYS, PARKING, FURNITURE, LANDSCAPING, GATES, LOADING BRIDGES, AIR CARGO/PARKING/OFFICE/TENANT LEASE SPACE COMPLEX, FUEL STORAGE, & OTHER MISC IMPROVEMENTS.					
		DESIGN			9,025		
		CONSTRUCTION			334,475		
		TOTAL FUNDING	TRN		342,500 E		E
			TRN		1,000 N		N
3.	A20	INTRA-TERMINAL TRANSPORTATION SYSTEM AT HIA, OAHU					
		DESIGN AND CONSTRUCTION FOR INTRA-TERMINAL TRANSPORTATION SYSTEM INCLUDING EQUIPMENT, BUILDINGS, GUIDE-WAYS, UTILITIES, COMPUTERIZED CONTROL SYSTEM, TERMINAL BUILDING MODIFICATIONS, RELOCATION OF EXISTING TENANTS, ESCALATORS, MOVING SIDEWALKS, AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		DESIGN			6,075		
		CONSTRUCTION			152,025		
		TOTAL FUNDING	TRN		157,100 E		E
			TRN		1,000 N		N
4.	A23	HIA AIRFIELD IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO AIRFIELD FACILITIES INCLUDING TAXIWAYS, RUNWAYS, SIGNS, ENGINE RUN UP PAD, SERVICE ROADS, SAFETY AREAS, LIGHTING SYSTEMS, EMERGENCY GENERATOR, AND OTHER MISC IMPROVEMENTS.					
		CONSTRUCTION			6,950		
		TOTAL FUNDING	TRN		5,950 B		B
			TRN		1,000 N		N
5.	A28	HIA AIRPORT TRAINING CENTER, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO AIRPORT TRAINING CENTER INCLUDING BUILDINGS, PARKING, UTILITIES, LANDSCAPING, AND OTHER MISCELLANEOUS IMPROVEMENTS. RELOCATE AVIONICS SCHOOL TENANT.					
		CONSTRUCTION			6,950		
		TOTAL FUNDING	TRN		6,950 B		B
6.	A37	AIRPORT SYSTEMS IMPROVEMENTS AT HIA, OAHU					
		DESIGN & CONSTRUCTION FOR IMPROVEMENTS INCLUDING ENERGY MANAGEMENT, SIGNS, FLIGHT INFORMATION, FIRE ALARM, SECURITY, OPERATIONAL CONTROLS, LOADING					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		BRIDGES, UTILITIES, RAMP AIR, FUELING, ELECTRICAL DISTRIBUTION, AIR CONDITIONING, EMERGENCY POWER, AND OTHER MISC IMPROVEMENTS. IMPROVE OPERATIONAL AND ENERGY EFFICIENCY.					
		DESIGN			3,052		660
		CONSTRUCTION			43,790		6,835
		TOTAL FUNDING	TRN		46,742 E		7,395 E
			TRN		100N		100N

7. A43 SERVICE SUPPORT FACILITIES AT HIA, OAHU

CONSTRUCTION FOR BUILDINGS, ROADS, PARKING, UTILITIES, APRONS, LANDSCAPING, TELEPHONE, NON-POTABLE WATER, LEASE LOTS, TAXIWAY, AIR CARGO, AIRCRAFT MAINTENANCE, GENERAL AVIATION, HELICOPTER, AIR TAXI, AIRCRAFT FUELING, WASTE DISPOSAL, DRAINAGE IMPROVEMENTS, HANGARS, AND OTHER MISCELLANEOUS IMPROVEMENTS.

CONSTRUCTION			34,260		
TOTAL FUNDING	TRN		33,260 E		E
	TRN		1,000N		N

TRN111 - HILO INTERNATIONAL AIRPORT

8. B10 HILO INTERNATIONAL AIRPORT IMPROVEMENTS, HAWAII

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES INCLUDING BUILDINGS, ROADS, PARKING, UTILITIES, TAXIWAYS, APRONS, CARGO, GENERAL AVIATION, LEASE LOTS, HELICOPTER FACILITIES, & OTHER MISC IMPROVEMENTS. MODIFICATIONS TO EXISTING FACILITIES AND RELOCATION OF TENANTS. SOUND ATTENUATE WAIAKEA HEALTH CENTER.

DESIGN			660		20
CONSTRUCTION			1,675		9,150
TOTAL FUNDING	TRN		2,235 B		7,170 B
	TRN		100N		2,000N

TRN114 - KE-AHOLE AIRPORT

9. C03 KEAHOLE AIRPORT IMPROVEMENTS, HAWAII

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES INCLUDING TERMINAL EXPANSION, BUILDINGS, ROADS, PARKING, APRONS, RUNWAYS, TAXIWAYS, LEASE LOTS, GENERAL AVIATION FACILITIES, UTILITIES, LANDSCAPING, FURNITURE, AND OTHER MISC IMPROVEMENTS. ALTERATIONS TO EXISTING FACILITIES AND RELOCATION OF

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TENANTS.					
		DESIGN			230		15
		CONSTRUCTION			54,525		4,910
		TOTAL FUNDING	TRN		49,755 B		2,925 B
			TRN		5,000 N		2,000 N
10.		C10 KEAHOLE AIRFIELD IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO AIRFIELD INCLUDING RUNWAY EXTENSION, TAXIWAYS, SERVICE ROADS, SITEWORK, PAVING, PAINTING, ELECTRICAL, STRENGTHEN EXISTING PAVEMENT. ALTERATION OR RELOCATION OF EXISTING FACILITIES AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		DESIGN			4,930		
		CONSTRUCTION			21,965		
		TOTAL FUNDING	TRN		24,895 B		B
			TRN		2,000 N		N
		TRN131 - KAHULUI AIRPORT					
11.		D08 SERVICE SUPPORT FACILITIES AT KAHULUI AIRPORT, MAUI					
		DESIGN AND CONSTRUCTION FOR BUILDINGS, ROADS, PARKING, APRONS, TAXIWAYS, LEASE LOTS, CARGO TERMINAL, HELIPADS, AIRLINES MAINTENANCE FACIL, FUEL STORAGE SITE, GENERAL AVIATION FACIL, UTILITIES, FLIGHT KITCHEN, ARFF FACIL, AIR TOUR FACIL, PARK, LANDSCAPING, AND OTHER MISC IMPROVEMENTS. RELOCATION OF EXISTING TENANTS.					
		DESIGN			1,215		460
		CONSTRUCTION			2,070		12,335
		TOTAL FUNDING	TRN		2,285 B		11,795 B
			TRN		1,000 N		1,000 N
12.		D10 KAHULUI AIRFIELD IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR EXTENSION TO EXISTING RUNWAY AND TAXIWAYS INCLUDING SITEWORK, PAVING, PAINTING, ELECTRICAL, STRENGTHEN EXISTING PAVEMENT, SERVICE ROADS, AIRCRAFT PARKING APRONS, ALTERATION OR RELOCATION OF EXISTING FACILITIES AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		DESIGN			1,305		
		CONSTRUCTION			26,775		
		TOTAL FUNDING	TRN		27,080 B		B
			TRN		1,000 N		N

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
TRN135 - KAPALUA AIRPORT							
13.		D30 KAPALUA AIRPORT IMPROVEMENTS, MAUI					
		PLANS FOR A MASTER PLAN, NOISE COMPATIBILITY PROGRAM, AND ENVIRONMENTAL ASSESSMENT PLANNING STUDIES.					
		PLANS			300		
		TOTAL FUNDING	TRN		300B		B
TRN141 - MOLOKAI AIRPORT							
14.		D55 MOLOKAI AIRPORT IMPROVEMENTS, MOLOKAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS INCLUDING NEW TERMINAL BUILDING, ROADS, PARKING, BUILDINGS, UTILITIES, LANDSCAPING, AND OTHER MISCELLANEOUS IMPROVEMENTS. MODIFICATIONS TO EXISTING FACILITIES AND RELOCATION OF EXISTING TENANTS.					
		DESIGN			590		
		CONSTRUCTION			3,705		
		TOTAL FUNDING	TRN		4,195B		B
			TRN		100N		N
TRN161 - LIHUE AIRPORT							
15.		E03 LIHUE AIRPORT COMPLEX, KAUAI					
		CONSTRUCTION FOR AIRPORT FACILITIES INCLUDING BLDGS, ROADS, PARKING, UTIL, AIRCRAFT APRONS, TAXIWAYS, RUNWAYS, CARGO TERMINAL, LEASE LOTS AND HANGARS, ALTERATION TO EXISTING FACIL INCLUDING BLDGS, AIRFIELD, ROADS, PARKING AND OTHER MISC IMPROVEMENTS. RELOCATION OF TENANTS AND MODIFICATIONS TO EXISTING FACILITIES.					
		CONSTRUCTION			5,760		
		TOTAL FUNDING	TRN		4,760B		B
			TRN		1,000N		N
TRN195 - AIRPORTS ADMINISTRATION							
16.		F04 AIRPORT PLANNING, STATEWIDE					
		PLANS TO PROVIDE BASIC DATA AND INFORMATION FOR PROPER PLANNING, PRELIMINARY DESIGNS, SPECIAL ENGINEERING, ARCHITECTURAL, ENVIRONMENTAL, NOISE COMPATIBILITY, AND SPECIAL STUDIES FOR STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		SYSTEM OF AIRPORTS AND CONTINUE REVIEW AND UPDATING MASTER PLANS AND NOISE COMPATIBILITY PROGRAM.					
		PLANS		640		700	
		TOTAL FUNDING	TRN	540 B		600 B	
			TRN	100N		100N	
17.		F08 AIRPORT IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MISC IMPROVEMENTS AT VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, AND OPERATIONAL EFFICIENCY. IMPROVEMENT OF STATEWIDE SYSTEMS INCLUDING FIRE ALARM, FLIGHT INFORMATION, COMMUNICATIONS, SECURITY, ENERGY MONITORING, AND AIRPORT OPERATIONS SYSTEM.					
		DESIGN		15			
		CONSTRUCTION		12,920			
		TOTAL FUNDING	TRN	12,435 B			B
			TRN	500N			N
TRN301 - HONOLULU HARBOR							
18.		J02 IMPROVEMENTS TO FACILITIES AT PIERS 19 TO 34 AT HONOLULU HARBOR, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF FIRE SPRINKLER SYSTEM IN PIER 29 SHED, RECONSTRUCT TOILET FACILITY AT PIER 25, AND OTHER IMPROVEMENTS.					
		PLANS		675			
		DESIGN		320		990	
		CONSTRUCTION		630		3,000	
		TOTAL FUNDING	TRN	1,625 B			B
			TRN		E	3,990 E	
19.		J03 MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO PIERS, SHEDS, AND YARD FACILITIES AT HONOLULU HARBOR, INCLUDING IMPROVEMENTS TO LIGHTING, PAVING, AND OTHER FACILITIES.					
		DESIGN		45		50	
		CONSTRUCTION		155		160	
		TOTAL FUNDING	TRN	200 B		210 B	
20.		J06 CONTAINER FACILITIES AT SAND ISLAND, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF SAND ISLAND CONTAINER YARD AREAS, PIERS, AND OTHER IMPROVEMENTS.					
		DESIGN		950			
		CONSTRUCTION		6,200		10,000	
		TOTAL FUNDING	TRN	950 B			B
			TRN	6,200 E		10,000 E	
21.		J20 IMPROVEMENTS TO PIERS 39-40 COMPLEX, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT PIERS 39-40, TO INCLUDE PIER, YARD, SHED, AND OTHER IMPROVEMENTS.					
		DESIGN		1,000		500	
		CONSTRUCTION		4,000		9,000	
		TOTAL FUNDING	TRN	5,000 E		9,500 E	
TRN303 - BARBERS POINT HARBOR							
22.		J11 BARBERS POINT HARBOR IMPROVEMENTS, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR INCREMENTAL DEVELOPMENT OF BARBERS POINT HARBOR INCLUDING PIERS, YARDS AND SHED FACILITIES, UTILITIES, AND OTHER IMPROVEMENTS.					
		PLANS		200			
		LAND				6,000	
		DESIGN		1,150		850	
		CONSTRUCTION		1,350		10,800	
		TOTAL FUNDING	TRN	1,600 B		7,150 B	
			TRN	1,100 E		10,500 E	
TRN311 - HILO HARBOR							
23.		L01 HILO HARBOR, HAWAII					
		DESIGN AND CONSTRUCTION FOR DREDGING OF HILO HARBOR BASIN, DEEPEN ENTRANCE CHANNEL, TURNING BASIN AND OTHER IMPROVEMENTS.					
		DESIGN				20	
		CONSTRUCTION				6,100	
		TOTAL FUNDING	TRN		E	1,550 E	
			TRN		N	4,570 N	
24.		L02 IMPROVE INTER-ISLAND FACILITIES AT HILO HARBOR, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PAVEMENT OF STORAGE YARD, UTILITY RELOCATION AND OTHER IMPROVEMENTS.					
		DESIGN		100			
		CONSTRUCTION		750			
		TOTAL FUNDING	TRN	850 B			B
25.		L10 HILO HARBOR IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT HILO HARBOR INCLUDING PIERS, YARDS, SHEDS, UTILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN		80			
		CONSTRUCTION				600	
		TOTAL FUNDING	TRN	80 B		600 B	
TRN313 - KAWAIHAE HARBOR							
26.		L05 BARGE TERMINAL IMPROVEMENTS AT KAWAIHAE HARBOR, HAWAII					
		DESIGN AND CONSTRUCTION FOR CLEARING ADDITIONAL YARD AREA, PROVIDE LIGHTING, AND OTHER IMPROVEMENTS.					
		DESIGN		20			
		CONSTRUCTION				100	
		TOTAL FUNDING	TRN	20 B		100 B	
27.		L09 IMPROVEMENTS TO KAILUA-KONA PIER, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE DEMOLITION AND RECONSTRUCTION OF EXISTING COMFORT STATION/OFFICE BUILDING.					
		DESIGN		30			
		CONSTRUCTION		300			
		TOTAL FUNDING	TRN	330 B			B
TRN331 - KAHULUI HARBOR							
28.		M06 PIER IMPROVEMENTS AT KAHULUI HARBOR, MAUI					
		DESIGN AND CONSTRUCTION FOR FUEL PIER, HARBOR DREDGING AND OTHER IMPROVEMENTS.					
		DESIGN		200			
		CONSTRUCTION				1,500	
		TOTAL FUNDING	TRN	200 B			B
			TRN	E		1,500 E	
29.		M09 KAHULUI HARBOR IMPROVEMENTS, MAUI					

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR DREDGING, BERTHING, YARD, AND OTHER IMPROVEMENTS.					
		LAND		7,500			
		DESIGN		100		500	
		CONSTRUCTION		1,000			
		TOTAL FUNDING	TRN	8,600 B			500 B
TRN341 - KAUNAKAKAI HARBOR							
		30. M07 KAUNAKAKAI HARBOR IMPROVEMENTS, MOLOKAI					
		DESIGN AND CONSTRUCTION FOR THE LIGHTING OF CAUSEWAY, EXTEND SHED AND OTHER IMPROVEMENTS.					
		DESIGN		20			
		CONSTRUCTION		75		200	
		TOTAL FUNDING	TRN	95 B			200 B
TRN361 - NAWILIWILI HARBOR							
		31. K01 NAWILIWILI HARBOR IMPROVEMENTS, KAUAI					
		DESIGN FOR THE DEVELOPMENT OF PIER 1 BACK-UP AREA AT NAWILIWILI AND OTHER IMPROVEMENTS.					
		DESIGN		900			
		TOTAL FUNDING	TRN	900 B			B
		32. K11 PIER 3 DEVELOPMENT AT NAWILIWILI HARBOR, KAUAI					
		CONSTRUCTION FOR THE DEVELOPMENT OF CARGO TERMINALS AT PIER 3 AND OTHER IMPROVEMENTS.					
		CONSTRUCTION		7,000			
		TOTAL FUNDING	TRN	7,000 E			E
TRN363 - PORT ALLEN HARBOR							
		33. K03 PORT ALLEN IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF SURGE BUOY, APRON LIGHTING, WATER SYSTEM AND OTHER IMPROVEMENTS.					
		DESIGN		80			
		CONSTRUCTION		70		500	
		TOTAL FUNDING	TRN	150 B			500 B
TRN395 - HARBORS ADMINISTRATION							

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
34.	I01	HARBOR PLANNING, STATEWIDE					
		PLANS FOR THE CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCED PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.					
		PLANS		550		200	
		TOTAL FUNDING	TRN	550 B		200 B	
35.	I03	MISC IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS AND OTHER FACILITIES.					
		DESIGN		75		75	
		CONSTRUCTION		200		200	
		TOTAL FUNDING	TRN	275 B		275 B	
TRN501 - OAHU HIGHWAYS							
36.	Q54	INTERSTATE H-1, KUNIA TO HALAWA I.C., AND H-2, MILILANI TO WAIAWA I.C., OAHU					
		CONSTRUCTION FOR ADDITIONAL LANES TO INCREASE THE INBOUND AND OUTBOUND CAPACITY OF INTERSTATE H-1, FROM KUNIA TO HALAWA INTERCHANGE AND INTERSTATE H-2, FROM MILILANI TO WAIAWA INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				8,200	
		TOTAL FUNDING	TRN		D	1,080 D	
			TRN		J	7,120 J	
37.	R76	KALANIANAOLE HIGHWAY, AINA KOA TO KEAHOLE STREET, OAHU					
		CONSTRUCTION FOR WIDENING KALANIANAOLE HIGHWAY TO A SIX LANE DIVIDED HIGHWAY FROM WEST HIND DRIVE TO KEAHOLE STREET; TO INCLUDE: SIDEWALKS, SHOULDERS, MEDIANS, AND OTHER IMPROVEMENTS FROM AINA KOA TO KEAHOLE STREET, OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		22,037		15,888	
		TOTAL FUNDING	TRN	6,611 D		4,766 D	
			TRN	15,426 K		11,122 K	
38.	S21	CASTLE HILLS REPLACEMENT ACCESS ROAD, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE PRESENT CASTLE HILLS SUBDIVISION ACCESS ON LIKELIKE HIGHWAY WITH A NEW ROADWAY TO KEAAHALA ROAD.					
		DESIGN			270		
		CONSTRUCTION			3,130		
		TOTAL FUNDING	TRN		3,400D		D
39.		Q62 INTERSTATE ROUTE H-1, PALI HIGHWAY OFF-RAMP IMPROVEMENTS, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR ADDITIONAL EXCLUSIVE RIGHT-TURN LANE ON PALI HIGHWAY OFF-RAMP. IMPROVEMENTS INCLUDE ROADWAY WORK, DEMOLITION AND RECONSTRUCTION OF RETAINING WALL, UPGRADING TRAFFIC SIGNALS, RELOCATING HIGHWAY LIGHTING SYSTEM, DRAINAGE SYSTEM, NEW OVERHEAD EXPRESSWAY SIGNS, AND OTHER RELATED ROADWAY WORK. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			1,000		
		DESIGN			50		
		CONSTRUCTION					500
		TOTAL FUNDING	TRN		1,050 B		500 B
40.		R30 INTERSTATE ROUTE H-3, JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU					
		DESIGN AND CONSTRUCTION FOR A DIVIDED HIGHWAY FROM JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN			27,479		
		CONSTRUCTION			416,506		
		TOTAL FUNDING	TRN		27,457 B		B
			TRN		30,159 E		E
			TRN		386,369 J		J
41.		R53 KAMEHAMEHA HIGHWAY, HELEMANO-WAIALUA JUNCTION TO HALEIWA BEACH PARK, OAHU					
		CONSTRUCTION FOR REALIGNMENT AND IMPROVEMENT OF HIGHWAY FROM HELEMANO-WAIALUA JUNCTION TO HALEIWA BEACH PARK. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION			17,000		
		TOTAL FUNDING	TRN		17,000 B		B
42.		R63 PUULOA ROAD-KAMEHAMEHA HIGHWAY TO PELTIER AVENUE, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		WIDENING THE EXISTING TWO-LANE FACILITY FROM KAMEHAMEHA HIGHWAY TO SALT LAKE BOULEVARD. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		2,500			
		CONSTRUCTION				4,000	
		TOTAL FUNDING	TRN	2,500 B		4,000 B	
43.	R71	LIKELIKE HWY-KAHEKILI HWY INTERCHANGE AND KAHEKILI HIGHWAY IMPROVEMENTS, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR LIKELIKE HIGHWAY-KAHEKILI HIGHWAY INTERCHANGE AND KAHEKILI HIGHWAY IMPROVEMENTS, OAHU. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		2,246			
		DESIGN		308			
		CONSTRUCTION				6,000	
		TOTAL FUNDING	TRN	2,554 B		6,000 B	
44.	S08	PALI HIGHWAY, HIGHWAY LIGHTS, PALI TUNNEL TO WAOKANAKA STREET, OAHU					
		CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTS. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION		1,400			
		TOTAL FUNDING	TRN	1,400 B			B
45.	S09	LIKELIKE HIGHWAY, HIGHWAY LIGHTS, WILSON TUNNEL TO VALLEY VIEW ROAD, OAHU					
		CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTS BETWEEN WILSON TUNNEL AND VALLEY VIEW ROAD, OAHU. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION		1,800			
		TOTAL FUNDING	TRN	1,800 B			B
46.	S80	HIGHWAY LIGHTING IMPROVEMENTS, ALA MOANA BOULEVARD AND VINEYARD BOULEVARD, OAHU					
		CONSTRUCTION FOR HIGHWAY LIGHTING IMPROVEMENTS AT ALA MOANA BOULEVARD AND VINEYARD BOULEVARD. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION		2,000			
		TOTAL FUNDING	TRN	2,000 B			B
47.	S82	NIMITZ HIGHWAY-MAKAI BOULEVARD IMPROVEMENTS, OAHU					
		DESIGN FOR IMPROVEMENTS TO NIMITZ					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		HIGHWAY FROM KEEHI INTERCHANGE AT INTERSTATE H-1 ALONG THE MAKAI BOULEVARD NETWORK TO KAPIOLANI INTERCHANGE ON INTERSTATE H-1. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN		1,500			
		TOTAL FUNDING	TRN	1,500	B		B
48.		S84 SAND ISLAND PARKWAY, SEWAGE TREATMENT PLANT TO SAND ISLAND PARK, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO SAND ISLAND PARKWAY TO HELP CORRECT FLOODING CONDITIONS AT THE INDUSTRIAL PARK AREA AND TO PROVIDE FOR SMOOTHER TRAFFIC FLOW CONDITIONS. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION		5,000			
		TOTAL FUNDING	TRN	5,000	B		B
49.		S86 TRAFFIC SIGNAL MODERNIZATION AT VARIOUS LOCATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO TRAFFIC SIGNALS LOCATED WITHIN TEN MILES FROM AIRPORTS. IMPROVEMENTS INVOLVE THE REPLACEMENT OF EXISTING NEMA CONTROLLERS WITH TYPE 170 CONTROLLERS, PROVIDE INTERCONNECTION OF TRAFFIC SIGNALS WHERE NECESSARY, AND OTHER RELATED WORK. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN		50			
		CONSTRUCTION		300		700	
		TOTAL FUNDING	TRN	350	B	700	B
50.		NORTH/SOUTH ROAD, PAPIPI ROAD TO INTERSTATE H-1, OAHU					
		DESIGN FOR A NEW FOUR LANE NORTH/SOUTH ROAD FROM PAPIPI ROAD TO INTERSTATE H-1, INCLUDING A NEW INTERCHANGE ON INTERSTATE H-1.					
		DESIGN		4,200			
		TOTAL FUNDING	TRN	4,200	B		B
51.		KAMEHAMEHA HIGHWAY, LUMIAINA STREET TO WAIPIO UKA STREET, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF KAMEHAMEHA HIGHWAY FROM LUMIAINA STREET TO WAIPIO UKA STREET. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		168			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			113		
		CONSTRUCTION			1,137		
		TOTAL FUNDING	TRN		1,418 B		B
52.		INTERSTATE H-1, WAIAWA INTERCHANGE TO PALAILAI INTERCHANGE, OAHU					
		CONSTRUCTION FOR HIGHWAY LIGHTS ON INTERSTATE H-1 FROM WAIAWA INTERCHANGE TO PALAILAI INTERCHANGE. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION			2,325		
		TOTAL FUNDING	TRN		306 B		B
			TRN		2,019 J		J
53.		KAMEHAMEHA HIGHWAY, KULEANA ROAD TO KALUAMOI DRIVE, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR STORAGE LANES AND DRAINAGE IMPROVEMENTS FOR LEFT TURN/U-TURN ON KAMEHAMEHA HIGHWAY BETWEEN KULEANA ROAD TO KALUAMOI STREET. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS			20		
		DESIGN			40		
		CONSTRUCTION			340		
		TOTAL FUNDING	TRN		400 B		B
54.		KAMEHAMEHA HIGHWAY, PUU PONI STREET TO PUU MOMI STREET, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR STORAGE LANES AND DRAINAGE IMPROVEMENTS FOR LEFT TURN/U-TURN ON KAMEHAMEHA HIGHWAY BETWEEN PUU PONI STREET AND PUU MOMI STREET. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS			20		
		DESIGN			40		
		CONSTRUCTION			340		
		TOTAL FUNDING	TRN		400 B		B
55.		PALI HIGHWAY, WYLLIE STREET TO AHI PLACE, OAHU					
		DESIGN AND CONSTRUCTION FOR SIDEWALKS ON PALI HIGHWAY FROM WYLLIE STREET TO AHI PLACE. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN			25		
		CONSTRUCTION			225		
		TOTAL FUNDING	TRN		250 B		B
56.		INTERSTATE H-1, KUNIA ROAD TO MIDDLE					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		STREET, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF TEN EMERGENCY PHONES ON INTERSTATE H-1 FROM KUNIA ROAD TO MIDDLE STREET.					
		DESIGN			1		
		CONSTRUCTION			59		
		TOTAL FUNDING	TRN		60 B		B
57.		S17 FARRINGTON HIGHWAY IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR FARRINGTON HIGHWAY IMPROVEMENTS FROM HELEUMA STREET TO JADE STREET.					
		CONSTRUCTION			8,000		
		TOTAL FUNDING	TRN		8,000 B		B
58.		HIGHWAY CONNECTOR AT THE ENTRANCE TO HALEIWA AND WAIALUA TOWNS, OAHU					
		DESIGN FOR A HIGHWAY CONNECTOR AT THE ENTRANCE TO HALEIWA AND WAIALUA TOWNS WITH THE HALEIWA BYPASS ROAD.					
		DESIGN			450		
		TOTAL FUNDING	TRN		450 D		D
TRN511 - HAWAII HIGHWAYS							
59.		T03 HAWAII BELT ROAD: HOLUALOA TO PAPA, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INCREMENTAL CONSTRUCTION OF TWO-LANE HIGHWAY FROM HOLUALOA TO PAPA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			400		
		DESIGN			300		
		CONSTRUCTION			2,300		
		TOTAL FUNDING	TRN		3,000 D		D
60.		T09 KANOELEHUA AVENUE WIDENING BETWEEN KAMEHAMEHA AVE AND PUAINAKO ST, HAWAII					
		DESIGN AND CONSTRUCTION FOR AN ADDITIONAL LANE NORTHBOUND TO RELIEVE TRAFFIC CONGESTION AND PROVIDE A LANE FOR THRU TRAFFIC AND TURNING MOVEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN			70		
		CONSTRUCTION					2,007
		TOTAL FUNDING	TRN		70 B		2,007 B

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
61.	T11	PUAINAKO STREET WIDENING, KOMOHANA STREET TO KILAUEA AVENUE, HAWAII					
		LAND ACQUISITION AND DESIGN FOR PUAINAKO STREET WIDENING, FROM KOMOHANA STREET TO KILAUEA AVENUE TO A FOUR-LANE HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					1,300
		DESIGN					300
		TOTAL FUNDING	TRN		B		1,600 B
62.	T64	KEAAU-PAHOA ROAD, KEAAU TOWN SECTION, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW ROADWAY AROUND KEAAU TOWN TO REDUCE TRAFFIC CONGESTION WITHIN THE TOWN. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS		600			
		LAND		2,000			
		DESIGN		600			
		CONSTRUCTION					3,000
		TOTAL FUNDING	TRN	3,200 B			3,000 B
63.	T82	WIDENING OF QUEEN KAAHUMANU HIGHWAY, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF QUEEN KAAHUMANU HIGHWAY TO A FOUR LANE DIVIDED HIGHWAY FROM PALANI ROAD TOWARD KAWAIHAE INCLUDING PAVED SHOULDERS FOR A BIKE ROUTE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		1,600			
		DESIGN		800			
		CONSTRUCTION					11,000
		TOTAL FUNDING	TRN	2,400 B			11,000 B
64.	T85	KEALAKEHE PARKWAY AND INTERCHANGE, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW MAUKA-MAKAI ROADWAY FROM MAMALAOA HIGHWAY TRAVERSING THROUGH KEALAKEHE AND CONNECTING TO QUEEN KAAHUMANU HIGHWAY WITH AN INTERCHANGE. THE ROADWAY WILL CONTINUE MAKAI ALONG THE COAST AND CONNECT TO KAILUA, KONA. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS		800			
		LAND					200
		DESIGN		1,612			800
		CONSTRUCTION		7,448			3,192

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	TRN	9,860	B	4,192	B
65.		HAWAII BELT ROAD, HILO TO PEPEEKEO, HAWAII					
		PLANS FOR THE WIDENING OF HAWAII BELT ROAD TO A FOUR LANE HIGHWAY FROM HILO TO PEPEEKEO, INCLUDING A FEASIBILITY STUDY IDENTIFYING POTENTIAL PROBLEMS IN ESTABLISHING A FOUR LANE HIGHWAY ALONG THE EXISTING ALIGNMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS		200			
		TOTAL FUNDING	TRN	200	B		B
TRN531 - MAUI HIGHWAYS							
66.		V04 HONOAPIILANI HIGHWAY WIDENING, KUIHELANI HIGHWAY TO NORTH KIHEI ROAD, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM KUIHELANI HIGHWAY TO THE MAALAEA HARBOR ENTRANCE TO A FOUR-LANE DIVIDED HIGHWAY TO PROVIDE ADDITIONAL CAPACITY AT THE APPROXIMATE CONVERGENCE OF HONOAPIILANI HIGHWAY, SOUTH KIHEI ROAD, NORTH KIHEI ROAD, AND KUIHELANI HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		5,900			
		DESIGN		300			
		CONSTRUCTION				5,000	
		TOTAL FUNDING	TRN	6,200	B	5,000	B
67.		V10 KAHULUI BEACH ROAD AND WAIEHU BEACH ROAD IMPROVEMENTS, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO INCLUDE THE WIDENING OF THE HIGHWAY INTO A DIVIDED FOUR-LANE HIGHWAY, PROVIDING PAVED SHOULDERS, IMPROVING THE DRAINAGE, AND WIDENING OF IAO STREAM BRIDGE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		400			
		DESIGN		500			
		CONSTRUCTION				8,357	
		TOTAL FUNDING	TRN	900	B	8,357	B
68.		V14 KUIHELANI HIGHWAY WIDENING, HONOAPIILANI HIGHWAY TO PUUNENE AVENUE, MAUI					
		DESIGN FOR WIDENING THE EXISTING					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		KUIHELANI HIGHWAY TO A FOUR-LANE, DIVIDED ARTERIAL BETWEEN PUUNENE AVENUE AND THE PROPOSED MAUI LANI PARKWAY TO PROVIDE ADDITIONAL CAPACITY THROUGH CENTRAL MAUI. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					800
		TOTAL FUNDING	TRN		B		800 B
69.	V41	HALEAKALA HIGHWAY, HANA HIGHWAY TO KULA HIGHWAY, MAKAWAO, MAUI					
		CONSTRUCTION FOR HALEAKALA HIGHWAY, FROM HALIIMAILE ROAD TO KULA JUNCTION, AND A TRUCK CLIMBING LANE FROM HANA HIGHWAY TO HALIIMAILE ROAD. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION		7,000			
		TOTAL FUNDING	TRN	7,000 B			B
70.	V42	HALEAKALA HIGHWAY WIDENING, PUKALANI BYPASS TO HANA HIGHWAY, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF HALEAKALA HIGHWAY FROM 3 TO 4 LANES BETWEEN HALIIMAILE ROAD AND HANA HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		1,000			
		DESIGN		500			
		CONSTRUCTION				10,000	
		TOTAL FUNDING	TRN	1,500 B		10,000 B	
71.	V51	HONOAPIILANI HWY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO PUAMANA, MAUI					
		LAND ACQUISITION AND CONSTRUCTION FOR THE WIDENING OF EXISTING HIGHWAY AND/OR TO CONSTRUCT A NEW ALIGNMENT FROM HONOKOWAI TO PUAMANA, LAHAINA. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		9,310			
		CONSTRUCTION				14,543	
		TOTAL FUNDING	TRN	9,310 B		14,543 B	
72.	V54	WAIKAPU BRIDGE WIDENING, MAUI					
		DESIGN AND CONSTRUCTION FOR THE WIDENING OF WAIKAPU BRIDGE TO PROVIDE FOR A LEFT TURN STORAGE LANE ON HONOAPIILANI HIGHWAY IN WAIKAPU TOWN TO WILIKONA PLACE. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN		75			

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION					825
		TOTAL FUNDING	TRN		75 B		825 B
TRN551 - LANAI HIGHWAYS							
73.		W59 MANELE ROAD IMPROVEMENTS, LANAI CITY TO MANELE BAY, LANAI					
		DESIGN AND CONSTRUCTION FOR THE WIDENING AND/OR REALIGNMENT OF MANELE ROAD. IMPROVEMENTS TO CONSIST OF TWO TRAVEL LANES, PAVED SHOULDERS, GUARDRAIL, AND OTHER IMPROVEMENTS. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN			610		
		CONSTRUCTION					11,590
		TOTAL FUNDING	TRN		305 B		5,795 B
			TRN		305 R		5,795 R
TRN561 - KAUAI HIGHWAYS							
74.		X61 NAWILIWILI ROAD-WAAPA ROAD INTERSECTION, KAUAI					
		CONSTRUCTION FOR THE REALIGNMENT OF THE HIGHWAY AT THE INTERSECTION OF NAWILIWILI ROAD AND WAAPA ROAD. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION			1,035		
		TOTAL FUNDING	TRN		1,035 B		B
75.		X62 KUHIO HIGHWAY - WAILUA BRIDGE AND COCO PALMS INTERSECTION IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR KUHIO HIGHWAY INTERSECTION IMPROVEMENTS AT WAILUA BRIDGE AND COCO PALMS INTERSECTION. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION			370		
		TOTAL FUNDING	TRN		370 B		B
76.		X47 MAALO ROAD WIDENING, KAUAI					
		LAND ACQUISITION AND CONSTRUCTION FOR UPGRADING THE ALIGNMENT AND PROVIDE STANDARD PAVEMENT/SHOULDERS, GUARDRAILS, AND DRAINAGE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			400		
		CONSTRUCTION					4,000
		TOTAL FUNDING	TRN		400 B		4,000 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
77.		X56 KUHIO HIGHWAY SAFETY IMPROVEMENTS, VICINITY OF COCO PALMS HOTEL, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR OFF-STREET PARKING AREAS AND FENCING. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			100		
		DESIGN			23		
		CONSTRUCTION			300		
		TOTAL FUNDING	TRN		423 B		B
78.		X60 INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY AND KOLOA ROAD, KAUAI					
		LAND ACQUISITION AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY AND KOLOA ROAD, INCLUDING LEFT-TURN AND RIGHT-TURN LANES AND TRAFFIC SIGNAL SYSTEM TOGETHER WITH THE ADDITION OF TWO LANES TO LAWAI BRIDGE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			410		
		CONSTRUCTION				1,800	
		TOTAL FUNDING	TRN		410 B	1,800 B	
79.		X63 KAUMUALII HIGHWAY-SHORING CAUSEWAY, KAUAI					
		LAND ACQUISITION AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY, KUHIO HIGHWAY AND RICE STREET INTERSECTIONS. WORK INCLUDES REALIGNMENT OF KAUMUALII HIGHWAY, RELOCATION OF UTILITY POLES, DRAINAGE IMPROVEMENTS, AND RECONSTRUCTION OF THE TRAFFIC SIGNALS. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			1,750		
		CONSTRUCTION			1,595		
		TOTAL FUNDING	TRN		3,345 B		B
80.		X66 KUHIO HIGHWAY, BYPASS AND/OR WIDENING FROM HANAMAULU THROUGH KAPAA, KAUAI					
		PLANS AND DESIGN FOR WIDENING AND/OR REALIGNING THE EXISTING KUHIO HIGHWAY FROM HANAMAULU TO KAPAA. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS			750		
		DESIGN				950	
		TOTAL FUNDING	TRN		750 B	950 B	
81.		X67 KUHIO HIGHWAY WIDENING FROM KAPULE HIGHWAY TO WAILUA BRIDGE, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN FOR THE WIDENING OF THE EXISTING 2-LANE KUHIO HIGHWAY TO A 4-LANE HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					1,400
		TOTAL FUNDING	TRN		B		1,400 B
82.	X68	KUHIO HIGHWAY, WIDENING AT WAIKAEA BRIDGE, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A FOUR-LANE BRIDGE AT WAIKAEA STREAM. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					40
		DESIGN			80		
		CONSTRUCTION					800
		TOTAL FUNDING	TRN		80 B		840 B
83.	X69	KUHIO HIGHWAY, TRAFFIC SIGNAL AT POINCIANA STREET, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF TRAFFIC SIGNAL LIGHTS ON KUHIO HIGHWAY AT THE INTERSECTION WITH POINCIANA STREET TO INCLUDE TURNING STORAGE LANES. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			30		
		DESIGN			20		
		CONSTRUCTION					180
		TOTAL FUNDING	TRN		50 B		180 B
84.	X70	KAUMUALII HIGHWAY WIDENING FROM KUHIO HIGHWAY TO PUHI, KAUAI					
		PLANS FOR THE WIDENING OF KAUMUALII HIGHWAY FROM A TWO-LANE TO FOUR-LANE HIGHWAY FROM LIHUE MILL BRIDGE TO PUHI. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS					400
		TOTAL FUNDING	TRN		B		400 B
85.	X72	KAUMUALII HIGHWAY, WIDENING MP 5.4 TO MP 6.8, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF THE EXISTING HIGHWAY FROM MALUHIA JUNCTION TO THE END OF THE NEW HULEIA BRIDGE PROJECT. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			300		
		DESIGN			500		
		CONSTRUCTION			7,000		
		TOTAL FUNDING	TRN		7,800 B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
86.		X74 KAUMUALII HIGHWAY, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR KAUMUALII HIGHWAY, WIDENING OF WEOWEOPILAU, WAIHOHONU AND STRUCTURE 7.E BRIDGES TO FOUR-LANES. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			150		
		DESIGN			70		
		CONSTRUCTION			700		
		TOTAL FUNDING	TRN		920 B		B
87.		X75 KAUMUALII HIGHWAY IMPROVEMENTS AT JUNCTION WITH HALEWILI ROAD, KAUAI					
		LAND ACQUISITION AND CONSTRUCTION FOR THE CONVERSION OF THE SKEWED INTERSECTION TO STANDARD INTERSECTION WITH PROVISIONS FOR LEFT-TURN STORAGE LANE ON KAUMUALII HIGHWAY AND PROVISIONS FOR LEFT-TURN AND RIGHT-TURN LANES ON HALEWILI ROAD. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			120		
		CONSTRUCTION			500		
		TOTAL FUNDING	TRN		620 B		B
88.		X76 KUAMOO ROAD, SAFETY IMPROVEMENTS, OPAEKAA FALLS LOOKOUT, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A PEDESTRIAN WALKWAY AND GUARDRAILS TO IMPROVE SAFETY OF ROADWAY ON KUAMOO ROAD AT OPAEKAA FALLS LOOKOUT. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					8
		DESIGN			15		
		CONSTRUCTION					80
		TOTAL FUNDING	TRN		15 B		88 B
89.		WAILUA RIVER BRIDGE, KAUAI					
		DESIGN AND CONSTRUCTION FOR A NEW TWO-LANE BRIDGE OVER THE WAILUA RIVER. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN			400		
		CONSTRUCTION			8,000		
		TOTAL FUNDING	TRN		8,400 B		B

TRN595 - HIGHWAYS ADMINISTRATION

90. X98 MISC IMPROVEMENTS TO EXISTING INTERSECTIONS & HIGHWAY FACIL, STATEWIDE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY, INCLUDING ELIMINATION OF CONSTRUCTIONS ON- AND OFF-SITE, EFFECTING EFFICIENT FLOW OF TRAFFIC ON INTERSTATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
					335		
					2,215		
		TOTAL FUNDING	TRN		925 D		D
			TRN		1,625 N		N

91. X99 HIGHWAY PLANNING, STATEWIDE

PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH AND ADVANCED PLANNING OF FEDERAL-AID AND NON-FEDERAL-AID HIGHWAY PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS			3,080	3,080
TOTAL FUNDING	TRN		2,100 D	2,100 D
	TRN		980 N	980 N

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

1. 840201 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342-D, HRS.

CONSTRUCTION			3,000	
TOTAL FUNDING	HTH		3,000 C	C

2. ENVIRONMENTAL MANAGEMENT, STATEWIDE

CONSTRUCTION FOR THE STATE REVOLVING FUND WHICH PROVIDES FINANCIAL ASSISTANCE TO LOCAL MUNICIPALITIES IN THE CONSTRUCTION OF WASTEWATER PROJECTS.

CONSTRUCTION			10,000	
TOTAL FUNDING	HTH		10,000 C	C

LNR402 - FORESTS AND WILDLIFE RESOURCES

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
3.	D05	KAHULUI BASEYARD OFFICE IMPROVEMENTS, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR FOUR NEW OFFICE ROOMS FOR NEW DOFAW PERSONNEL AT KAHULUI BASEYARD, MAUI.					
		PLANS			3		
		DESIGN			2		
		CONSTRUCTION			60		
		TOTAL FUNDING	LNR		65 C		C
4.	D06	KAUAI DLNR BASEYARD IMPROVEMENTS, PHASE 1 AND 2, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN ADDITION TO THE DLNR BASEYARD TO INCLUDE CONSTRUCTION OF AN ENCLOSED PARKING AND STORAGE BUILDING FOR FIRE EQUIPMENT, WAREHOUSE BUILDING AND COVERED PARKING BUILDING FOR OTHER DLNR DIVISIONS, EXTENSION OVER MECHANIC SHOP AND EXTENSION OVER CARPENTER SHOP.					
		PLANS					10
		DESIGN					230
		CONSTRUCTION			480		
		TOTAL FUNDING	LNR		480 C		240 C
5.	D08	DEPARTMENT OF LAND AND NATURAL RESOURCES BASEYARD, OAHU					
		CONSTRUCTION FOR A CENTRALLY LOCATED BASE OF OPERATIONS. THE IMPROVEMENTS SHALL CONSIST OF WAREHOUSING, MECHANICAL REPAIR SHOP, FIRE CACHE, NURSERY, ADMINISTRATION OFFICE, RESEARCH FACILITIES, SECURITY PARKING, AND OTHER APPURTENANT AND INCIDENTAL WORKS.					
		CONSTRUCTION					300
		TOTAL FUNDING	LNR			C	300 C
6.	D09	HAWAII BRANCH, DOFAW HILO OFFICE COMPLEX, HAWAII					
		PLANS AND DESIGN FOR AN OFFICE COMPLEX BUILDING AND APPURTENANT FACILITIES TO MEET THE HAWAII BRANCH'S OFFICE SPACE AND PUBLIC SERVICE FACILITY REQUIREMENTS.					
		PLANS			50		
		DESIGN			175		
		TOTAL FUNDING	LNR		225 C		C
7.	D-23	HAWAII ENDANGERED SPECIES FACILITY, MAUI					
		PLANS AND DESIGN FOR RENOVATION OF AN ENDANGERED SPECIES FACILITY TO MAINTAIN					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		AND BREED ENDANGERED SPECIES IN CAPTIVITY FOR RESEARCH AND RELEASE INTO THE WILD TO INCLUDE FACILITIES FOR RESEARCH, VETERINARY MEDICINE AND SECURITY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			50		
		DESIGN			60		
		TOTAL FUNDING	LNR		110 C		C
8.	D23A	OLINDA FACILITY NENE CARETAKER'S RESIDENCE, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR A TWO-BEDROOM ONE BATH RESIDENCE WITH WATER AND POWER UTILITIES AT THE OLINDA ENDANGERED SPECIES FACILITY TO PROVIDE SECURITY AND SURVEILLANCE FOR THE PIHOLO ENTRANCE TO THE WATERFOWL COMPLEX AND FOR BIRDS MAINTAINED AT THAT LOCATION.					
		PLANS			4		
		DESIGN			6		
		CONSTRUCTION			50		
		TOTAL FUNDING	LNR		60 C		C
LNR404 - WATER RESOURCES							
9.	G75	HUALALAI WELL DEVELOPMENT, HAWAII					
		PLANS, LAND ACQUISITION, AND DESIGN FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS			30		
		LAND			10		
		DESIGN			100		
		TOTAL FUNDING	LNR		140 C		C
10.	G94	WATER RESOURCES, DISTRICTS OF HAMAKUA AND WAIMEA (HONOKAA WELL DEV), HAWAII					
		CONSTRUCTION FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER APPURTENANT WORK.					
		CONSTRUCTION			1,020		
		TOTAL FUNDING	LNR		1,020 C		C
11.	J22	MAKAKILO WELLS DEVELOPMENT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS			25		
		DESIGN			75		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION			750		
		TOTAL FUNDING	LNR		850 C		C
12.	J32	WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT THE WAIMANALO WASTEWATER TREATMENT PLANT TO MEET DEPARTMENT OF HEALTH'S STATE WATER QUALITY STANDARDS.					
		PLANS			25		
		DESIGN			200		
		CONSTRUCTION				1,700	
		TOTAL FUNDING	LNR		225 C	1,700 C	
13.	G75A	WAHIKULI WELL DEVELOPMENT, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS			25		
		LAND			10		
		DESIGN			100		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	LNR		1,135 C		C
14.	G89B	ALTERNATIVE WATER SOURCE DEVELOPMENT, PEARL HARBOR SPRING WATER SUPPLY, OAHU					
		PLANS AND DESIGN FOR A DIVERSION SYSTEM TO INTERCEPT SPRING WATER IN THE PEARL HARBOR AREA.					
		PLANS			50		
		DESIGN			100		
		TOTAL FUNDING	LNR		150 C		C
LNR405 - CONSERVATION & RESOURCES ENFORCEMENT							
15.	A10	DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT ADMIN BLDG MAUNA KEA, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING STRUCTURE TO SERVE AS AN ADMINISTRATIVE AND TRAINING FACILITY FOR DOCARE AND OTHER DEPARTMENTAL PERSONNEL, INCLUDING PARKING LOT, FENCING, AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS			10		
		DESIGN			20		
		CONSTRUCTION				300	
		EQUIPMENT				30	
		TOTAL FUNDING	LNR		30 C	330 C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

E. HEALTH

HTH111- HANSEN'S DISEASE INSTITUTIONAL SERVICES

- 1. 111201 KALAUPAPA MAIN KITCHEN REFRIGERATION FACILITY, MOLOKAI

DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO KALAUPAPA MAIN KITCHEN REFRIGERATION FACILITY, BUILDING 6. TO INCLUDE REPLACING EXISTING MEAT HOUSE - BUTCHER SHOP AND FREEZER, BUILDINGS 267 AND 268 WITH CENTRALIZED FACILITY LOCATED AT BUILDING 6.

DESIGN			36		
CONSTRUCTION			374		
TOTAL FUNDING	AGS		410 C		C

- 2. IMPROVEMENTS TO KALAUPAPA BARGE WHARF HARBOR, MOLOKAI

CONSTRUCTION FOR IMPROVEMENTS TO KALAUPAPA HARBOR TO INCLUDE THE STRENGTHENING OF THE WHARF, REPAIR OF SEAWALL DREDGING (ROCK REMOVAL) OF BARGE BASIN AND OTHER IMPROVEMENTS.

CONSTRUCTION			200		
TOTAL FUNDING	TRN		200 C		C

HTH212 - HONOKAA HOSPITAL

- 3. 212002 HONOKAA HOSPITAL, NEW HOSPITAL FACILITY, HAWAII

CONSTRUCTION AND EQUIPMENT FOR NEW HEALTH CARE FACILITIES WITH APPROXIMATELY 50 BEDS AT HONOKAA TO REPLACE PRESENT STRUCTURE THAT DOES NOT MEET MEDICARE STANDARDS.

CONSTRUCTION			4,119		
EQUIPMENT			693		
TOTAL FUNDING	AGS		4,812 C		C

HTH215 - KONA HOSPITAL

- 4. 215201 KONA HOSPITAL, RENOVATION AND EXPANSION, PHASE II, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF EXISTING FACILITY.

DESIGN			689		
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION EQUIPMENT			1		
		TOTAL FUNDING	AGS		239		
					929		C
HTH221 - MAUI MEMORIAL HOSPITAL							
5.	221201	MAUI MEMORIAL HOSPITAL, REPLACEMENT AND INSTALLATION OF INCINERATOR, MAUI					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT AND INSTALLATION OF HOSPITAL INCINERATOR. PROJECT TO CORRECT DEFICIENCIES PERTAINING TO LIFE SAFETY CODES AND VIOLATIONS TO STATE AND FEDERAL ENVIRONMENTAL AIR QUALITY MANAGEMENT STANDARDS.					
		DESIGN			40		
		CONSTRUCTION			448		
		TOTAL FUNDING	AGS		488		C
6.	221002	MAUI MEMORIAL HOSPITAL, SECOND INCREMENT RENOVATION, MAUI					
		DESIGN FOR THE SECOND INCREMENT OF THE RENOVATION OF MAUI MEMORIAL HOSPITAL.					
		DESIGN			311		
		TOTAL FUNDING	AGS		311		C
HTH222 - HANA MEDICAL CENTER							
7.	222201	HANA MEDICAL CENTER, RENOVATION AND EXPANSION, MAUI					
		LAND ACQUISITION AND DESIGN FOR THE RENOVATION AND EXPANSION TO EXISTING FACILITY INCLUDING ACQUISITION OF ADJACENT LAND.					
		LAND			323		
		DESIGN			81		
		TOTAL FUNDING	AGS		404		C
HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL							
8.	KAUAI VETERANS MEMORIAL HOSPITAL, MEDICAL BUILDING, KAUAI						
		CONSTRUCTION AND EQUIPMENT FOR A MEDICAL OFFICE BUILDING.					
		CONSTRUCTION			4,700		
		EQUIPMENT			300		
		TOTAL FUNDING	AGS		5,000		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
HTH241 - MALUHIA HOSPITAL							
9.		MALUHIA DAY HOSPITAL ADDITION AND RENOVATIONS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE ADDITION AND RENOVATION OF THE MALUHIA LONG TERM CARE HEALTH CENTER.					
		PLANS			1		
		DESIGN			180		
		CONSTRUCTION			1,067		
		TOTAL FUNDING	AGS		1,248 C		
HTH420 - ADULT MENTAL HEALTH							
10.		420201 HOUSING INITIATIVE FOR MENTAL HEALTH CONSUMERS, STATEWIDE					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR ACQUISITION AND RENOVATION OF LIVING UNITS FOR CRISIS INTERVENTION, REHABILITATION/RESPIRE, SPECIALIZED LONG TERM CARE, AND INDEPENDENT LIVING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			2,670		
		DESIGN			30		
		CONSTRUCTION			300		
		TOTAL FUNDING	AGS		3,000 C		
11.		420202 HAWAII STATE HOSPITAL, FURNITURE AND EQUIPMENT, OAHU					
		DESIGN AND EQUIPMENT FOR FURNITURE AND EQUIPMENT OF NEW HOSPITAL FACILITY.					
		DESIGN			60		
		EQUIPMENT			740		
		TOTAL FUNDING	AGS		800 C		
12.		420203 HAWAII STATE HOSPITAL-RENOVATE STRUCTURE FOR ADOLESCENT UNIT & ICF FOR MI, OAHU					
		PLANS AND DESIGN FOR THE RENOVATION OF EXISTING BUILDING TO HOUSE ADOLESCENTS AND TO PROVIDE FOR AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY ILL.					
		PLANS			70		
		DESIGN			99		
		TOTAL FUNDING	AGS		169 C		
13.		420204 HAWAII STATE HOSPITAL, COVERED WALKS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR COVERED WALKS TO CONNECT THE BUILDINGS OF THE NEW FACILITY.					
		DESIGN			29		
		CONSTRUCTION			267		
		TOTAL FUNDING	AGS		296 C		C
14.		FRIENDSHIP HOUSE, KAUAI					
		CONSTRUCTION FOR THE FRIENDSHIP HOUSE ON KAUAI.					
		CONSTRUCTION			1,200		
		TOTAL FUNDING	AGS		1,200 C		C
15.		HAWAII STATE HOSPITAL, EMPLOYEES' AND SPECIAL NEED GROUPS COTTAGES, OAHU					
		PLANS FOR THE RELOCATION OF EMPLOYEES' COTTAGES AND THE CONSTRUCTION OF A SPECIAL NEED GROUPS FACILITY ON STATE LAND.					
		PLANS			50		
		TOTAL FUNDING	AGS		50 C		C
HTH501 - COMMUNITY SERVICES FOR DEV DIS & MENT RET							
16.	501004	HALE HAUOLI DAY CARE FACILITIES FOR THE MENTALLY RETARDED, KAUAI					
		DESIGN FOR DAY CARE FACILITIES FOR THE MENTALLY RETARDED.					
		DESIGN			120		
		TOTAL FUNDING	AGS		120 C		C
17.		HILO DAY ACTIVITY CENTER, HAWAII					
		PLANS FOR THE PROJECT DEVELOPMENT REPORT FOR A NEW HILO DAY ACTIVITY CENTER.					
		PLANS			60		
		TOTAL FUNDING	AGS		60 C		C
HTH710 - STATE LABORATORY SERVICES							
18.	901001	NEW LAB FACILITY - HANDICAP REQUIREMENTS AND COST OVERRUNS, OAHU					
		CONSTRUCTION FOR HANDICAP REQUIREMENTS AND COST OVERRUNS.					
		CONSTRUCTION			3,500		
		TOTAL FUNDING	AGS		3,500 C		C

HTH907 - GENERAL ADMINISTRATION

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
19.	907201	DIAMOND HEAD HEALTH CENTER, UPGRADE AIR CONDITIONING SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT OF AIR CONDITIONING SYSTEM FOR THE ENTIRE BUILDING.					
		DESIGN			162		
		CONSTRUCTION					2,729
		TOTAL FUNDING	AGS		162 C		2,729 C
20.		NORTH HAWAII COMMUNITY HOSPITAL FACILITY, WAIMEA, HAWAII					
		CONSTRUCTION FOR A NEW ACUTE CARE FACILITY AT THE NORTH HAWAII COMMUNITY HOSPITAL. (GRANT-IN-AID)					
		CONSTRUCTION			12,500		
		TOTAL FUNDING	AGS		12,500 C		C
21.		WAILUKU HEALTH CENTER, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW HEALTH CENTER FACILITY FOR THE CHILDREN'S MENTAL HEALTH PROGRAM.					
		PLANS			60		
		DESIGN			100		
		CONSTRUCTION			340		
		TOTAL FUNDING	AGS		500 C		C
F. SOCIAL SERVICES							
HMS501 - YOUTH SERVICES ADMINISTRATION							
1.	OYS 01	HYCF COMPLEX PROJECT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR FACILITIES ON THE HYCF COMPLEX GROUNDS AND SATELLITE ADJUNCTS, INCLUDING RENOVATIONS AND INFRASTRUCTURE SUPPORT AND IMPROVEMENTS.					
		PLANS			75		
		DESIGN			1,000		
		CONSTRUCTION			7,000		
		TOTAL FUNDING	AGS		8,075 C		C
2.	OYS 02	YOUTH SERVICE CENTERS PROJECT, STATEWIDE					
		PLANS AND DESIGN FOR YOUTH SERVICE CENTERS AT VARIOUS SITES THROUGHOUT THE STATE.					
		PLANS			50		
		DESIGN			200		
		TOTAL FUNDING	AGS		250 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
DEF112 - SERVICES TO VETERANS							
3.		OVS642 HAWAII STATE VETERANS CEMETERY, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A STATE VETERANS CEMETERY ON OAHU. TO BE MATCHED WITH FEDERAL FUNDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			5,000		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		2,550 C		C
			AGS		2,550 N		N
HMS220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE							
4.		HA9201 KAPAA SEWER LINE, KAUAI					
		DESIGN AND CONSTRUCTION FOR SEWER LINE CONNECTING THE KAPAA PUBLIC HOUSING PROJECT TO THE NEW COUNTY SEWER TRUNK LINE. THE LINE WILL RUN FROM THE PROJECT TO LEHUA STREET WHERE THE NEW SEWER LINE WILL RUN.					
		DESIGN			50		
		CONSTRUCTION					500
		TOTAL FUNDING	HMS		50 C		500 C
5.		HA9204 ACQUISITION OF WILIKINA APARTMENTS, OAHU					
		LAND ACQUISITION FOR WILIKINA APARTMENTS, A 119-UNIT HIGHRISE BUILDING IN WAHIAWA.					
		LAND			9,210		
		TOTAL FUNDING	HMS		9,210 C		C
6.		HA9209 MINOR CIP, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MINOR CIP PROJECTS, STATEWIDE.					
		DESIGN			75		75
		CONSTRUCTION			500		500
		TOTAL FUNDING	HMS		575 C		575 C
7.		807211 REPLACEMENT OF WATER LINE AT HALE HOONANEA, KAUAI					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF PRIVATE WATER LINE AT HALE HOONANEA ON A PRO RATA BASIS WITH A NEW WATER LINE THAT WILL BE DEDICATED TO THE COUNTY.					
		DESIGN			5		
		CONSTRUCTION			50		
		TOTAL FUNDING	HMS		55 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
HMS807 - TEACHER HOUSING							
8.	HA9207	DRIVEWAY FOR LANAI TEACHER COTTAGE, LANAI					
		DESIGN AND CONSTRUCTION FOR DRIVEWAY AT LANAI TEACHER COTTAGE.					
		DESIGN				5	
		CONSTRUCTION				80	
		TOTAL FUNDING	HMS			85 C	C
9.	HA9208	PARKING AREA FOR KOHALA TEACHER COTTAGE, HAWAII					
		DESIGN AND CONSTRUCTION FOR PARKING AREA FOR KOHALA TEACHER COTTAGES.					
		DESIGN				4	
		CONSTRUCTION				35	
		TOTAL FUNDING	HMS			39 C	C
10.	HA9210	TWO TEACHER COTTAGES AT WAIMEA, HAWAII					
		DESIGN AND CONSTRUCTION FOR TWO TEACHER COTTAGES IN WAIMEA, HAWAII.					
		DESIGN				1	
		CONSTRUCTION				224	
		TOTAL FUNDING	HMS			225 C	C
HMS229 - HOUSING ASSISTANCE ADMINISTRATION							
11.	HA9202	HHA CENTRAL MAINTENANCE GAS TANK, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF HHA CENTRAL MAINTENANCE GAS TANK.					
		DESIGN				10	
		CONSTRUCTION				90	
		TOTAL FUNDING	HMS			100 C	C
12.	HA9205	LOW INCOME PUBLIC HOUSING, STATEWIDE					
		PLANS, LAND ACQUISITION, AND DESIGN FOR THE DEVELOPMENT OF LOW INCOME PUBLIC HOUSING - APPROXIMATELY 225 (0, 1, 2, 3) BEDROOM UNITS ON A STATEWIDE BASIS. ZERO, ONE, AND TWO BEDROOM UNITS PLANNED FOR THE ELDERLY. ONE, TWO, AND THREE BEDROOM UNITS ARE FOR LOW INCOME FAMILIES.					
		PLANS				400	
		LAND				3,250	
		DESIGN				2,800	
		TOTAL FUNDING	HMS			6,450 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
13.		HOMELESS SHELTERS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HOMELESS SHELTERS, STATEWIDE.					
		PLANS			1		
		LAND			1		
		DESIGN			1		
		CONSTRUCTION			5,996		
		EQUIPMENT			1		
		TOTAL FUNDING	HMS		6,000	C	C
BUF225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP							
14.		HF9203 CONSTRUCTION OF ELDERLY HOUSING AT CROWN PROPERTY, PHASE II, OAHU					
		LAND ACQUISITION AND DESIGN FOR A MID-RISE ELDERLY HOUSING COMPLEX INCLUDING APPROXIMATELY 110 DWELLING UNITS.					
		LAND			1,600		
		DESIGN			355		
		TOTAL FUNDING	BUF		1,955	C	C
15.		HF9205 SOURCE DEVELOPMENT OF WATER SYSTEM FOR LAHAINA MASTER PLANNED COMMUNITY, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, AND EQUIPMENT FOR TWO WELLS, ONE MILLION GALLON RESERVOIR, TRANSMISSION LINES AND APPURTENANT WORKS AT WAHIKULI, LAHAINA, MAUI.					
		PLANS			70		
		LAND			1,356		
		DESIGN			300		
		EQUIPMENT			400		
		TOTAL FUNDING	BUF		2,126	C	C
16.		HF9206 SEWER EXPANSION IMPROVEMENTS TO LAHAINA WASTEWATER TREATMENT PLANT, MAUI					
		PLANS AND DESIGN FOR IMPROVEMENTS TO EXPAND THE SEWAGE CAPACITY OF LAHAINA WASTEWATER TREATMENT PLANT, MAUI.					
		PLANS			320		
		DESIGN			1,000		
		TOTAL FUNDING	BUF		1,320	C	C
17.		P00048 WAILANI STREAM DRAINAGE IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR WAILANI STREAM DRAINAGE IMPROVEMENTS.					
		PLANS			10		
		DESIGN			100		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION			2,000		
		TOTAL FUNDING	BUF		2,110 C		C
18.	P00141	ELDERLY HOUSING FACILITIES, CROWN PROPERTY, WAIPAHAU, OAHU					
		CONSTRUCTION FOR ELDERLY HOUSING FACILITIES IN WAIPAHAU, OAHU.					
		CONSTRUCTION			2,000		
		TOTAL FUNDING	BUF		2,000 C		C
HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDs							
19.	H-30-C	MOLOKAI WATER SYSTEM IMPROVEMENTS, PHASE IIIC, MOLOKAI					
		CONSTRUCTION FOR THE UPGRADE AND EXPANSION OF THE EXISTING WATER SYSTEM ON MOLOKAI TO COUNTY OF MAUI STANDARDS AND TO THE STANDARDS OF THE FEDERAL AND STATE SAFE DRINKING WATER REGULATIONS.					
		CONSTRUCTION			2,400		
		TOTAL FUNDING	HHL		2,400 C		C
20.	LMD001	HAWAII HOME LANDS DEVELOPMENT, STATEWIDE					
		CONSTRUCTION FOR THE DEVELOPMENT OF HAWAII HOME LANDS FOR RESIDENTIAL, AGRICULTURAL, AND OTHER PURPOSES PERMITTED BY THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED. TO INCLUDE: PLANS, DESIGN, AND THE CONSTRUCTION OF ON-SITE (EX. GRADING, ROADS AND UTILITIES) AND OFF-SITE IMPROVEMENTS AND TO PROVIDE FOR LOAN CAPITALIZATION. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER.					
		CONSTRUCTION			5,500	13,010	
		TOTAL FUNDING	HHL		5,500 C	13,010 C	
21.	LMD006	WAIANAE VALLEY INTERCEPTOR SEWER, OAHU					
		CONSTRUCTION FOR A GRAVITY SEWER SYSTEM FOR SEWER DISPOSAL FOR EXISTING AND FUTURE HOMESTEADERS OF WAIANAE RESIDENCE LOTS, WAIANAE VALLEY, OAHU. FUNDS MAY BE USED TO MATCH FEDERAL FUNDS.					
		CONSTRUCTION			2,500		
		TOTAL FUNDING	HHL		2,500 C		C
22.	HAWAIIAN HOME LANDS MULTI-FAMILY AND WATER DEVELOPMENT PROJECTS, STATEWIDE						

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN FOR THE DEVELOPMENT OF MULTI-FAMILY AND MULTI-USE PROJECTS IN WAIMANALO, PAPA KOLEA, KALAWAHINE, AND WAIANA E, AND TO DEVELOP WATER IMPROVEMENTS, STATEWIDE.					
		DESIGN			900		
		TOTAL FUNDING	HHL		900 C		C
23.		KULA WATER SYSTEM, MAUI					
		CONSTRUCTION FOR A TWO-MILE EXTENSION OF THE LOWER KULA WATERLINE TO HAWAIIAN HOME LANDS AT KEOKEA, MAUI.					
		CONSTRUCTION					1,470
		TOTAL FUNDING	HHL			C	1,470 C
24.		PANA EWA FARM LOTS, PHASE 2, HAWAII					
		CONSTRUCTION FOR WATER AND ELECTRICAL COSTS, AS WELL AS ON-SITE CONSTRUCTION COSTS FOR ROADS AND DRAINAGE WHICH WILL SERVICE 86 FARM LOTS IN PANAEWA, HAWAII.					
		CONSTRUCTION			264		
		TOTAL FUNDING	HHL		264 C		C
25.		ANAHOLA WATER SYSTEM, KAUAI					
		CONSTRUCTION FOR THE EXPANSION AND IMPROVEMENTS OF THE DEPARTMENT'S ANAHOLA WATER SYSTEM BY CONSTRUCTING AN ALTERNATE BACK-UP SOURCE, BOOSTER PUMP STATION, AND WATER TRANSMISSION LINES TO SERVICE 46 EXISTING FARM LOTS AND 61 UNDEVELOPED RESIDENTIAL LOTS.					
		CONSTRUCTION			500		
		TOTAL FUNDING	HHL		500 C		C
26.		NANAKULI GRAVITY SEWER SYSTEM, OAHU					
		CONSTRUCTION FOR THE COMPLETION OF THE NANAKULI GRAVITY SEWER SYSTEM WHICH SERVICES OVER 300 EXISTING HOMESTEAD LOTS AND 1000 FUTURE LOTS.					
		CONSTRUCTION			200		
		TOTAL FUNDING	HHL		200 C		C
27.		NANAKULI RESIDENCE LOTS, SERIES 5-3, OAHU					
		CONSTRUCTION FOR WATER FACILITY CHARGES AND CONSTRUCTION OF AN ELECTRICAL SYSTEM, AS WELL AS ON-SITE CONSTRUCTION COSTS FOR ROADS, DRAINAGE, AND LOT GRADING FOR 37 LOTS IN NANAKULI, OAHU.					
		CONSTRUCTION			165		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	HHL		165 C		C
28.		NANAKULI RESIDENTIAL LOTS, SERIES 7, OAHU					
		CONSTRUCTION FOR WATER FACILITY CHARGES AND CONSTRUCTION OF AN ELECTRICAL SYSTEM, AS WELL AS ON-SITE CONSTRUCTION COSTS FOR ROADS, DRAINAGE, AND LOT GRADING FOR 167 LOTS IN NANAKULI, OAHU.					
		CONSTRUCTION			756		
		TOTAL FUNDING	HHL		756 C		C

HMS904 - GENERAL ADMINISTRATION (DSSH)

29.		904-01 RENOVATION OF ISO BASEMENT FACILITY AND FIRST FLOOR OFFICES, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF EXISTING WALLS TO GLASS WALLS IN COMPUTER ROOM; INSTALLATION OF AUTOMATIC SLIDING DOORS IN COMPUTER ROOM AND DATA CONTROL SECTION; AND INSTALLATION OF ELECTRONIC KEY LOCK FOR EXTERNAL DOORS OF BASEMENT FACILITY AND FIRST FLOOR OFFICES AND ADDITIONAL ELECTRICAL LINES FOR COMPUTER HARDWARE.					
		PLANS			10		
		DESIGN			10		
		CONSTRUCTION			150		
		EQUIPMENT			50		
		TOTAL FUNDING	AGS		220 C		C

G. FORMAL EDUCATION

EDN105 - REGULAR INSTRUCTION PROGRAM

1.		010 LUMP SUM CIP-ASBESTOS REMOVAL IN SCHOOL BUILDINGS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTION, IMPROVEMENT AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS WITH IDENTIFIED HEALTH AND SAFETY HAZARDS.					
		DESIGN			100		100
		CONSTRUCTION			900		900
		TOTAL FUNDING	AGS		1,000 B		1,000 B
2.		020 LUMP SUM CIP-COUNTY BUILDING PERMIT REQUIREMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ON-SITE AND OFF-SITE IMPROVEMENTS, AS REQUIRED					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		BY THE COUNTIES.					
		DESIGN			125		
		CONSTRUCTION			1,875		
		TOTAL FUNDING	AGS		2,000 B		B
3.	008	LUMP SUM CIP-FIRE PROTECTION SYSTEMS AND FIRE ALARM SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS TO MEET COUNTY FIRE PROTECTION STANDARDS.					
		DESIGN			100		100
		CONSTRUCTION			500		500
		TOTAL FUNDING	AGS		600 B		600 B
4.	003	LUMP SUM CIP-MASTER PLANS, SITE STUDIES, AND MINOR LAND ACQUISITIONS, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF SMALL PARCELS, FEASIBILITY STUDIES TO MEET FUTURE AND UNFORSEEN NEEDS AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.					
		PLANS			395		400
		LAND			5		
		TOTAL FUNDING	AGS		400 B		400 B
5.	002	LUMP SUM CIP-MINOR RENOVATIONS AND IMPROVEMENTS TO BUILDINGS & SCHOOL SITES					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS AND IMPROVEMENTS TO BUILDINGS AND SCHOOLS SITES.					
		DESIGN			40		80
		CONSTRUCTION			450		700
		EQUIPMENT			10		20
		TOTAL FUNDING	AGS		500 B		800 B
6.	011	LUMP SUM CIP-PROJECT ADJUSTMENT FUND					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DOE PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS ITEM.					
		DESIGN			400		400
		CONSTRUCTION			2,500		3,500
		EQUIPMENT			100		100
		TOTAL FUNDING	AGS		3,000 B		4,000 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
7.	001	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF PORTABLES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORSEEN EMERGENCIES AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION. THESE FUNDS ARE ALSO FOR SECONDARY SCHOOLS.					
		DESIGN			175		175
		CONSTRUCTION			3,665		3,665
		EQUIPMENT			160		160
		TOTAL FUNDING	AGS		4,000 B		4,000 B
8.	021	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS TO ACCOMMODATE CLASS SIZE REDUCTION.					
		DESIGN			40		40
		CONSTRUCTION			930		930
		EQUIPMENT			30		30
		TOTAL FUNDING	AGS		1,000 B		1,000 B
9.	009	LUMP SUM CIP-RENOVATIONS FOR NOISE ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION PROBLEMS.					
		DESIGN			50		50
		CONSTRUCTION			250		250
		TOTAL FUNDING	AGS		300 B		300 B
10.	012	LUMP SUM CIP-TELECOMMUNICATION AND POWER INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATION AND POWER INFRASTRUCTURE REQUIREMENTS.					
		DESIGN			400		
		CONSTRUCTION			1,500		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		2,000 B		B
11.	302005	CAMPBELL HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, APPURTENANCES, GROUND AND					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		SITE IMPROVEMENTS. CONSTRUCTION EQUIPMENT			2,650 10		
		TOTAL FUNDING	AGS		2,660 B		B
12.	104001	CENTRAL INTERMEDIATE SCHOOL, OAHU					
		DESIGN FOR THE FIRST INCREMENT OF REPLACEMENT PROGRAM. DESIGN			135		
		TOTAL FUNDING	AGS		135 B		B
13.	303005	EWA ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN			150		
		TOTAL FUNDING	AGS		150 B		B
14.	303003	EWA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR SEWER CONNECTION; GROUND AND SITE IMPROVEMENTS. DESIGN			20		
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		270 B		B
15.	343005	EWA GENTRY ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN					165
		TOTAL FUNDING	AGS			B	165 B
16.	343004	EWA GENTRY ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN			375		
		CONSTRUCTION					8,050
		EQUIPMENT					85
		TOTAL FUNDING	AGS		375 B		8,135 B
17.	502007	HILO HIGH SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN		140			
		TOTAL FUNDING	AGS	140 B			B
18.	507005	HONOKAA HIGH SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		375			
		TOTAL FUNDING	AGS	375 B			B
19.	508001	HOOKENA ELEMENTARY SCHOOL, HAWAII					
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES.					
		LAND		400			
		DESIGN		140			
		CONSTRUCTION				2,150	
		EQUIPMENT				24	
		TOTAL FUNDING	AGS	540 B		2,174 B	
20.	603009	IAO INTERMEDIATE SCHOOL, MAUI					
		LAND ACQUISITION FOR IAO INTERMEDIATE SCHOOL.					
		LAND		800		300	
		TOTAL FUNDING	AGS	800 B		300 B	
21.	532006	KAHAKAI ELEMENTARY SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		140			
		TOTAL FUNDING	AGS	140 B			B
22.	410023	KAHUKU HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		250		4,490	
		CONSTRUCTION				50	
		EQUIPMENT					
		TOTAL FUNDING	AGS	250 B		4,540 B	
23.	625005	KALAMA INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		225			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION EQUIPMENT				3,925	
		TOTAL FUNDING	AGS	225 B		40	3,965 B
24.	625004	KALAMA INTERMEDIATE SCHOOL, MAUI					
		LAND ACQUISITION FOR KALAMA INTERMEDIATE SCHOOL.					
		LAND			350		
		TOTAL FUNDING	AGS	350 B			B
25.	324004	KALEIOPUU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			165		
		CONSTRUCTION EQUIPMENT			600	2,725	
		TOTAL FUNDING	AGS	765 B		48	2,773 B
26.	342007	KAMAILE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			150		
		CONSTRUCTION EQUIPMENT				2,450	
		TOTAL FUNDING	AGS	150 B		32	2,482 B
27.	716002	KAPAA II ELEMENTARY SCHOOL, KAUAI					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS, PLAYFIELD; PARKING, GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				375	
		TOTAL FUNDING	AGS		B		375 B
28.	716001	KAPAA II ELEMENTARY SCHOOL, KAUAI					
		PLANS AND LAND ACQUISITION FOR KAPAA II ELEMENTARY SCHOOL TO INCLUDE A MASTER PLAN.					
		PLANS			75		
		LAND			600		
		TOTAL FUNDING	AGS	675 B			B
29.	717001	KAPAA INTERMEDIATE SCHOOL, KAUAI					
		PLANS AND LAND ACQUISITION FOR EIS, SITE SELECTION AND MASTER PLAN.					
		PLANS			75	100	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		LAND					1,200
		TOTAL FUNDING	AGS		75 B		1,300 B
30.	347002	KAPOLEI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		CONSTRUCTION				2,350	
		EQUIPMENT				32	
		TOTAL FUNDING	AGS		150 B		2,382 B
31.	347001	KAPOLEI ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A NEW ELEMENTARY SCHOOL.					
		CONSTRUCTION			8,450		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		8,550 B		B
32.	718001	KAUAI INTERMEDIATE SCHOOL, KAUAI					
		LAND ACQUISITION FOR KAUAI INTERMEDIATE SCHOOL.					
		LAND			500		
		TOTAL FUNDING	AGS		500 B		B
33.	513007	KEAAU ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			175		
		CONSTRUCTION			1,175		
		EQUIPMENT			12		
		TOTAL FUNDING	AGS		1,362 B		B
34.	538001	KEAAU HIGH SCHOOL, HAWAII					
		PLANS FOR EIS, SITE SELECTION, AND MASTER PLAN.					
		PLANS			75		
		TOTAL FUNDING	AGS		75 B		B
35.	537001	KEAAU II ELEMENTARY SCHOOL, HAWAII					
		PLANS FOR EIS AND SITE SELECTION OF KEAAU II ELEMENTARY SCHOOL.					
		PLANS			75		
		TOTAL FUNDING	AGS		75 B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
36.	536001	KEALAKEHE HIGH SCHOOL, HAWAII					
		DESIGN FOR FIRST INCREMENT CLASSROOMS; PE LOCKER/SHOWER; PARKING; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		1,400			
		TOTAL FUNDING	AGS	1,400	B		B
37.	533007	KEALAKEHE INTERMEDIATE SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				150	
		TOTAL FUNDING	AGS		B	150	B
38.	533001	KEALAKEHE INTERMEDIATE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; PARKING AND ACCESS ROAD.					
		DESIGN		150			
		CONSTRUCTION				2,250	
		EQUIPMENT				6	
		TOTAL FUNDING	AGS	150	B	2,256	B
39.	534004	KEONEPOKO ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION FOR CLASSROOMS; PARKING; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		3,950			
		TOTAL FUNDING	AGS	3,950	B		B
40.	608008	KIHEI ELEMENTARY SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		195			
		CONSTRUCTION				3,225	
		EQUIPMENT				32	
		TOTAL FUNDING	AGS	195	B	3,257	B
41.	630002	KIHEI II ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				375	
		TOTAL FUNDING	AGS		B	375	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
42.	630001	KIHEI II ELEMENTARY SCHOOL, MAUI PLANS AND LAND ACQUISITION FOR KIHEI II ELEMENTARY SCHOOL, TO INCLUDE A MASTER PLAN. PLANS LAND TOTAL FUNDING	AGS		75 600 675 B		B
43.	715006	KING KAUMUALII ELEMENTARY SCHOOL, KAUAI CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS		2,720 32 2,752 B		B
44.	517004	KONAWAENA ELEMENTARY SCHOOL, HAWAII CONSTRUCTION FOR SECOND INCREMENT; CLASSROOMS; COVERED WALKWAYS; ACCESS ROAD; PARKING; EQUIPMENT AND APPURTENANCES; SUPPLEMENTARY FUNDS FIRST INCREMENT. CONSTRUCTION TOTAL FUNDING	AGS		6,900 6,900 B		B
45.	632002	LAHAINA ELEMENTARY SCHOOL, MAUI DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN TOTAL FUNDING	AGS				375 375 B
46.	632001	LAHAINA ELEMENTARY SCHOOL, MAUI PLANS FOR EIS; SITE SELECTION; MASTER PLAN. PLANS TOTAL FUNDING	AGS		200 200 B		B
47.	612004	LAHAINALUNA HIGH SCHOOL, MAUI CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS. CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS		2,637 32 2,669 B		B
48.	612002	LAHAINALUNA HIGH SCHOOL, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO WATER SYSTEM.					
		DESIGN		175			
		CONSTRUCTION		1,050			
		TOTAL FUNDING	AGS	1,225	B		B
49.	629003	LOKELANI INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		185			
		CONSTRUCTION				3,180	
		EQUIPMENT				40	
		TOTAL FUNDING	AGS	185	B	3,220	B
50.	633002	MAUI LANI ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				375	
		TOTAL FUNDING	AGS		B	375	B
51.	633001	MAUI LANI ELEMENTARY SCHOOL, MAUI					
		PLANS FOR EIS; SITE SELECTION; MASTER PLAN.					
		PLANS		200			
		TOTAL FUNDING	AGS	200	B		B
52.	626007	MAUI WAENA INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		190			
		CONSTRUCTION				2,950	
		EQUIPMENT				40	
		TOTAL FUNDING	AGS	190	B	2,990	B
53.	140007	MCKINLEY HIGH SCHOOL, OAHU					
		DESIGN FOR RENOVATION OF BUILDING A. RELOCATE OR CONSTRUCT PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				500	
		TOTAL FUNDING	AGS		B	500	B
54.	215008	MILILANI HIGH SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		TOTAL FUNDING	AGS		150 B		B
55.	241006	MILILANI-MAUKA ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					165
		TOTAL FUNDING	AGS			B	165 B
56.	241002	MILILANI-MAUKA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			195		
		CONSTRUCTION					3,275
		EQUIPMENT					50
		TOTAL FUNDING	AGS		195 B		3,325 B
57.	241001	MILILANI-MAUKA ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT OF A NEW SCHOOL; CLASSROOMS; LIBRARY; ADMINISTRATION; CAFETORIUM; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS.					
		CONSTRUCTION			18,600		
		EQUIPMENT			175		
		TOTAL FUNDING	AGS		18,775 B		B
58.	520005	MT. VIEW ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			160		
		TOTAL FUNDING	AGS		160 B		B
59.	523012	PAHOA HIGH AND ELEMENTARY SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			185		
		TOTAL FUNDING	AGS		185 B		B
60.	628007	UPCOUNTRY HIGH SCHOOL, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		500			
		TOTAL FUNDING	AGS	500 B			B
61.	628004	UPCOUNTRY HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		1,400			
		CONSTRUCTION				16,680	
		EQUIPMENT				150	
		TOTAL FUNDING	AGS	1,400 B		16,830 B	
62.	525008	WAIAKEA HIGH SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		165			
		TOTAL FUNDING	AGS	165 B			B
63.	235002	WALALUA HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				2,270	
		EQUIPMENT				24	
		TOTAL FUNDING	AGS		B	2,294 B	
64.	325005	WAIANAE HIGH SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		185			
		TOTAL FUNDING	AGS	185 B			B
65.	622001	WAIHEE ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		CONSTRUCTION		3,475			
		EQUIPMENT		32			
		TOTAL FUNDING	AGS	3,507 B			B
66.	348001	WAIKELE ELEMENTARY SCHOOL, OAHU					
		PLANS AND LAND ACQUISITION FOR WAIKELE ELEMENTARY SCHOOL TO INCLUDE A MASTER PLAN.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PLANS LAND					75 600
		TOTAL FUNDING	AGS		B		675 B
67.	623007	WAILUKU ELEMENTARY SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		175			
		CONSTRUCTION				2,815	
		EQUIPMENT				32	
		TOTAL FUNDING	AGS	175 B		2,847 B	
68.	631001	WAILUKU II ELEMENTARY SCHOOL, MAUI					
		PLANS FOR EIS; SITE SELECTION; MASTER PLANS.					
		PLANS			200		
		TOTAL FUNDING	AGS		200 B		B
69.	631002	WAILUKU II ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					375
		TOTAL FUNDING	AGS		B		375 B
70.	714001	WAIMEA CANYON ELEMENTARY AND INTERMEDIATE SCHOOL, KAUAI					
		CONSTRUCTION FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		1,000			
		TOTAL FUNDING	AGS	1,000 B			B
71.	528005	WAIMEA ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
		DESIGN FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		TOTAL FUNDING	AGS		150 B		B
72.	712008	WAIMEA HIGH SCHOOL, KAUAI					
		DESIGN FOR CLASSROOMS OR RENOVATION OF CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		TOTAL FUNDING	AGS		150 B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
73.	535004	WEST HAWAII ELEMENTARY SCHOOL, HAWAII					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PARKING; PLAY AREA; TEMPORARY FACILITIES; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			375		
		TOTAL FUNDING	AGS		375 B		B
74.	238001	WHEELER INTERMEDIATE SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; CONVERT BUILDING D TO CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			150		
		TOTAL FUNDING	AGS		150 B		B
75.	KALIHI-WAENA	ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE ENLARGEMENT OF THE PLAYCOURT AREA.					
		DESIGN			1		
		CONSTRUCTION			249		
		TOTAL FUNDING	AGS		250 C		C
76.	FARRINGTON	HIGH SCHOOL, OAHU					
		DESIGN FOR A VOCATIONAL EDUCATION BUILDING AT FARRINGTON HIGH SCHOOL.					
		DESIGN			100		
		TOTAL FUNDING	AGS		100 C		C
77.	WAIPAHAU	ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE COMPLETION OF THE HOLLOW TILE WALL ALONG ANIANI PLACE SCHOOL BOUNDARY.					
		DESIGN			13		
		CONSTRUCTION			75		
		TOTAL FUNDING	AGS		88 C		C
78.	WAIPAHAU	INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE PHYSICAL EDUCATION COMPLEX, THREE CLASSROOMS, AND TWO LOCKER/SHOWER ROOMS.					
		DESIGN			62		
		CONSTRUCTION			524		
		TOTAL FUNDING	AGS		586 C		C
79.	AIEA	HIGH SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN FOR A SHOWER/LOCKER AND WEIGHT TRAINING ROOMS AT AIEA HIGH SCHOOL'S GYMNASIUM.					
		DESIGN		200			
		TOTAL FUNDING	AGS	200	C		
80.		NOELANI ELEMENTARY SCHOOL, OAHU					
		PLANS AND DESIGN FOR MULTIPURPOSE CLASSROOMS AT NOELANI ELEMENTARY SCHOOL.					
		PLANS		1			
		DESIGN		99			
		TOTAL FUNDING	AGS	100	C		
81.		ALHIOLANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL OF IDENTIFIED ASBESTOS MATERIALS IN THE SCHOOL.					
		DESIGN		1			
		CONSTRUCTION		226			
		TOTAL FUNDING	AGS	227	C		
82.		KAHUKU HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE CLASSROOM PILOT PROJECT AT KAHUKU HIGH SCHOOL.					
		DESIGN		1			
		CONSTRUCTION		73			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	75	C		
83.		WAIAKEA ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION FOR A SIX CLASSROOM BUILDING AT WAIAKEA ELEMENTARY SCHOOL.					
		CONSTRUCTION		2,000			
		TOTAL FUNDING	AGS	2,000	C		
84.		KAUAI ENVIRONMENTAL EDUCATION FACILITY/ CAMP, KAUAI					
		PLANS AND DESIGN FOR AN ENVIRONMENTAL EDUCATION FACILITY/CAMP ON KAUAI.					
		PLANS		20			
		DESIGN		130			
		TOTAL FUNDING	AGS	150	C		
85.		234002 WAIALUA ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN (8) CLASSROOM BUILDING; GROUND AND SITE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION EQUIPMENT		2,719			
		TOTAL FUNDING	AGS	32		2,751 C	C
86.		KAPAA ELEMENTARY SCHOOL, KAUAI					
		CONSTRUCTION FOR COVERED STUDENT PLAYGROUND AREA AND MAKE OTHER SAFETY SITE IMPROVEMENTS INCLUDING PAVING THE ENTRY, DROP-OFF, PICK-UP, AND PARKING AREAS.					
		CONSTRUCTION		450			
		TOTAL FUNDING	AGS	450 C			C
87.		KAUAI HIGH SCHOOL, KAUAI					
		DESIGN AND CONSTRUCTION FOR PORTABLE CLASSROOMS AT KAUAI HIGH SCHOOL.					
		DESIGN		1			
		CONSTRUCTION		119			
		TOTAL FUNDING	AGS	120 C			C
88.		KALAHEO ELEMENTARY SCHOOL, KAUAI					
		DESIGN AND CONSTRUCTION FOR A COVERED STUDENT DROP-OFF AREA AND MAKE OTHER SAFETY SITE IMPROVEMENTS.					
		DESIGN		1			
		CONSTRUCTION		149			
		TOTAL FUNDING	AGS	150 C			C
89.		SALT LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS, EXPANSIONS AND/OR RENOVATIONS TO EXISTING FACILITIES AND GROUNDS.					
		DESIGN		23			
		CONSTRUCTION		150			
		TOTAL FUNDING	AGS	173 C			C
90.		KALIHI ELEMENTARY SCHOOL, OAHU					
		LAND ACQUISITION FOR THE FUTURE EXPANSION OF THE SCHOOL.					
		LAND		800			
		TOTAL FUNDING	AGS	800 C			C
91.		WAIANA E HIGH SCHOOL, OAHU					
		CONSTRUCTION FOR A PRESSROOM, GROUND AND SITE IMPROVEMENTS, AND OTHER RELATED IMPROVEMENTS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION			109		
		TOTAL FUNDING	AGS		109 C		C
EDN107 - SPECIAL EDUCATION							
92.	005	LUMP SUM CIP-ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOM IMPROVEMENTS					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS.					
		DESIGN			400		400
		CONSTRUCTION			7,600		8,600
		TOTAL FUNDING	AGS		8,000 B		9,000 B
93.	013	LUMP SUM CIP-SPECIAL EDUCATION PROGRAM, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION.					
		DESIGN			50		50
		CONSTRUCTION			250		250
		TOTAL FUNDING	AGS		300 B		300 B
EDN203 - SCHOOL ADMINISTRATION							
94.		WAIPAHA INTERMEDIATE, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW ADMINISTRATION BUILDING, TO INCLUDE THE DEMOLITION OF THE EXISTING FACILITY.					
		DESIGN			1		
		CONSTRUCTION			1,698		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,700 C		C
95.		NOELANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE ADMINISTRATION BUILDING AT NOELANI ELEMENTARY SCHOOL.					
		DESIGN			20		
		CONSTRUCTION			566		
		TOTAL FUNDING	AGS		586 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
96.		WHEELER ELEMENTARY SCHOOL, OAHU					
		DESIGN TO RENOVATE TYPE 4 CLASSROOMS (BLDG. B) INTO AN ADMINISTRATIVE OFFICE AND LIBRARY.					
		DESIGN			145		
		TOTAL FUNDING	AGS		145 C		C
EDN204 - INSTRUCTIONAL MEDIA							
97.		KALIHI KAI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE CONVERSION OF THE OLD CAFETERIA INTO A LIBRARY, TO INCLUDE THE REMOVAL OF ASBESTOS IN THE FACILITY.					
		DESIGN			1		
		CONSTRUCTION			799		
		TOTAL FUNDING	AGS		800 C		C
EDN305 - SCHOOL FOOD SERVICES							
98.		LINAPUNI ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR A NEW CAFETORIUM AT LINAPUNI ELEMENTARY SCHOOL.					
		DESIGN			100		
		TOTAL FUNDING	AGS		100 C		C
99.		WILSON ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CAFETORIUM IMPROVEMENTS TO INCLUDE, BUT NOT LIMITED TO: CEILING FANS IN THE KITCHEN AND CAFETERIA; INSTALL A NEW LIGHTING SYSTEM; INSTALL A PUBLIC ADDRESS SYSTEM; AND OTHER RELATED IMPROVEMENTS.					
		PLANS			20		
		DESIGN			50		
		CONSTRUCTION			150		
		EQUIPMENT			20		
		TOTAL FUNDING	AGS		240 C		C

EDN407 - PUBLIC LIBRARIES

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
100.	001-2	HAWAII STATE PUBLIC LIBRARY, OAHU					
		EQUIPMENT FOR THE EXPANSION AND RENOVATION OF THE HAWAII STATE LIBRARY.					
		EQUIPMENT		1,500			
		TOTAL FUNDING	AGS	1,500 C			C
101.	037-1	WAIPAHU PUBLIC LIBRARY, OAHU					
		DESIGN FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					
		DESIGN		200			
		TOTAL FUNDING	AGS	200 C			C
102.	044-1	NANAKULI PUBLIC LIBRARY, OAHU					
		PLANS FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					
		PLANS		100			
		TOTAL FUNDING	AGS	100 C			C
103.	059-3	KIHEI PUBLIC LIBRARY, MAUI					
		PLANS AND DESIGN FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					
		PLANS		1			
		DESIGN		149			
		TOTAL FUNDING	AGS	150 C			C
104.	070-4	HILO LIBRARY EXPANSION, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR EXPANSION OF THE HILO PUBLIC LIBRARY.					
		CONSTRUCTION		200			
		EQUIPMENT		250			
		TOTAL FUNDING	AGS	450 C			C
105.	085-11	LUMP SUM CIP-ASBESTOS ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ASBESTOS ABATEMENT IN PUBLIC LIBRARIES.					
		DESIGN		50		50	
		CONSTRUCTION		500		500	
		TOTAL FUNDING	AGS	550 C		550 C	
106.	800-01	LUMP SUM CIP-ARCHITECTURAL BARRIERS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR ARCHITECTURAL BARRIER CORRECTIONS.					
		DESIGN		641			
		CONSTRUCTION		1,359			
		TOTAL FUNDING	AGS	2,000 C			C
107.	800-03	LUMP SUM CIP-ENVIRONMENTAL CONTROLS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF ENVIRONMENTAL CONTROLS TO BUILDINGS AND LIBRARY SITES.					
		DESIGN		100			
		CONSTRUCTION		400			
		TOTAL FUNDING	AGS	500 C			C
108.	800-07	LUMP SUM CIP-SITE SELECTION MASTER PLAN, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR SITE SELECTION MASTER PLANNING AND DAGS ASSISTANCE FUNDS.					
		PLANS		100			
		LAND		100			
		TOTAL FUNDING	AGS	200 C			C
109.	800-08	LUMP SUM CIP-FIRE PROTECTION SYSTEM, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRE PROTECTION SYSTEMS.					
		PLANS		30			
		DESIGN		100			
		CONSTRUCTION		500			
		EQUIPMENT		20			
		TOTAL FUNDING	AGS	650 C			C
110.	800-10	LUMP SUM CIP-COUNTY BUILDING REQUIREMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REQUIREMENTS BY COUNTIES TO OBTAIN BUILDING PERMITS.					
		DESIGN		50			
		CONSTRUCTION		200			
		TOTAL FUNDING	AGS	250 C			C
111.	900-21	LIHUE PUBLIC LIBRARY-FACILITY IMPROVEMENTS, KAUAI					
		DESIGN FOR A REVISED PHYSICAL LAYOUT IN THE LIBRARY TO ALLEVIATE CRAMPED WORK AREAS, READING AREAS, BOOK SHELVES, AND OFFICE AREAS.					
		DESIGN		45			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	AGS		45 C		C
112.	800-02	LUMP SUM CIP-MINOR IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR IMPROVEMENTS TO BUILDINGS AND LIBRARY SITES.					
		PLANS			30		
		DESIGN			100		
		CONSTRUCTION			506		
		EQUIPMENT			20		
		TOTAL FUNDING	AGS		656 C		C
113.		KOHALA PUBLIC LIBRARY, HAWAII					
		PLANS FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					
		PLANS			100		
		TOTAL FUNDING	AGS		100 C		C
114.		HANAPEPE PUBLIC LIBRARY, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AN AIR CONDITIONING SYSTEM.					
		DESIGN			1		
		CONSTRUCTION			178		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		180 C		C
UOH101 - INSTRUCTION - UOH, MANOA							
115.	078	UHM, SCHOOL OF ARCHITECTURE/PARKING FACILITIES, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES FOR THE SCHOOL OF ARCHITECTURE AND ADJOINING PARKING FACILITIES.					
		DESIGN			50		
		CONSTRUCTION			1,042		
		EQUIPMENT			522		
		TOTAL FUNDING	AGS		1,614 C		C
116.	085	UHM, CENTER FOR HAWAIIAN STUDIES, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES FOR THE HAWAIIAN STUDIES PROGRAM.					
		DESIGN			336		33
		CONSTRUCTION			3,928		
		EQUIPMENT					371
		TOTAL FUNDING	AGS		4,264 C		404 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
117.	088	UHM, WIST HALL RENOVATIONS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITIES FOR THE COLLEGE OF EDUCATION.					
		DESIGN			55		
		CONSTRUCTION			1		
		EQUIPMENT			685		
		TOTAL FUNDING	AGS		741 C		C
118.	092	UHM, PACIFIC OCEAN SCIENCE AND TECHNOLOGY CENTER, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR INSTRUCTIONAL AND RESEARCH FACILITIES FOR THE PACIFIC OCEAN SCIENCE AND TECHNOLOGY PROGRAMS. ALSO, RENOVATION OF FACILITIES FOR PROGRAMS AFFECTED BY DEMOLITION AND SITE PREPARATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			18,901		
		EQUIPMENT			6,000		
		TOTAL FUNDING	AGS		18,901 C		C
			AGS		6,000 N		N
119.	097	UHM, WEBSTER AND SPALDING HALLS/SCHOOL OF NURSING RENOVATIONS, PHASE I, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITIES FOR THE SCHOOL OF NURSING AND OTHER ACADEMIC PROGRAMS.					
		DESIGN			54		
		CONSTRUCTION			7,618		
		EQUIPMENT			750		
		TOTAL FUNDING	AGS		8,422 C		C
120.	P00080	UHM, AGRICULTURAL SCIENCE FACILITIES, PHASE III, OAHU					
		DESIGN AND EQUIPMENT FOR FACILITIES FOR THE COLLEGE OF TROPICAL AGRICULTURE AND HUMAN RESOURCES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,554		
		EQUIPMENT			3,600		
		TOTAL FUNDING	AGS		2,266 C		C
			AGS		2,888 N		N
121.	066	UHM, KENNEDY THEATRE ADDITION/PARKING STRUCTURE, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN FOR AN ADDITION TO KENNEDY THEATRE AND A PARKING STRUCTURE.					
		DESIGN		750			
		TOTAL FUNDING	AGS	750 C			C
122.	042 UHM,	COLLEGE OF EDUCATION COMPLEX, PHASE I, OAHU					
		CONSTRUCTION FOR THE COLLEGE OF EDUCATION COMPLEX, PHASE I, INCLUDING LABORATORY SCHOOL FACILITIES FOR THE PRESCHOOL, THE ELEMENTARY, AND HIGH SCHOOLS, ALSO, FOR DEMOLITION, RENOVATION, RELOCATION OF FACILITIES FOR PROGRAMS AFFECTED BY THIS PROJECT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					16,000
		TOTAL FUNDING	AGS		C		11,000 C
			AGS		N		5,000 N
UOH102 - ORGANIZED RESEARCH - UOH, MANOA							
123.	171 UHM,	SCHOOL OF MEDICINE RENOVATION, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF LABORATORIES REQUIRED BY THE NUCLEAR REGULATORY COMMISSION (NRC) AT THE BIOMEDICAL SCIENCES BUILDING AND AT LEAHI HOSPITAL.					
		DESIGN		20			
		CONSTRUCTION		490			
		TOTAL FUNDING	AGS	510 C			C
124.	691 UHM,	WAIALEE LIVESTOCK RESEARCH CENTER, SEWAGE SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION OF A SECOND OXIDATION POND, REHABILITATION OF THE EXISTING POND AND OTHER NECESSARY REPAIRS TO PROVIDE A SEWAGE DISPOSAL SYSTEM THAT MEETS HEALTH CODE REQUIREMENTS.					
		DESIGN		115			
		CONSTRUCTION		1,767			
		TOTAL FUNDING	AGS	1,882 C			C
125.	694 UHM,	EXPERIMENT STATIONS - FUEL STORAGE TANKS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF FUEL STORAGE TANKS.					
		DESIGN		99			
		CONSTRUCTION		848			
		EQUIPMENT		60			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	AGS	1,007	C		C
126.	532	UHM, MKO, HEADQUARTER FACILITY, HAWAII PLANS FOR A NEW HEADQUARTER FACILITY IN HILO FOR OBSERVATORY PERSONNEL. PLANS		252			
		TOTAL FUNDING	UOH	252	C		C
UOH104 - ACADEMIC SUPPORT - UOH, MANOA							
127.	181	UHM, KRAUSS HALL RENOVATIONS, OAHU DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF OLD KRAUSS HALL. DESIGN		135			
		CONSTRUCTION		1,270			
		EQUIPMENT		130			
		TOTAL FUNDING	AGS	1,535	B		B
128.	178	UHM, HAMILTON LIBRARY, PHASE III AND RENOVATION OF EXISTING LIBRARY, OAHU DESIGN FOR HAMILTON LIBRARY, PHASE III AND THE RENOVATION OF EXISTING LIBRARY. DESIGN		220			
		TOTAL FUNDING	AGS	220	C		C
UOH105 - STUDENT SERVICES - UOH, MANOA							
129.	287	UHM, STUDENT SERVICES CENTER, OAHU DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE STUDENT SERVICES CENTER TO ACCOMMODATE STUDENT SERVICES AND ADMINISTRATIVE PERSONNEL HOUSED IN TEMPORARY AND SEPARATE FACILITIES ON THE MANOA CAMPUS. DESIGN		153		176	
		CONSTRUCTION		4,357			
		EQUIPMENT				1	
		TOTAL FUNDING	AGS	4,510	C	177	C
130.	UHM, HPER - SPECIAL EVENTS COMPLEX AND PARKING STRUCTURE, OAHU PLANS, DESIGN, AND CONSTRUCTION FOR THE HPER - SPECIAL EVENTS COMPLEX FACILITY. ALSO, DESIGN AND CONSTRUCTION OF THE SECOND PARKING STRUCTURE ON THE MAKAI CAMPUS, TO INCLUDE TRANSPORTATION SERVICES FACILITIES, THE RENOVATION OF						

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PHASE I, AND TRAFFIC CIRCULATION IMPROVEMENTS. FUNDS MAY ALSO BE USED FOR THE DEMOLITION OF EXISTING FACILITIES AND RELOCATION FOR PROGRAMS AFFECTED BY THIS PROJECT.					
		PLANS			581		
		DESIGN			3,392		
		CONSTRUCTION			28,027		
		TOTAL FUNDING	AGS		32,000 C		C
UOH106 - INSTITUTIONAL SUPPORT - UOH, MANOA							
131.		M71 UHM, UNIVERSITY CLUB, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A FACILITY TO PROMOTE INTERACTION BETWEEN UNIVERSITY STAFF AND MEMBERS OF THE COMMUNITY.					
		DESIGN			1		20
		CONSTRUCTION			2,347		1
		EQUIPMENT					224
		TOTAL FUNDING	AGS		2,348 R		245 R
132.		M73 UHM, ELECTRICAL POWER DISTRIBUTION SYSTEM, PHASE II, OAHU					
		DESIGN AND CONSTRUCTION FOR THE NECESSARY ELECTRICAL INFRASTRUCTURE AS DETERMINED BY THE ELECTRICAL POWER DISTRIBUTION MASTER PLAN. ALSO, TO INCLUDE TELECOMMUNICATIONS INFRASTRUCTURE AS REQUIRED.					
		DESIGN			1		
		CONSTRUCTION			4,999		
		TOTAL FUNDING	AGS		5,000 C		C
133.		277 UHM, REMOVAL, ENCAPSULATION AND ENCLOSURE OF ASBESTOS MATERIAL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATIONS TO UNIVERSITY BUILDINGS WITH IDENTIFIED ASBESTOS HAZARDS.					
		DESIGN			50		49
		CONSTRUCTION			919		919
		TOTAL FUNDING	AGS		969 C		968 C
134.		279 UHM, REPLACEMENT OF TRANSFORMERS WITH PCB, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TRANSFORMERS WITH PCB, A RECOGNIZED CARCINOGEN, TO MEET EPA REGULATIONS.					
		DESIGN			57		57

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION		1,134		691	
		TOTAL FUNDING	UOH	1,191 C		748 C	
135.	280	UHM, MODIFICATION TO EXISTING AND/OR ADDITION OF FACIL TO MEET HOSHA, OAHU					
		DESIGN AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES TO MEET HAWAII OCCUPATIONAL SAFETY AND HEALTH ACT AND OTHER CODE REQUIREMENTS.					
		DESIGN		230			
		CONSTRUCTION		4,060			
		TOTAL FUNDING	AGS	4,290 C			C
136.	M-79	UHM, TELECOMMUNICATIONS INFRA STRUCTURE NETWORK, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UNIFORM CABLE DISTRIBUTION SYSTEM OF OUTSIDE PLANT AND BUILDING WIRING AND FIBER-OPTIC CABLES FOR VOICE, VIDEO, AND DATA TRANSMISSIONS.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		11,997			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	12,000 E			E
137.	M72	UHM, FOOD SERVICE FACILITY, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF THE HAMILTON SNACK BAR TO MAKE WAY FOR THE CONSTRUCTION OF HAMILTON LIBRARY, PHASE III ON MAILE WAY. FUNDING FOR THIS PROJECT WILL BE MATCHED BY THE MARRIOTT EDUCATION SERVICES.					
		DESIGN		342			
		CONSTRUCTION		5,282			
		EQUIPMENT		754			
		TOTAL FUNDING	UOH	3,189 C			C
			UOH	3,189 R			R
UOH215 - STUDENT SERVICES - UOH, HILO							
138.	411A	UHH, STUDENT HOUSING FACILITIES, PHASE IA, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A COVERED PLAZA.					
		DESIGN		15			
		CONSTRUCTION		160			
		EQUIPMENT		10			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
TOTAL FUNDING			AGS	185 C		C	
UOH216 - INSTITUTIONAL SUPPORT - UOH, HILO							
139.	448	UHH, CAMPUS LIGHTING IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR CAMPUS LIGHTING IMPROVEMENTS.					
		DESIGN			50		
		CONSTRUCTION			350		
		TOTAL FUNDING	AGS	400 C		C	
140.	440	UHH, UNIVERSITY PARK, HAWAII					
		DESIGN AND CONSTRUCTION FOR INFRASTRUCTURE IMPROVEMENTS AT THE UHH MAUKA CAMPUS SITE TO ACCOMMODATE THE FUTURE DEVELOPMENT AND EXPANSION OF UHH'S STUDENT HOUSING, ACADEMIC AND RESEARCH PROGRAMS.					
		DESIGN			500		
		CONSTRUCTION			1,282		
		TOTAL FUNDING	AGS	1,782 C		C	
UOH301 - INSTRUCTION - HONOLULU COMMUNITY COLLEGE							
141.	HCC,	HUMAN RESOURCES LABORATORY AND SITE IMPROVEMENTS, PHASE I, OAHU					
		DESIGN AND CONSTRUCTION FOR NEW CLASSROOMS, LABORATORIES, FACULTY OFFICES AND SUPPORT FACILITIES FOR THE HUMAN RESOURCES PROGRAM, INCLUDING EARLY CHILDHOOD EDUCATION. ALSO, FOR SITEWORK FOR THE HUMAN RESOURCES PROGRAM, EXPANSION OF PARKING AREA NO. 1, DEMOLITION, CLEARING, GRADING, LANDSCAPING, ROADWAYS, WALKWAYS, LIGHTING, AND UTILITIES.					
		DESIGN			274		
		CONSTRUCTION			510		
		TOTAL FUNDING	AGS	784 C		C	
UOH311 - INSTRUCTION -KAPIOLANI COMMUNITY COLLEGE							
142.	B-102	KDH, NEW CAMPUS DEVELOPMENT, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW FACILITIES INCLUDING SITE WORK, UTILITIES, ROADWAYS AND BUILDINGS, AND OFF-SITE ROADWAY IMPROVEMENTS, CHILD CARE FACILITIES, AND COMMUNITY SERVICES FACILITIES.					
		DESIGN					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION		17,935			
		EQUIPMENT			1		
		TOTAL FUNDING	AGS	17,937	C		C

UOH331 - INSTRUCTION-WINDWARD COMMUNITY COLLEGE

143. W-100 WIN, NEW CAMPUS DEVELOPMENT, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW FACILITIES, INCLUDING SITE WORK, UTILITIES, BUILDINGS, AND RENOVATIONS TO EXISTING FACILITIES (INCLUDING LOKAI AND SCIENCE BUILDINGS).

DESIGN		310		
CONSTRUCTION				12,052
EQUIPMENT				206
TOTAL FUNDING	AGS	310	C	12,258

UOH501 - INSTRUCTION-MAUI COMMUNITY COLLEGE

144. M-100 MAU, NEW CAMPUS DEVELOPMENT, PHASE I, (SITE/INFRASTRUCTURE IMPROVEMENTS), MAUI

DESIGN AND CONSTRUCTION FOR SITE AND INFRASTRUCTURE IMPROVEMENTS INCLUDING DEMOLITION, CLEARING, GRADING, LANDSCAPING, ROADWAYS, WALKWAYS, LIGHTING AND UTILITIES. ALSO, FOR THE CONSTRUCTION OF BUILDING J.

DESIGN				1
CONSTRUCTION				14,053
TOTAL FUNDING	AGS		C	14,054

UOH901 - ACADEMIC SUPPORT-UOH, SYSTEM-WIDE SUPPORT

145. 503 SYS, LONG RANGE DEVELOPMENT PLANS, STATEWIDE

PLANS FOR LONG RANGE DEVELOPMENT PLANS, INCLUDING UPDATES OF LONG RANGE DEVELOPMENT PLANS FOR VARIOUS UNIVERSITY CAMPUSES.

PLANS		900		
TOTAL FUNDING	UOH	900	C	C

UOH903 - INSTITUTIONAL SPPT-UOH, SYSTEM-WIDE SPPT

146. 531 SYS, MODIFICATIONS FOR THE HANDICAPPED, STATEWIDE

PLANS AND DESIGN FOR MODIFICATIONS FOR THE HANDICAPPED TO IDENTIFY AND CORRECT

ACT 296

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		EXISTING ARCHITECTURAL BARRIERS AT ALL UNIVERSITY CAMPUSES, EXTENSION SITES, AND OTHER RELATED FACILITIES.					
		PLANS			500		
		DESIGN			500		
		TOTAL FUNDING	AGS		1,000 C		C
UOH906 - COMMUNITY COLLEGE SYSTEMWIDE SUPPORT							
147.	C-03	CCS, REMOVAL/ENCAPSULATION AND ENCLOSURE OF ASBESTOS MATERIALS, STATEWIDE					
		PLANS FOR THE RENOVATION OF COMMUNITY COLLEGE BUILDINGS TO REMOVE, ENCAPSULATE, AND/OR ENCLOSE ASBESTOS MATERIALS.					
		PLANS			150		
		TOTAL FUNDING	AGS		150 C		C
H. CULTURE AND RECREATION							
UOH881 - AQUARIA							
1.	577	UHM, WAIKIKI AQUARIUM REVITALIZATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE NEW OCEAN SCIENCE CENTER, ADDITIONS AND IMPROVEMENTS TO EXISTING FACILITIES INCLUDING PUBLIC AMENITIES, UTILITIES AND SITE IMPROVEMENTS, AND OTHER RELATED WORK.					
		PLANS			200		
		DESIGN			1	490	
		CONSTRUCTION			409		
		TOTAL FUNDING	AGS		610 C		490 C
CCA701 - HAWAII PUBLIC BROADCASTING							
2.	HPBA05	HPBA INTERACTIVE, CLOSED CIRCUIT EDUCATIONAL TELEVISION SYSTEM, STATEWIDE					
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN HPBA STATEWIDE, INTERACTIVE, CLOSED CIRCUIT, EDUCATIONAL TELEVISION SYSTEM USING "INSTRUCTIONAL TELEVISION FIXED SERVICE" (ITFS) FREQUENCIES RESERVED FOR EDUCATIONAL USE BY THE FEDERAL COMMUNICATIONS COMMISSION.					
		LAND			50		
		DESIGN			15		
		CONSTRUCTION			85	90	
		EQUIPMENT			30	10	
		TOTAL FUNDING	AGS		180 C		100 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
3.	HPBA07	HPBA INTERACTIVE, CLOSED CIRCUIT, TELEVISION SYSTEM, STATEWIDE					
		LAND ACQUISITION AND DESIGN FOR HPBA STATEWIDE, INTERACTIVE, CLOSED CIRCUIT, EDUCATIONAL TELEVISION SYSTEM USING "INSTRUCTIONAL TELEVISION FIXED SERVICE" (ITFS) FREQUENCIES RESERVED FOR EDUCATIONAL USE BY THE FEDERAL COMMUNICATIONS COMMISSION. THIS PROJECT WILL EXTEND THE HITS COVERAGE IN HAWAII AND TO WAIANAE.					
		LAND			20		
		DESIGN			200		
		TOTAL FUNDING	AGS		220 C		C
4.	HPBA08	HPBA INTERACTIVE CLOSED CIRCUIT EDUCATIONAL TELEVISION SYSTEM, STATEWIDE					
		DESIGN AND EQUIPMENT FOR ADDITION TO INTERACTIVE CLOSED CIRCUIT, EDUCATIONAL TELEVISION SYSTEM USING "INSTRUCTIONAL TELEVISION FIXED SERVICE" (ITFS) FREQUENCIES RESERVED FOR EDUCATIONAL USE BY THE FEDERAL COMMUNICATIONS COMMISSION.					
		DESIGN			120		50
		EQUIPMENT			1,023		400
		TOTAL FUNDING	AGS		1,143 C		450 C
LNR802 - HISTORIC PRESERVATION							
5.	KONA	SATELLITE MUSEUM FACILITY, HAWAII					
		PLANS FOR A SATELLITE MUSEUM FACILITY IN KONA.					
		PLANS			75		
		TOTAL FUNDING	LNR		75 C		C
6.		MANAGEMENT AND PRESERVATION OF THE HULA PLATFORM AND ENVIRONS AT KE'E, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE IMPLEMENTATION OF A JOINT MANAGEMENT PLAN AND THE REHABILITATION OF BUILDINGS ON THE PREMISES.					
		PLANS			1		
		DESIGN			74		
		CONSTRUCTION			225		
		TOTAL FUNDING	LNR		300 C		C
LNR804 - FOREST RECREATION							
7.	D11	"NIKE" SITE RESTORATION, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION FOR PROJECT WHICH INVOLVES THE RESTORATION OF TWO BUILDINGS AT THE "NIKE" SITE FOR THE PURPOSE OF ENVIRONMENTAL EDUCATION WITHIN THE MOKULEIA FOREST RESERVE.					
		CONSTRUCTION			200		
		TOTAL FUNDING	LNR		200 C		C
8.		D02K FOREST TRAILS AND ACCESS, WAIOLI-HANALEI, KAUAI					
		PLANS FOR TRAILS ON AN INCREMENTAL BASIS. TRAILS TO BE AT LEAST THREE 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			125		
		TOTAL FUNDING	LNR		125 C		C
9.		ACQUISITION OF KA'IWA RIDGE, OAHU					
		LAND ACQUISITION FOR KA'IWA RIDGE IN LANIKAI TO BE INCORPORATED INTO THE NA ALA HELE TRAIL SYSTEM.					
		LAND			500		
		TOTAL FUNDING	LNR		500 C		C
LNR806 - HERITAGE & RECREATION PARKS							
10.		F11 IOLANI PALACE RESTORATION, OAHU					
		DESIGN AND CONSTRUCTION FOR MAJOR RECONSTRUCTION OF PALACE BASEMENT, RELOCATION OF MAINTENANCE FACILITIES AND OTHER MAJOR REPAIR OR REPLACEMENT WORK.					
		DESIGN			60		
		CONSTRUCTION			250		
		TOTAL FUNDING	LNR		310 C		C
11.		F13 LAPAKAHI STATE HISTORICAL PARK, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF LAPAKAHI AHUPUA'A ARCHAEOLOGICAL FEATURES WHICH OFFERS AN OPPORTUNITY FOR PUBLIC INTERPRETATION OF EARLY HAWAIIAN FISHING AND FARM SYSTEM. DEVELOPMENT OF PARK SERVICES INCLUDING WATER SYSTEM IMPROVEMENTS AND A BASEYARD FACILITY.					
		PLANS			50		
		DESIGN			50		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION			200		200
		TOTAL FUNDING	LNR		300 C		200 C
12.	F14	KEALAKEKUA BAY, HAWAII					
		PLANS FOR THE CONTINUED PLANNING, RESEARCH AND DESIGN TOGETHER WITH INCREMENTAL PARK DEVELOPMENT OF A MAJOR HISTORIC PARK INVOLVING A MOST IMPORTANT HISTORIC AND ARCHAEOLOGICAL PLACE IN THE STATE.					
		PLANS			250		
		TOTAL FUNDING	LNR		250 C		C
13.	F15	ROYAL MAUSOLEUM - NUUANU PETROGLYPHS, OAHU					
		CONSTRUCTION FOR RESEARCH OF SITE; TO INCLUDE: INTERPRETIVE VALUES, RESTORATION OF CRYPT, LANDSCAPING, REPLACEMENT OF CARETAKER'S HOUSE AND RESTROOMS, IMPROVEMENTS OF LANDSCAPING AND DRIVEWAY. TO BE FOLLOWED BY AN ADDITIONAL DEVELOPMENT ALONG NUUANU STREAM.					
		CONSTRUCTION			400		
		TOTAL FUNDING	LNR		400 C		C
14.	F40	LAIE POINT STATE PARK, OAHU					
		LAND ACQUISITION FOR DEVELOPMENT OF A STATE PARK AT LAIE POINT.					
		LAND					20
		TOTAL FUNDING	LNR			C	20 C
15.	F46	KOKEE/WAIMEA CANYON COMPLEX, KAUAI					
		PLANS FOR CONTINUED PARK DEVELOPMENT AND REPLACEMENT OF OLDER FACILITIES, MASTER PLAN FOR THE IMPROVEMENT AND MANAGEMENT OF THE PARK, AND THE ADDITION OF INTERPRETIVE FACILITIES.					
		PLANS			100		
		TOTAL FUNDING	LNR		100 C		C
16.	F57	KAHANA VALLEY STATE PARK, OAHU					
		CONSTRUCTION FOR THE INCREMENTAL DEVELOPMENT OF THE PARK, INCLUDING THE DEVELOPMENT OF A "LIVING PARK" WITH VALLEY RESIDENTS. PLAN AND RESEARCH IN COOPERATION WITH THE KAHANA ADVISORY COUNCIL AND OTHERS.					
		CONSTRUCTION			3,000		
		TOTAL FUNDING	LNR		3,000 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
17.	F70	SAND ISLAND STATE RECREATION AREA, OAHU					
		DESIGN FOR PARK IMPROVEMENTS AND RECONSTRUCTION OF EXISTING FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					75
		TOTAL FUNDING	LNR		C		75 C
18.	F73	MAKENA-LAPEROUSE STATE PARK, MAUI					
		DESIGN AND CONSTRUCTION FOR THE INCREMENTAL ACQUISITION OF LAND AS PER CONCEPTUAL PLAN AND INCREMENTAL DEVELOPMENT AS DETERMINED BY DEVELOPMENT PLAN. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				100	
		CONSTRUCTION					500
		TOTAL FUNDING	LNR		100 C		500 C
19.	F74	HAENA BEACH STATE PARK, KAUAI					
		PLANS FOR INCREMENTAL DEVELOPMENT INCLUDING PLANNING, RESEARCH, DESIGN AND CONSTRUCTION OF FACILITIES AND INTERPRETIVE PROGRAMS. POSSIBLE LAND ACQUISITION FOR PARK EXPANSION.					
		PLANS				100	
		TOTAL FUNDING	LNR		100 C		C
20.	F75	HAPUNA BEACH STATE PARK, HAWAII					
		DESIGN AND CONSTRUCTION FOR LAND ACQUISITION OF WAILEA BAY AREA, AS PER MASTER PLAN. INCREMENTAL DEVELOPMENT AND RECONSTRUCTION OF UTILITY INFRASTRUCTURE, AND OTHER RELATED IMPROVEMENTS FOR RECREATIONAL DEVELOPMENT.					
		DESIGN				50	
		CONSTRUCTION				600	500
		TOTAL FUNDING	LNR		650 C		500 C
21.	F78	POLIHALE STATE PARK, KAUAI					
		CONSTRUCTION FOR PLANNING AND RESEARCH TO DETERMINE FUTURE MANAGEMENT AND DEVELOPMENT OF PARK. RENOVATION OF EXISTING FACILITIES AND INCREMENTAL DEVELOPMENT OF ADDITIONAL FACILITIES AS DETERMINED BY DEVELOPMENT PLANS. ROAD RECONSTRUCTION IN FY 1991-92 TO CORRECT					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		A SAFETY PROBLEM. CONSTRUCTION		350			
		TOTAL FUNDING	LNR	350 C			C
22.		F88 KAIKA POINT, OAHU					
		CONSTRUCTION FOR DEVELOPMENT OF BEACH PARK AT KAIKA AS PER MASTER PLAN. INCLUDES OFF SITE WATER SYSTEM DEVELOPMENT.					
		CONSTRUCTION		385			
		TOTAL FUNDING	LNR	385 C			C
23.		H09 LANDSCAPING AND PARK IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR MINOR ADDITIONS, RENOVATIONS AND REPLACEMENTS TO PARK GROUNDS AND FACILITIES INCLUDING FACILITIES TO AID THE HANDICAPPED.					
		PLANS		75		75	
		DESIGN		200		200	
		CONSTRUCTION		1,000		1,000	
		TOTAL FUNDING	LNR	1,275 C		1,275 C	
24.		H18 KEOLONAHIHI (KAMOA) POINT, HAWAII					
		PLANS FOR RESEARCH, STABILIZATION AND RESTORATION OF PARK FEATURES FOLLOWED BY INTERPRETIVE PROGRAM AND FACILITY DEVELOPMENT. POSSIBLE ACQUISITION OF ADJOINING SMALL PARCELS OF LAND.					
		PLANS		100			
		TOTAL FUNDING	LNR	100 C			C
25.		H68 MAKAPUU POINT, OAHU					
		LAND ACQUISITION FOR A SHORELINE PARK FROM HANAUMA BAY TO MAKAPUU POINT, MAKAI OF KALANIANAOLE HIGHWAY. INCREMENTAL DEVELOPMENT OF 40+ EXISTING ACRES AT MAKAPUU POINT.					
		LAND					30
		TOTAL FUNDING	LNR		C		30 C
26.		H80 HANAIEI RECREATIONAL PIER, HANAIEI, KAUAI					
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF HANAIEI RECREATIONAL PIER.					
		DESIGN		10			
		CONSTRUCTION		1,000			
		TOTAL FUNDING	LNR	1,010 C			C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
27.		H87 MAHAIULA/KUA BAY AREA, HAWAII					
		PLANS FOR CONCEPTUAL PLANS OF POTENTIAL STATE PARKS TO DETERMINE FEASIBILITY, SIZE AND DEVELOPMENT NEEDS. LAND APPRAISAL FOR ACQUISITION OF PRIVATE LAND.					
		PLANS			250		
		TOTAL FUNDING	LNR		250 C		C
28.		WAIOLA STATE PARK, OAHU					
		PLANS FOR THE FEASIBILITY AND PURCHASE OF WAIOLA IN CENTRAL OAHU TO BE USED TO DEVELOP A MULTI-PURPOSE RECREATIONAL, CULTURAL AND SPORTS PARK COMPLEX.					
		PLANS			100		
		TOTAL FUNDING	LNR		100 C		C
TRN801 - OCEAN-BASED RECREATION							
29.		01K NAWILIWILI BOAT HARBOR, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF WATERLINE, ADDITIONAL BERTHING FACILITIES, LOADING DOCK, CHARTER BOAT FACILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN			170		
		CONSTRUCTION			1,220		
		TOTAL FUNDING	TRN		1,390 D		D
30.		01O KEEHI BOAT HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF ELECTRICAL OUTLETS, CORRECT SUBSIDENCE, PAVE PARKING AREAS, LOADING DOCKS, DINGHY DOCKS, EXPAND ADMINISTRATION BUILDING AND OTHER IMPROVEMENTS.					
		DESIGN			200		
		CONSTRUCTION			675		600
		TOTAL FUNDING	TRN		875 D		600 D
31.		01S IMPROVEMENTS TO BOATING FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO EXISTING BOAT HARBORS AND BOAT REFUGE AREAS.					
		DESIGN			30		30
		CONSTRUCTION			140		140
		TOTAL FUNDING	TRN		170 D		170 D
32.		02O ALA WAI BOAT HARBOR IMPROVEMENTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR LANDSCAPING, EXPAND COMFORT STATION, IMPROVEMENTS TO TELEPHONE AND ELECTRICAL SYSTEMS, AND OTHER IMPROVEMENTS.					
		DESIGN			110		35
		CONSTRUCTION			940		200
		TOTAL FUNDING	TRN		1,050 D		235 D
33.	02S	SEWAGE SYSTEM IMPROVEMENTS TO BOATING FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR INCREMENTAL DEVELOPMENT OF SEWAGE SYSTEMS FOR BOATING FACILITIES AND OTHER IMPROVEMENTS.					
		DESIGN			90		100
		CONSTRUCTION			1,000		300
		TOTAL FUNDING	TRN		1,090 D		400 D
34.	03M	IMPROVEMENTS TO LAHAINA BOAT HARBOR, MAUI					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF NEW LOADING DOCK, DINGHY DOCK, IMPROVED HARBOR ACCESS, WATERLINE/FIRE HYDRANTS AND OTHER IMPROVEMENTS.					
		DESIGN			125		
		CONSTRUCTION			800		
		TOTAL FUNDING	TRN		925 D		D
35.	03S	BOAT LAUNCHING FACILITY PROGRAM, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT OF BOAT LAUNCHING FACILITIES THROUGHOUT THE STATE AT EXISTING AND NEW SITES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					75
		CONSTRUCTION			1,235		
		TOTAL FUNDING	TRN		1,235 C		75 C
36.	04O	HALEIWA BOAT HARBOR, OAHU					
		DESIGN FOR PROVISION OF ELECTRICAL POWER TO PIER 200 AND OTHER IMPROVEMENTS.					
		DESIGN			50		
		TOTAL FUNDING	TRN		50 D		D
37.	05O	WAIANAE BOAT HARBOR, OAHU					
		DESIGN FOR MARGINAL WHARF, PAVED PARKING, BERTHING FACILITIES AND OTHER					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		IMPROVEMENTS.					
		DESIGN			90		
		TOTAL FUNDING	TRN		90D		D
38.		05S PLANNING FOR BOATING FACILITIES, STATEWIDE					
		PLANS FOR CONTINUING STUDIES, RESEARCH AND ADVANCED PLANNING OF BOAT HARBORS ON ALL ISLANDS.					
		PLANS			105		
		TOTAL FUNDING	TRN		105D		D
39.		19H HONOKOHAU BOAT HARBOR IMPROVEMENTS, HAWAII					
		CONSTRUCTION FOR THE PAVEMENT OF ACCESS ROADS AND PARKING, ELECTRICAL OUTLETS, PERIMETER WALKWAY, CONSTRUCT BERTHS, DEVELOP MARITIME INDUSTRIAL SUBDIVISION, CONSTRUCT ADMINISTRATION BUILDING AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			1,100		
		TOTAL FUNDING	TRN		1,100D		D
40.		300 KEEHI LAGOON IMPROVEMENTS, OAHU					
		PLANS FOR ENVIRONMENTAL IMPACT STATEMENT FOR THE DEVELOPMENT OF KEEHI LAGOON AND OTHER IMPROVEMENTS.					
		PLANS			200		
		TOTAL FUNDING	TRN		200C		C
41.		13M IMPROVEMENTS TO MAALAEA BOAT HARBOR, MAUI					
		DESIGN AND CONSTRUCTION FOR PAVING, ELECTRICAL IMPROVEMENTS, CONSTRUCT HARBOR AGENT'S OFFICE, LOADING DOCK IMPROVEMENTS AND OTHER IMPROVEMENTS.					
		DESIGN			20		
		CONSTRUCTION			220		
		TOTAL FUNDING	TRN		240D		D
42.		22M KAHULUI HARBOR BOAT RAMP FACILITY, MAUI					
		DESIGN AND CONSTRUCTION TO COMPLETE IMPROVEMENTS FOR THE KAHULUI HARBOR BOAT RAMP FACILITY.					
		DESIGN			5		
		CONSTRUCTION			172		
		TOTAL FUNDING	TRN		177C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM							
43.	S200	ALOHA STAD, CORRECT CORRODED CONDITIONS AND OTHER DEFICIENCIES, PHASE I, OAHU					
		CONSTRUCTION FOR THE RENOVATION OF CORRODED CONDITIONS AND OTHER DEFICIENCIES INCLUDING ACCESSIBILITY FOR PERSONS WITH DISABILITIES, SAFETY, REMOVAL OF ASBESTOS MATERIALS, AND OTHER MINOR IMPROVEMENTS FOR OPERATIONAL AND SECURITY REQUIREMENTS.					
		CONSTRUCTION			18,000		
		TOTAL FUNDING	AGS		18,000 C		
44.	S201	ALOHA STAD, CORRECT CORRODED CONDITIONS AND OTHER DEFICIENCIES, PHASE II, OAHU					
		DESIGN FOR THE RENOVATION OF CORRODED CONDITIONS AND OTHER DEFICIENCIES INCLUDING ACCESSIBILITY FOR PERSONS WITH DISABILITIES, SAFETY, REMOVAL OF ASBESTOS MATERIALS, AND OTHER MINOR IMPROVEMENTS FOR OPERATIONAL AND SECURITY REQUIREMENTS.					
		DESIGN			1,000		
		TOTAL FUNDING	AGS		1,000 C		
45.	S205	ALOHA STADIUM, LOCKER ROOM IMPROVEMENTS, PHASE II, OAHU					
		DESIGN FOR THE RENOVATION OF LOCKERS INCLUDING SHOWERS, RESTROOMS, FLOORING, ELECTRICAL AND MECHANICAL SYSTEMS, AND OTHER ANCILLARY ROOMS.					
		DESIGN			100		
		TOTAL FUNDING	AGS		100 C		
46.	S207	ALOHA STADIUM, REPLACEMENT OF CHILLER PLANT, OAHU					
		DESIGN FOR THE REPLACEMENT OF CHILLER PLANT FOR THE ADMINISTRATIVE OFFICES, LOCKERS, SCOREBOARD CONTROL AND SOUND AMPLIFIER ROOMS INCLUDING THE REMOVAL OF ASBESTOS MATERIALS.					
		DESIGN			60		
		TOTAL FUNDING	AGS		60 C		
47.	S211	ALOHA STADIUM, SCOREBOARD RENOVATIONS, OAHU					
		EQUIPMENT FOR THE ACQUISITION OF THE SCOREBOARD AND RELATED COMPUTERIZED					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		OPERATING SYSTEM INCLUDING IMPROVEMENTS AND RENOVATIONS.					
		EQUIPMENT		2,000			
		TOTAL FUNDING	AGS	2,000 C			C
I. PUBLIC SAFETY							
PSD402 - HALAWA CORRECTIONAL FACILITY							
1.	919304	HALAWA MEDIUM SECURITY FACILITY SUPPORT IMPROVEMENTS, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS THROUGHOUT THE FACILITY AND/OR SATELLITE ADJUNCTS.					
		CONSTRUCTION		2,950			
		EQUIPMENT		495			
		TOTAL FUNDING	AGS	3,445 C			C
PSD403 - KULANI CORRECTIONAL FACILITY							
2.	919301	KULANI CORRECTIONAL FACILITY IMPROVEMENTS AND RENOVATIONS, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND RENOVATIONS THROUGHOUT THE FACILITY AND/OR ANY SATELLITE ADJUNCTS.					
		PLANS		150			
		LAND		50			
		DESIGN		375			
		CONSTRUCTION				2,500	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS	575 C		2,550 C	
PSD404 - WAIAWA CORRECTIONAL FACILITY							
3.	919302	WAIAWA CORRECTIONAL FACILITY IMPROVEMENTS AND RENOVATIONS, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS THROUGHOUT THE FACILITY AND/OR ANY SATELLITE ADJUNCTS.					
		LAND		100			
		DESIGN		250			
		CONSTRUCTION		2,100			
		TOTAL FUNDING	AGS	2,450 C			C
PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER							

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
4.	919306	HAWAII COMMUNITY CORRECTIONAL CENTER EXPANSION/RENOVATIONS, HAWAII					
		PLANS, LAND ACQUISITION, AND DESIGN FOR NEW STRUCTURES AND SITE IMPROVEMENTS AND/OR RENOVATE EXISTING THROUGHOUT THE FACILITY AND/OR ANY SATELLITE ADJUNCTS. INCLUDES NEW CORRECTIONAL FACILITIES IN WEST HAWAII.					
		PLANS			150		
		LAND			150		
		DESIGN			350		250
		TOTAL FUNDING	AGS		650 C		250 C
PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER							
5.	919307	MAUI COMMUNITY CORRECTIONAL CENTER EXPANSION/RENOVATIONS, MAUI					
		DESIGN AND EQUIPMENT FOR NEW STRUCTURES AND IMPROVEMENTS AND RENOVATE EXISTING THROUGHOUT THE FACILITY AND/OR ANY SATELLITE ADJUNCTS.					
		DESIGN			300		
		EQUIPMENT			1,250		
		TOTAL FUNDING	AGS		1,550 C		C
PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER							
6.	919308	OAHU COMMUNITY CORRECTIONAL CENTER ANNEX REPLACEMENT FACILITIES, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR NEW FACILITIES AT THE FACILITY AND/OR ANY SATELLITE ADJUNCTS.					
		PLANS			50		
		LAND			50		
		DESIGN			375		
		TOTAL FUNDING	AGS		475 C		C
PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER							
7.	919303	KAUAI COMMUNITY CORRECTIONAL CENTER IMPROVEMENTS AND RENOVATIONS, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS THROUGHOUT THE FACILITY AND/OR ANY SATELLITE ADJUNCTS.					
		PLANS			65		
		LAND			1		
		DESIGN			250		
		CONSTRUCTION			2,750		
		TOTAL FUNDING	AGS		3,066 C		C

ACT 296

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
PSD900 - GENERAL ADMINISTRATION							
8.	919305	DIVISION OF CORRECTIONS NEW CONSERVATION CAMP FACILITIES, HAWAII					
		PLANS FOR NEW CONSERVATION CAMP FACILITIES IN HAWAII.					
		PLANS				150	
		TOTAL FUNDING	AGS			150 C	C
9.	919309	PSD GENERAL ADMINISTRATION, HEALTH AND SAFETY RENOVATIONS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND/OR RENOVATIONS AT ANY CORRECTIONAL FACILITY STATEWIDE TO FACILITATE CONFORMANCE WITH ALL HEALTH AND SAFETY REQUIREMENTS.					
		PLANS				250	
		LAND				1	
		DESIGN				550	
		CONSTRUCTION				2,250	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS			3,151 C	C
10.	919310	DIVISION OF CORRECTIONS NEW RECEPTION CENTER FACILITY, OAHU					
		PLANS AND LAND ACQUISITION FOR A NEW RECEPTION CENTER FACILITY.					
		PLANS				150	
		LAND				150	
		TOTAL FUNDING	AGS			300 C	C
11.	919311	PSD GENERAL ADMINISTRATION, NEW TRAINING FACILITIES, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR NEW TRAINING FACILITIES, STATEWIDE.					
		PLANS				150	
		LAND				50	
		TOTAL FUNDING	AGS			200 C	C

DEF110 - AMELIORATION OF PHYSICAL DISASTERS

12. A37 ARMY NATIONAL GUARD ARMORY, MAUI
- PLANS FOR PLANNING AND CONSTRUCTION OF A MAJOR ARMORY COMPLEX TO CONSOLIDATE EXISTING FACILITY, INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, AND OTHER SUPPORTING

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			100		
		TOTAL FUNDING	AGS		100 C		C
13.	C13	ADDITION & UPGRADE OF DISASTER WARNING & COMMUNICATIONS DEVICES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR INCREMENTAL ADDITIONAL AND UPGRADING OF 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 PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMB.					
		PLANS			1		1
		LAND			1		1
		DESIGN			38		38
		CONSTRUCTION			400		400
		EQUIPMENT			160		160
		TOTAL FUNDING	AGS		500 C		500 C
			AGS		100 N		100 N
14.	A-45	IMPROVEMENTS TO THE DEPARTMENTAL ADMINISTRATION BUILDING/ARMORY, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT THE DEPARTMENTAL ADMINISTRATION BUILDING & 100-MAN ARMORY FOR PROVIDING FACILITIES FOR INCREASED STAFF OF THE ADJUTANT GENERAL'S OFFICE & THE HAWAII ARMY NATIONAL GUARD TO INCLUDE ADMIN SPACE, LANDSCAPING, RETROFIT OF 306 AIR CONDITIONING SYSTEM & OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			30		
		CONSTRUCTION			600		
		TOTAL FUNDING	AGS		630 C		C
15.	A-46	REPLACE WATERLINE KEALAKĒKUA, HAWAII					
		DESIGN FOR THE PRIMARY WATERLINE, OTHER IMPROVEMENTS AND SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			25		
		TOTAL FUNDING	AGS		25 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
16.	A-47	REPLACE WATERLINE, OLAA, HAWAII					
		DESIGN FOR THE PRIMARY WATERLINE, OTHER IMPROVEMENTS AND SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			30		
		TOTAL FUNDING	AGS		30 C		C
17.	A-48	POV PARKING LOT, KEALEKEKUA, HAWAII					
		DESIGN FOR A POV PARKING LOT INCLUDING ACCESS ROAD, SECURITY FENCING AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			50		
		TOTAL FUNDING	AGS		30 C		C
			AGS		20 N		N
18.	A-49	POV PARKING LOT, OLAA, HAWAII					
		DESIGN FOR A POV PARKING LOT INCLUDING ACCESS ROAD, SECURITY FENCING AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			30		
		TOTAL FUNDING	AGS		20 C		C
			AGS		10 N		N
19.	A-51	ELECTRICAL IMPROVEMENTS TO NAT GUARD ARMORIES TO CORRECT OSHA, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL IMPROVEMENTS AT NATIONAL GUARD ARMORIES TO UPGRADE ELECTRICAL SYSTEMS TO CONFORM TO CURRENT STANDARDS AND CRITERIA AND TO MEET OTHER REQUIREMENTS FOR INCREASED POWER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			35		
		CONSTRUCTION			210		
		TOTAL FUNDING	AGS		245 C		C

J. INDIVIDUAL RIGHTS

AGR812 - MEASUREMENT STANDARDS

- 1. A-042 NEW MEASUREMENT STANDARDS AND PLANT QUARANTINE FACILITIES, OAHU

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN FOR A NEW MEASUREMENT STANDARDS FACILITY AND A NEW PLANT QUARANTINE FACILITY ON OAHU TO INCLUDE BUT NOT BE LIMITED TO THE EXISTING MEASUREMENT STANDARDS AND PLANT QUARANTINE FACILITIES.					
		DESIGN			40		
		TOTAL FUNDING	AGR		40 C		C
K. GOVERNMENT-WIDE SUPPORT							
GOV100 - OFFICE OF THE GOVERNOR							
1. G01 PROJECT ADJUSTMENT FUND, STATEWIDE							
		DESIGN FOR ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT (TO BE EXPENDED BY THE OFFICE OF THE GOVERNOR).					
		DESIGN			3,000		
		TOTAL FUNDING	GOV		3,000 C		C
GOV103 - STATEWIDE PLAN AND COORDINATION							
2. G03B KEEHI LAGOON CANOE CENTER/KALIHI KAI PARK, OAHU							
		PLANS, DESIGN, AND CONSTRUCTION FOR A CANOE RACE COMPLEX AND 25 ACRE PARK AT KEEHI LAGOON INCLUDING RAMPS, CANOE STORAGE SHEDS, PEDESTRIAN BRIDGES, COMFORT STATIONS, PASSIVE AND ACTIVE RECREATIONAL FACILITIES, LANDSCAPING AND UTILITIES. FUNDS MAY BE SUPPLEMENTED BY SPECIAL AND FEDERAL FUNDS.					
		PLANS			1		
		DESIGN			617		
		CONSTRUCTION					3,165
		TOTAL FUNDING	BED		618 C		3,165 C
3. G03E WATERFRONT IMPROVEMENT PROJECT, OAHU							
		PLANS, DESIGN, AND CONSTRUCTION FOR VARIOUS AREA-WIDE WATERFRONT PROJECTS IN FURTHERANCE OF THE HONOLULU WATERFRONT MASTER PLAN.					
		PLANS			245		100
		DESIGN			535		
		CONSTRUCTION			4,000		
		TOTAL FUNDING	BED		4,780 C		100 C

BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
4.	H73	KAKAAKO WATERFRONT PARK, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF A WATERFRONT PARK AND RECREATIONAL FACILITIES ON THE FORT ARMSTRONG-KEWALO PENINSULA.					
		PLANS		1			1
		LAND		1			1
		DESIGN		3,200			235
		CONSTRUCTION		1			3,960
		TOTAL FUNDING	BED	3,203 C			4,197 C
5.	HCD001	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PLANNING, DEVELOPMENT AND PROJECT COSTS, AS DEFINED IN CHAPTER 206E, HAWAII REVISED STATUTES, FOR KAKAAKO COMMUNITY DEVELOPMENT DISTRICT TO INCLUDE THE PLANS AND DESIGN OF A DESALINIZATION PLANT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.					
		PLANS		2,000			2,095
		LAND		1			1
		DESIGN		5,660			1
		CONSTRUCTION		1			1
		TOTAL FUNDING	BED	7,662 C			2,098 C
6.	HF9204	KAKAAKO AFFORDABLE INCOME HOUSING (A MIXED USE HOUSING PROJECT), OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR AFFORDABLE INCOME HOUSING (MIXED-USE HOUSING); PREPARE ARCHITECTURAL DESIGN AND FUND A PORTION OF CONSTRUCTION FOR THE DEVELOPMENT OF MULTI-FAMILY HOUSING.					
		PLANS					1
		LAND		3,300			
		DESIGN		4,500			1
		CONSTRUCTION					4,198
		TOTAL FUNDING	BED	7,800 C			4,200 C

BUF131 - ELECTRONIC DATA PROCESSING SERVICES

- 7. EDPD1 INFO & COMM SERVICES DIVISION OFFICE & COMPUTER FACILITY BUILDING, OAHU

DESIGN FOR A STATE OFFICE AND COMPUTER FACILITY FOR THE INFORMATION AND COMMUNICATIONS SERVICES PROGRAM. THIS FACILITY WILL PROVIDE ADDITIONAL OFFICE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		SPACE AND A SECOND COMPUTER SITE WHICH WILL SERVE AS A BACKUP TO THE CURRENT FACILITY.					
		DESIGN			300		
		TOTAL FUNDING	AGS		300 C		C
BUF161 - COMMUNICATION							
8.		BUF01 COMMUNICATION DUCTLINES, CABLES AND CABLE DISTRIBUTION FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE ACCOMMODATION OF COMMUNICATION DUCTLINES, CABLES AND CABLE DISTRIBUTION FACILITIES TO OFFICE BUILDINGS WITHIN THE STATE CAPITOL COMPLEX AND ADJOINING AREAS AND NEIGHBOR ISLANDS.					
		DESIGN			100		
		CONSTRUCTION			900		
		TOTAL FUNDING	AGS		1,000 C		C
9.		BUF02 TELECOMMUNICATIONS SITE, OAHU					
		DESIGN FOR THE ACQUISITION OF A TELECOMMUNICATIONS SITE AND CONSTRUCT TELECOMMUNICATIONS FACILITIES TO SUPPLEMENT THE EXISTING TELECOMMUNICATIONS SITE AT ROUND TOP.					
		DESIGN			100		
		TOTAL FUNDING	AGS		100 C		C
10.		101004 MICROWAVE TOWER AND GENERATOR ENCLOSURE, MOLOKAI					
		DESIGN FOR THE PROVISION OF A MICROWAVE TOWER AND GENERATOR ENCLOSURE AT THE KAUNAKAKAI CIVIC CENTER. THE TOWER WILL BE USED TO SUPPORT THE MICROWAVE ANTENNA TO PROVIDE KAUNAKAKAI WITH A LINK TO THE STATEWIDE MICROWAVE BACKBONE.					
		DESIGN			19		
		TOTAL FUNDING	AGS		19 C		C
11.		101005 EMERGENCY POWER FOR TELECOMMUNICATIONS SYSTEMS AT STATE OFFICE BLDGS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF ENGINE GENERATORS FOR EMERGENCY POWER AT THE MAJOR STATE OFFICE BUILDINGS, STATEWIDE.					
		DESIGN			30		
		CONSTRUCTION			120		
		TOTAL FUNDING	AGS		150 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
12.	101006	LANAI TELECOMMUNICATIONS SITE, LANAI					
		LAND ACQUISITION FOR THE LANAI TELECOMMUNICATIONS SITE.					
		LAND			100		
		TOTAL FUNDING	AGS		100 C		C
LNR101 - PUBLIC LANDS MANAGEMENT							
13.	E78	RESOURCE LAND ACQUISITIONS, STATEWIDE					
		LAND ACQUISITION INCLUDING ACQUISITION OF EASEMENTS, OF LANDS HAVING VALUE AS A RESOURCE TO THE STATE, INCLUDING LANDS HAVING NATURAL, ENVIRONMENTAL, RECREATIONAL, SCENIC, OPEN SPACE, CULTURAL OR HISTORICAL VALUE.					
		LAND			10,000		
		TOTAL FUNDING	LNR		10,000 C		C
14.	MAUNAWILI VALLEY ON-SITE IMPROVEMENTS, OAHU						
		DESIGN AND CONSTRUCTION FOR ON-SITE IMPROVEMENTS, ACCESS ROAD STREAM CROSSINGS, AND THE INSTALLATION OF UTILITIES IN MAUNAWILI VALLEY.					
		DESIGN			1		
		CONSTRUCTION			249		
		TOTAL FUNDING	LNR		250 C		C
AGS221 - CONSTRUCTION							
15.	A53	MOLOKAI MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY, MOLOKAI					
		PLANS AND DESIGN FOR A MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY FOR MOLOKAI STATE AND COUNTY AGENCIES TO REPLACE EXISTING SITE NEEDED FOR CIVIC CENTER, PHASE II.					
		PLANS			20		
		DESIGN			250		
		TOTAL FUNDING	AGS		270 C		C
16.	A90	LILIHA CIVIC CENTER, PHASES I AND II, OAHU					
		DESIGN FOR THE PROVISION OF OFFICE BUILDINGS AND PARKING STRUCTURE COMPLEX FOR STATE AGENCIES. WORK TO BE DONE IN PHASES.					
		DESIGN			425		
		TOTAL FUNDING	AGS		425 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
17.	B27	ADVANCE PLANNING, STATEWIDE					
		PLANS FOR THE PROVISION OF ASSISTANCE TO THE PUBLIC, STATE AND COUNTIES IN MATTERS RELATING TO PUBLIC WORKS DIVISION. IT INCLUDES PREPARATION OF REPORTS, STUDIES, INVENTORIES, REVIEWS AND PERFORMANCE OF ALL NECESSARY ACTIVITIES TO CARRY OUT DAGS FUNCTIONS.					
		PLANS			250		275
		TOTAL FUNDING	AGS		250 C		275 C
18.	B28	STATE OFFICE BUILDINGS REMODELING, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING OF OFFICES OCCUPIED BY STATE AGENCIES IN LEASE OR STATE OWNED SPACE STATEWIDE, TO PROVIDE ADEQUATE SPACE FOR AGENCIES TO ACCOMMODATE THEIR OPERATIONAL REQUIREMENTS. WORK INCLUDES REMODELING FOR REORGANIZATION, PROGRAM CHANGES, STAFFING CHANGES, CORRECTION OF INEFFICIENT OFFICE LAYOUTS, OSHA REGULATIONS, PLUMBING, ELEVATORS, ETC.					
		DESIGN			100		
		CONSTRUCTION			750		
		EQUIPMENT			15		
		TOTAL FUNDING	AGS		865 C		C
19.	C43	KAHULUI CIVIC CENTER, PHASE I AND II, MAUI					
		DESIGN FOR THE PROVISION OF A STATE CIVIC CENTER IN KAHULUI, MAUI, IN PHASES.					
		DESIGN			98		
		TOTAL FUNDING	AGS		98 C		C
20.	C72	NEW ARCHIVES BUILDING, OAHU					
		DESIGN FOR A NEW ARCHIVES BUILDING.					
		DESIGN			35		
		TOTAL FUNDING	AGS		35 C		C
21.	C80	KAMEHAMEHA V POST OFFICE RENOVATIONS, OAHU					
		EQUIPMENT FOR OFFICE/PERFORMING ARTS COMPLEX FOR STATE FOUNDATION ON CULTURE AND THE ARTS.					
		EQUIPMENT			25		
		TOTAL FUNDING	AGS		25 C		C
22.	A101	STATE OFFICE TOWER FURNITURE AND EQUIPMENT/WORKS OF ART, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION AND EQUIPMENT FOR THE ACQUISITION AND INSTALLATION OF FURNITURE AND EQUIPMENT (INCLUDING WORKS OF ART) FOR OFFICES BEING RELOCATED BECAUSE OF ASBESTOS MITIGATION WORK AT THE STATE CAPITOL BUILDING.					
					364		
					1,352		
		TOTAL FUNDING	AGS		1,716 C		C
23.	A103	CAPITOL MEMORIAL MALL/PARKING/ANNEX, OAHU					
		PLANS AND DESIGN FOR THE PROVISION OF A WAR MEMORIAL MALL, MULTI-LEVEL PARKING GARAGE AND CAPITOL ANNEX BUILDING ON THE KINAU HALE SITE AT BERETANIA AND PUNCHBOWL STREETS, OAHU.					
					90		
					500		
		TOTAL FUNDING	AGS		590 C		C
24.	A104	WAHIAWA CIVIC CENTER, OAHU					
		DESIGN FOR THE PROVISION OF OFFICE BUILDINGS AND PARKING COMPLEX FOR STATE AGENCIES IN WAHIAWA. WORK TO BE DONE IN PHASES.					
					275		
		TOTAL FUNDING	AGS		275 C		C
25.	A48	LIHUE MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY, KAUAI					
		CONSTRUCTION FOR A MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY FOR KAUAI STATE AND COUNTY AGENCIES, INCLUDING SEWER, WATER LINE, AND OTHER INFRASTRUCTURE IMPROVEMENTS.					
					1,690		
		TOTAL FUNDING	AGS		1,690 C		C
26.	A111	DOWNTOWN OFFICE BUILDING FOR ASBESTOS REMOVAL IN THE STATE CAPITOL DIST, OAHU					
		LAND ACQUISITION FOR A DOWNTOWN OFFICE BUILDING RELATED TO ASBESTOS REMOVAL IN THE STATE CAPITOL DISTRICT.					
					10,500		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	AGS	10,500	C		C
27.	A39B	KAUNAKAKAI CIVIC CENTER, PHASE I AND II, MOLOKAI					
		EQUIPMENT FOR THE KAUNAKAKAI CIVIC CENTER, PHASE I.					
		EQUIPMENT		10			
		TOTAL FUNDING	AGS	10	C		C
28.	C10409	STATE CAPITOL DIST ASBESTOS MITIGATION, AIR COND AND OTHER IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE MITIGATION OF ASBESTOS CONTAINING MATERIAL IN THE STATE CAPITOL. RENOVATE THE BUILDING AIR CONDITIONING AND OTHER SYSTEMS, CAPITOL POOL AND REFURBISH THE OFFICE AND PUBLIC AREAS.					
		DESIGN		1,250			
		CONSTRUCTION		16,000			
		TOTAL FUNDING	AGS	17,250	C		C
29.	P00007	MAUI DISTRICT OFFICE, RELOCATION TO KAHULUI AIRPORT AREA, PHASE I, MAUI					
		CONSTRUCTION FOR THE RELOCATION OF DAGS MAUI DISTRICT OFFICE AND PROVIDE STORAGE AND SERVICE FACILITIES FOR ALL STATE AGENCIES.					
		CONSTRUCTION		1,609			
		TOTAL FUNDING	AGS	1,609	C		C
30.		CULTURAL CENTER, PEARL CITY, OAHU					
		CONSTRUCTION FOR A PEARL CITY CULTURAL CENTER TO INCLUDE AN AUDITORIUM, SEATING, EQUIPMENT, SITE WORK, AND PARKING.					
		CONSTRUCTION		3,000			
		TOTAL FUNDING	AGS	3,000	C		C
31.		STATE HISTORY MUSEUM, OAHU					
		PLANS AND DESIGN FOR A STATE HISTORY MUSEUM.					
		PLANS		1			
		DESIGN		199			
		TOTAL FUNDING	AGS	200	C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
SUB201 - CITY AND COUNTY OF HONOLULU							
32.		HONOLULU POLICE DEPARTMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADING OF THE TELECOMMUNICATIONS SYSTEM OF THE HONOLULU POLICE DEPARTMENT.					
		DESIGN			1		
		CONSTRUCTION			2,321		
		TOTAL FUNDING	CCH		2,322		C
33.		FIRE PROTECTION FACILITIES, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF PIPELINES, FIRE HYDRANTS, AND THE NECESSARY APPURTENANCES ALONG VARIOUS SCHOOL FACILITIES AND STREETS WITHIN THE CITY AND COUNTY OF HONOLULU.					
		DESIGN			1		
		CONSTRUCTION			2,999		
		TOTAL FUNDING	CCH		3,000		C
34.		KAHALUU SEWAGE SYSTEM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF A SEWAGE SYSTEM IN KAHALUU.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			4,676		
		TOTAL FUNDING	CCH		4,678		C
SUB301 - COUNTY OF HAWAII							
35.		PUBLIC SAFETY BUILDING, PHASE III, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE PUBLIC SAFETY BUILDING, PHASE III, TO INCLUDE AN EVIDENCE WAREHOUSE.					
		PLANS			1		
		LAND			1		
		DESIGN			1		
		CONSTRUCTION			1,497		
		TOTAL FUNDING	COH		1,500		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
36.		FIRE DEPARTMENT ADMINISTRATION BUILDING, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A FIRE DEPARTMENT ADMINISTRATION BUILDING.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				998	
		TOTAL FUNDING	COH			1,000 C	C
37.		KULAIMANO RECREATIONAL COMPLEX, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A RECREATIONAL COMPLEX IN PEPEEKEO, HAWAII. FUNDS SHALL BE MATCHED ON A DOLLAR-FOR-DOLLAR BASIS BY THE COUNTY OF HAWAII.					
		PLANS				50	
		DESIGN				50	
		CONSTRUCTION				900	
		TOTAL FUNDING	COH			1,000 C	C
38.		WEST HAWAII REGIONAL LANDFILL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE REPLACEMENT OF THE KEALAKEHE LANDFILL INCLUDING THE MITIGATION OF EXISTING HEALTH, SAFETY, AND ENVIRONMENTAL HAZARDS AND THE DEVELOPMENT OF A REPLACEMENT FACILITY. FUNDS ARE TO BE MATCHED ON A DOLLAR-FOR-DOLLAR BASIS BY THE COUNTY OF HAWAII.					
		PLANS				50	
		DESIGN				250	
		CONSTRUCTION				1,200	
		TOTAL FUNDING	COH			1,500 C	C
39.		HILO WASTEWATER TREATMENT SYSTEM, HAWAII					
		CONSTRUCTION FOR THE HILO WASTEWATER TREATMENT SYSTEM (AINAKO INTERCEPTOR SEWER, PART A).					
		CONSTRUCTION				3,000	
		TOTAL FUNDING	COH			3,000 C	C

SUB401 - COUNTY OF MAUI

40. WATER SOURCE DEVELOPMENT, MAUI

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION FOR WATER SOURCE DEVELOPMENT IN CENTRAL MAUI.					
		CONSTRUCTION		7,770			
		TOTAL FUNDING	COM	7,770			C
41.		MAUI COMMUNITY ARTS AND CULTURAL CENTER, MAUI					
		CONSTRUCTION FOR THE MAUI COMMUNITY ARTS AND CULTURAL CENTER. (GRANT-IN-AID)					
		CONSTRUCTION		3,000			
		TOTAL FUNDING	COM	3,000			C
SUB501 - COUNTY OF KAUAI							
42.		KOLOA/POIPU BYPASS ROAD, KAUAI					
		PLANS, LAND ACQUISITION, AND CONSTRUCTION FOR RIGHT-OF-WAY ACQUISITION AND A BYPASS ROADWAY BETWEEN KOLOA AND POIPU.					
		PLANS		1			
		LAND		200			
		CONSTRUCTION		2,573			
		TOTAL FUNDING	COK	2,774			C
43.		KAUAI CIVIC CENTER, KAUAI					
		CONSTRUCTION FOR THE KAUAI CIVIC CENTER.					
		CONSTRUCTION		1,000			
		TOTAL FUNDING	COK	1,000			C
44.		LIHUE WATER SYSTEM, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DRILLING AND DEVELOPMENT OF KALEPA WELL #2.					
		PLANS		1			
		LAND		10			
		DESIGN		24			
		CONSTRUCTION		300			
		TOTAL FUNDING	COK	335			C

PART V. CAPITAL IMPROVEMENT PROVISIONS

SECTION 166. Provided that of the special fund appropriation for Kapalua airport (TRN 135), the sum of \$300,000 in fiscal year 1991-92 shall not be expended for plans, design, construction, and equipment of any improvements to the airport.

SECTION 167. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$200,000 in fiscal year 1991-92 shall be expended to plan and assess the site of a second commercial harbor on Maui.

SECTION 168. Provided that of the special fund appropriation for Hawaii highways (TRN 511), the amount required for the design and construction of the Kealakehe parkway and interchange mauka/makai roadway that is a part of the development of the Kealakehe (Lai'opuna) master planned project may be advanced from the homes revolving fund established under chapter 201E-207.5, Hawaii Revised Statutes; provided further that the advanced amount is to be reimbursed by the department of transportation.

SECTION 169. Provided that of the special fund appropriation for Lanai highways (TRN 551), the sum of \$12,200,000 in the fiscal biennium 1991-93 shall be used for Manele road improvements; provided further that no funds shall be expended unless matched on a dollar-for-dollar basis with private contributions.

SECTION 170. Provided that any interest earned by the state highway special fund administered by highways division of the department of transportation (TRN 595) that is attributable to the moneys transferred from the airport special fund shall be retained in the state highway special fund; provided further that these funds shall be expended, to the extent possible, on highway capital improvement projects.

SECTION 171. Provided that of the general obligation bond fund appropriation for general administration (HTH 907), the sum of \$12,500,000 in fiscal year 1991-92 shall be used for the north Hawaii community hospital; provided further that these funds shall be matched.

SECTION 172. Provided that of the appropriations from the state educational facilities improvement special fund for lump sum CIP-relocation or construction of portable classrooms (EDN 105), the sum of \$300,000 in fiscal year 1991-92 shall be used to construct three portables for the Maui district/Kamehameha schools partnership pre-school program.

SECTION 173. Provided that in the implementation of capital improvement projects funded by the state educational facilities improvement special fund, the department of accounting and general services, with the concurrence of the department of education, and with the approval of the governor, may make expenditures from the state educational facilities improvement special fund to satisfy the objectives of the state educational facilities improvement special fund appropriations.

SECTION 174. After the objectives of appropriations made in this Act for capital improvement purposes from the state educational facilities improvement

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special fund have been met, any unrequired balances shall be transferred to the special fund project adjustment fund for state educational facilities appropriated in Part II and described further in Part IV, and shall be considered a supplemental appropriation.

SECTION 175. In the event that currently authorized appropriations specified for capital improvement purposes listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the state educational facilities improvement special fund, the governor may make supplemental allotments from the special fund project adjustment fund for state educational facilities appropriated in Part II and described further in Part IV; provided that such supplemental allotments from the special funded project adjustment fund for state educational facilities shall not be used to increase the scope of the project.

SECTION 176. Provided that of the general obligation bond fund appropriation for regular instruction program (EDN 105), the sum of \$75,000 in fiscal year 1991-92 shall be used for an innovative portable classroom pilot project at Kahuku high school; provided further that the selection and negotiation process shall be exempt from the provisions of chapter 103, Hawaii Revised Statutes; provided further that the department shall submit a full report of the effectiveness of the facility for educational purposes and acceptability of the pilot project by the community; provided further that this report shall be submitted to the legislature twenty days prior to the convening of the 1992 regular session.

SECTION 177. Provided that of the general obligation bond appropriation for student services - UOH, Manoa (UOH-105) for the HPER-special events complex and parking structure, shall be used to plan, design, and construct the special events complex in coordination with the design and construction of the second parking structure on the makai campus; provided further that the parking facilities be available prior to the completion of the arena, and the university shall develop plans to temporarily relocate existing programs, activities; and events that are scheduled in Klum gym.

SECTION 178. Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by section 6 of Act 299, Session Laws of Hawaii 1990, is amended:

(1) By amending Item A-9 to read:

“9. A01 AGRICULTURAL PARK SUBDIVISION, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF ON AND OFF SITE IMPROVEMENTS FOR DEVELOPMENT OF AGRICULTURAL PARK, SUBDIVISIONS, STATEWIDE, INCLUDING ACQUISITION OF LAND BY FEE SIMPLE PURCHASE OR LEASE.

PLANS		300	200
LAND	[1,000]	<u>5,400</u>	
DESIGN		700	300
CONSTRUCTION	[5,000]	<u>600</u>	

TOTAL FUNDING	AGR	[7,000]	1,600A	A
	AGR		<u>5,400C</u>	500C"

(2) By amending Item A-15 to read:

"15. THERMAL ENERGY CONVERSION PROJECTS, HAWAII

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A WARM AND COLD WATER PIPELINE OF APPROXIMATELY FORTY INCHES IN DIAMETER FOR THE CLOSED CYCLE OCEAN THERMAL ENERGY CONVERSION[.], AND/OR THE PURCHASE OF WATER PIPELINES AND PUMPS INSTALLED AT NELHA, KEAHOLE, HAWAII.

PLANS			200	
DESIGN		[300]	1	
CONSTRUCTION		[4,000]	1	
EQUIPMENT		[500]	4,798	
TOTAL FUNDING	BED	[5,000]	500A	A
	<u>BED</u>		<u>4,500C</u>	<u>C"</u>

(3) By amending Item E-8 to read:

"8. NEW HOSPITAL FACILITY, HONOKAA, HAWAII

PLANS, DESIGN, AND CONSTRUCTION [TO RENOVATE AND REPLACE THE PRESENT STRUCTURES; TO INCLUDE; ACUTE CARE, LONG TERM CARE, AND EMERGENCY CARE FACILITIES.] OF NEW HONOKAA HEALTH CARE FACILITIES.

PLANS			500	
DESIGN			500	
CONSTRUCTION			6,500	
TOTAL FUNDING	AGS		7,500A	A"

(4) By amending Item F-27B to read:

"27B HOMELESS MEN EMERGENCY [SHELTER,] WALK-IN DORMITORY, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE [HOMELESS MEN EMERGENCY SHELTER] RENOVATION OF THE EXISTING STRUCTURE FOR EXPANDED USE AS AN EMERGENCY WALK-IN DORMITORY FOR HOMELESS MEN TO BE EXPENDED BY THE INSTITUTE FOR HUMAN SERVICES. (GRANT-IN-AID)

PLANS			1	
DESIGN			1	
CONSTRUCTION		[1,086]	<u>997</u>	

INCLUDED. PAVED AREA TO BE COVERED WITH ROOF TO PROTECT VEHICLES AND EQUIPMENT FROM WEATHER. PROVIDE SECURITY FENCING AROUND COMPLEX.

CONSTRUCTION		[400]	<u>220</u>	
TOTAL FUNDING	AGR	[400]	<u>220A</u>	A"

(8) By amending Item J-2 to read:

"2. A-042 NEW MEASUREMENT STANDARDS AND PLANT QUARANTINE FACILITIES, OAHU

PLANS, DESIGN AND CONSTRUCTION OF A NEW MEASUREMENT STANDARDS FACILITY AND A NEW PLANT QUARANTINE FACILITY ON OAHU TO INCLUDE BUT NOT BE LIMITED TO THE EXISTING MEASUREMENT STANDARDS AND PLANT QUARANTINE FACILITIES.

PLANS			200	
DESIGN		[383]	<u>563</u>	
TOTAL FUNDING	AGR	[583]	<u>763A</u>	A"

(9) By amending Item K-20 to read:

"20. C-27 PROFESSIONAL BASEBALL TRAINING FACILITY, OAHU.

LAND ACQUISITION, DESIGN AND CONSTRUCTION TO PROVIDE A PROFESSIONAL TRAINING FACILITY AS PART OF CENTRAL/EWA OAHU DEVELOPMENT FOR DUAL USE BY THE COMMUNITY.

LAND		[2,700]	<u>1</u>	
DESIGN			999	
CONSTRUCTION		[1]	<u>2,700</u>	
TOTAL FUNDING	AGS		[3,700A]	[A]
	<u>AGS</u>		<u>3,700C</u>	C"

SECTION 179. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, authorizing general funds in the amounts indicated or balances thereof, are hereby amended to read as follows:

<u>Item No.</u>		<u>Amount (MOF)</u>		
AGR 192-9	\$	5,400,000	[A]	<u>C</u>
BED 120-15		4,500,000	[A]	<u>C</u>
BED 120-16A		2,000,000	[A]	<u>C</u>
TRN 501-42		23,750,000	[A]	<u>C</u>
LNR 404-33		3,000,000	[A]	<u>C</u>
LNR 404-33A		2,200,000	[A]	<u>C</u>

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BUF 225-34	1,306,000	[A]	<u>C</u>
UOH 101-148	10,000,000	[A]	<u>C</u>
UOH 101-149	2,586,000	[A]	<u>C</u>
DOC 406-1A	11,300,000	[A]	<u>C</u>
AGS 221-20	3,700,000	[A]	<u>C</u>
AGS 221-28	4,400,000	[A]	<u>C</u>

SECTION 180. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, authorizing general obligation bond funding in the amounts indicated or balances thereof, are hereby amended to read as follows:

<u>Item No.</u>		<u>Amount (MOF)</u>	
TRN 501-60	\$ 19,000,000	[C]	<u>B</u>
TRN 531-64	12,000,000	[C]	<u>B</u>

provided that the special fund is from the transportation special fund from Duty Free.

SECTION 181. Any law to the contrary, notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balance thereof are hereby lapsed:

<u>Item No.</u>		<u>Amount (MOF)</u>	
TRN 301-29	\$ 800,000	A	
HTH 907-18C	500,000	A	
HMS 229-27B	89,000	A	
BUF 225-32A	100,000,000	C	
UOH 101-146	7,618,000	A	
UOH 105-155	0 ¹		
DOC 409-4	7,000,000	A	
SUB 401-40	2,000,000	A	

SECTION 182. Any law to the contrary notwithstanding, the appropriations under Act 314, Session Laws of Hawaii 1989, section 2, in the amounts indicated or balance thereof are hereby lapsed:

<u>Item No.</u>		<u>Amount (MOF)</u>	
TRN 501-3	\$ 5,000	D	
TRN 501-4	25,000	D	
TRN 501-14	140,000	D	
TRN 501-19	50,000	D	
TRN 501-21	25,000	D	
EDN 105-4	8,000	C	
EDN 105-5	14,000	C	
EDN 105-20	28,000	C	
EDN 105-38	20,000	C	
EDN 105-65	10,000	C	
EDN 105-81	30,000	C	
EDN 105-89	25,000	C	
EDN 105-90	25,000	C	

EDN 105-92	15,000	C
EDN 105-93	4,000	C
EDN 105-98	7,000	C
EDN 105-100	2,000	C
EDN 105-101	3,000	C
EDN 105-102	4,000	C
EDN 105-103	3,000	C
EDN 105-106	3,000	C
EDN 105-108	4,000	C
EDN 105-109	4,000	C
EDN 105-110	11,000	C
EDN 105-111	2,000	C
EDN 105-112	30,000	C
EDN 105-113	10,000	C
EDN 105-140	10,000	C
EDN 105-142	12,000	C
EDN 105-145	10,000	C
EDN 105-153	50,000	C
EDN 105-160	22,000	C
EDN 105-169	25,000	C
EDN 105-181	25,000	C
EDN 105-187	170,000	C
UOH 301-250	110,000	C
UOH 335-251	175,000	C
LNR 806-4	24,000	C
LNR 806-5	30,000	C
LNR 810-1	10,000	C
LNR 810-2	20,000	C
AGS 221-4	31,000	C
AGS 221-5	11,000	C

SECTION 183. Part V, Act 316, Session Laws of Hawaii 1989, is amended as follows:

(1) By amending Section 231 to read:

“SECTION 231. Provided that of the special fund appropriation to Oahu highways and services (TRN 501), no funds for the Pali highway contra-flow lane [and/or the Likelike highway contra-flow lane] shall be expended until the department of transportation prepares an environmental impact statement.”

SECTION 184. Act 314, Session Laws of Hawaii 1989, section 2, is amended as follows:

(1) By amending Item SUB 201-16 to read:

“16. HP2902 [KUULEI] KUULEI STREET IMPROVEMENTS MOILILI TRIANGLE, OAHU.

PLANS, DESIGN, AND CONSTRUCTION FOR STORM DRAINS TO ALLEVIATE FLOODING. FUNDS TO BE MATCHED BY CITY AND COUNTY OF HONOLULU.

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PLANS		5	
DESIGN		10	
CONSTRUCTION		85	
TOTAL FUNDING	CCH	100	C"

(2) By amending Item SUB 401-50 to read:

"50. HP1005 COMMUNITY SERVICES FACILITY, MOLOKAI.

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW BUILDING TO HOUSE MAUI ECONOMIC OPPORTUNITY OFFICES, TRANSPORTATION SERVICES, HEADSTART AND DAY CARE PROGRAMS ON MOLOKAI.

PLANS	[25]	<u>5</u>	
<u>LAND</u>		<u>25</u>	
DESIGN	[25]	<u>20</u>	
CONSTRUCTION		125	
TOTAL FUNDING	COM	175	C"

SECTION 185. Part II, Act 314, Session Laws of Hawaii 1989, is amended as follows:

(1) By amending Section 10 to read:

"SECTION 10. If the amount specified for any capital improvement project is not totally required to complete the work of such project or after it is definitely found by the expending officer that not more than a specified amount will be required to complete such work, such unrequired amount may be expended with the approval of the governor for any other capital improvement project authorized by the legislature in this Act or in a prior year or which may be authorized by the legislature in the future."

(2) By amending section 14 to read:

"SECTION 14. Any law or any provision to the contrary notwithstanding, the governor may supplement funds for any early-phased cost element [(plans or land)] for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds authorized for later-phased cost elements [(design and construction)] for the same project authorized by the legislature in this Act or in prior year or which may be authorized by the legislature in the future."

SECTION 186. Act 300, Session Laws of Hawaii 1990, section 2, is amended:

(1) By amending Item HHL 602-24 to read:

"24. SP0403 PAUKUKALO COMMUNITY CENTER, MAUI

DESIGN, CONSTRUCTION AND EQUIPMENT FOR [THE EXPANSION] A NEW BUILDING AND IMPROVEMENTS TO THE COMMUNITY CENTER AT PAUKUKALO, MAUI.

DESIGN		[1]	40
CONSTRUCTION		[198]	150
EQUIPMENT		[1]	10
TOTAL FUNDING	HHL	A	200 A"

(2) By amending Item EDN 105-31 to read:

"31. JP3408 HAAHEO ELEMENTARY, HAWAII

DESIGN AND CONSTRUCTION [TO EXPAND PAVED PARKING AREA FOR 20 VEHICLES.] OF PAVED PARKING AREA FOR BUS LOADING AND ADDITIONAL PARKING SPACES.

DESIGN			4
CONSTRUCTION			76
TOTAL FUNDING	AGS	A	80 A"

(3) By amending Item LNR 806-3 to read:

"3. SP0311 HULIHEE PALACE, HAWAII

CONSTRUCTION FOR THE [RESTORATION OF STONEWALL FRONTING HULIHEE PALACE.] REBUILDING AND COMPLETION OF STONE WALL FRONTING ALII DRIVE AND THE NORTH SIDE OF AIUMALU BEACH. ALSO, THE INSTALLATION OF SECURITY LIGHTING AND SPRINKLER SYSTEM FOR HULIHEE PALACE AND GROUNDS.

CONSTRUCTION			50
TOTAL FUNDING	LNR	A	50 A"

SECTION 187. Part II, Act 300, Session Laws of Hawaii 1990, is amended as follows:

(1) By amending Section 9 to read:

"SECTION 9. If the amount specified for any capital improvement project is not totally required to complete the work of such project or after it is definitely found by the expending officer that not more than a specified amount will be required to complete such work, such unrequired amount may be expended with the approval of the governor for any other capital improvement project authorized by the legislature in this Act or in a prior year or which may be authorized by the legislature in the future."

PART VI. ISSUANCE OF BONDS

SECTION 188. **GOVERNOR'S DISCRETIONARY POWERS.** When

it is deemed in the public interest of the State, the governor, in the governor's discretion, is authorized to use general fund savings or balances determined to be available from authorized general fund program appropriations to finance capital improvement projects authorized in this Act or any other act currently authorized by the legislature, where the method of financing is designated to be the general obligation bond fund. Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

SECTION 189. AIRPORT REVENUE BONDS. The department of transportation is authorized to issue airport revenue bonds for airport capital improvement 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 funds 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 improvements, and, 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 of 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 revenues 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, to the extent not paid from the proceeds of such bonds shall be paid from the airport revenue fund.

The governor, in the governor's discretion, is authorized to use the airport revenue fund to finance those projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be by airport revenue bond funds.

SECTION 190. HARBOR REVENUE BONDS. The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement 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 funds 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 improvements, and, 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 of 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 and reserves of such harbor revenue bonds to the extent not paid from the proceeds of such bonds shall be paid on the harbor special fund.

The governor, in the governor's discretion, is authorized to use the harbor revenue fund to finance those projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be by harbor revenue bond funds.

SECTION 191. HAWAIIAN HOME LANDS REVENUE BONDS. The department of Hawaiian home lands is authorized to issue Hawaiian home lands revenue bonds for Hawaiian home lands capital improvement 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 funds 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 improvements, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to increase reserves for the Hawaiian home lands revenue bonds and to pay the expenses of the issuance of such bonds. Notwithstanding any limitations contained in any prior authorization of Hawaiian home lands revenue bonds, the aforementioned Hawaiian home lands revenue bonds and all prior authorized revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal and interest of Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable from and secured by the revenues from Hawaiian home lands, revenues from available lands and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of Hawaiian home lands, available lands and related facilities. The expenses of the issuance of such Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the Hawaiian home lands special fund.

The governor, in the governor's discretion, is authorized to use the Hawaiian home lands special fund to finance those projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be by the Hawaiian home lands revenue bond funds.

SECTION 192. HOUSING REVENUE BONDS. The housing finance and development corporation is authorized to issue housing revenue bonds for housing capital improvement projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds in such principal amounts as shall be required to yield the amounts appropriated for such capital improvements, and, if so determined by the corporation and approved by the governor, such additional amounts as may be deemed necessary by the corporation to increase reserves for the housing revenue bonds and to pay the expenses of the issuance of such bonds. The aforementioned housing revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal and inter-

est of housing revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable and secured by revenues from housing and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of housing and related facilities.

PART VII. SPECIAL PROVISIONS

SECTION 193. 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 obligation when due in accordance with the terms of such bonds, the governor shall direct the utilization of any or all appropriations available or unexpended from any other state program, as the first charge for the payment of principal and interest of the bonds when due; provided further that the legislature shall, under procedures established in section 10 of article III of the Hawaii State Constitution, meet in special session to comply with the provisions of section 12 of article VII of the Hawaii State Constitution, which pledge the full faith and credit of the State for the payment of principal and interest on all general obligation and reimbursable general obligation bonds.

SECTION 194. Provided that notwithstanding any position ceiling, the governor may transfer positions or funds between existing programs of the state executive branch during fiscal year 1991-92 for the purpose of establishing and maintaining integrated statewide data processing and communications systems; provided further that the governor shall submit a report to the legislature of all transfers as of December 31, 1991 and June 30, 1992.

SECTION 195. Provided that no income from Sand Island lands and facilities, other than those set aside for harbors or foreign trade zone purposes, shall be expended except pursuant to the provisions of section 5 of article VII of the Hawaii State Constitution; provided further that such income shall first be deposited into the general fund.

SECTION 196. Provided that if federal funds in the amounts designated under the Morill-Nelson Bankhead-Jones Act, Hatch Act, and Smith-Lever Act are received in excess of the amounts authorized by this Act, 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 1991-93.

SECTION 197. There is hereby appropriated out of the public trust fund created by section 5(f) of the Admissions Act (Public Law No. 86-3) 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, 1991 to June 30, 1993. 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 198. 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.

SECTION 199. 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 200. No appropriation authorized in this Act shall be considered to be a mandate, under section 5 of article VIII of the Hawaii 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 section 5 of article VIII of the Hawaii 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 for such projects shall be correspondingly decreased.

SECTION 201. Any law or provision to the contrary notwithstanding, 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 under procedures prescribed by the department of budget and finance in the event actual population and workload trends are less than the figures so specified. 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 human services.

SECTION 202. With the approval of the director of finance, the department of health may transfer to the department of human services funds appropriated to the department of health for the care and treatment of patients whenever the department of human services 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 human services 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 203. Unless otherwise provided in this Act, the governor is

authorized to transfer funds between appropriations within an expending agency for operating purposes; provided further that the governor shall submit a report to the legislature of all transfers as of December 31 and June 30 of each fiscal year.

SECTION 204. Except as otherwise provided in this Act, each department or agency is authorized to transfer positions within its respective authorized position ceiling, for the purpose of maximizing the utilization of personnel resources and staff productivity; provided further that all such actions shall be with the prior approval of the governor or the director of finance if so delegated by the governor; provided further that the governor shall submit a report to the legislature of all transfers as of December 31 and June 30 of each fiscal year.

SECTION 205. 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.

SECTION 206. In the event that essential, federally-funded state programs are significantly diminished or curtailed by unanticipated federal funding cut-backs, the governor may utilize savings as determined to be available from other state programs for the purpose of maintaining such programs until the next legislative session.

SECTION 207. Provided that, of the respective appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$7,500 in each year of the fiscal biennium 1991-93 shall be made available in each department or agency to be established as a separate account for a protocol fund to be expended at the discretion of the executive heads of such departments or agencies which are respectively known as its directors, chairpersons, comptroller, adjutant-general, superintendent and attorney general; provided further that the provisions of this section shall not include the president of the university of Hawaii.

SECTION 208. The governor is hereby authorized to establish ten permanent positions during each year of the fiscal biennium 1991-93 to be allocated by the governor to any of the program areas included in this Act as the governor shall deem proper; provided further that the governor shall submit a report to the legislature on all positions established as of December 31 and June 30 of each fiscal year.

SECTION 209. The governor is hereby authorized to establish ten positions in each year of the fiscal biennium 1991-93 to be allocated by the governor to any program areas included in this Act and to be funded by savings as determined to be available from any program included in this Act. These positions shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes; provided further that the governor shall submit a report on all positions established as of December 31 and June 30 of each fiscal year.

SECTION 210. Where any agency is authorized by general law 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 agency

with the governor's approval, shall have the power to enter into such an undertaking.

SECTION 211. 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 212. Any law or any provision 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 1991-93 which are unencumbered as of June 30, 1994, shall lapse as of that date; provided further that this lapsing date shall not apply to the appropriations for the projects described in section 66 of this Act which are denoted as necessary to qualify for federal aid financing and reimbursement and which appropriations in their entirety the legislature hereby determines are necessary to qualify for federal aid financing and reimbursement.

SECTION 213. With the approval of the governor, designated expending agencies for capital investment projects authorized in this Act may delegate to other state or county agencies the implementation of such projects when it is determined by such agencies that it is advantageous to do so; provided further that the governor shall submit a report to the legislature of all delegations as of December 31 and June 30 of each fiscal year.

SECTION 214. 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 and housing projects shall be reimbursed, as provided by section 174-21 and chapter 201E, Hawaii Revised Statutes, respectively.

The governor is authorized to use, at the governor's 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 the funds; provided further that the governor shall submit a report to the legislature on the use of these funds as of December 31 and June 30 of each fiscal year.

SECTION 215. 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 216. Notwithstanding any other law to the contrary, negotia-

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tions for the purchase of land by state agencies shall be subject to the approval of the governor and the department of land and natural resources. Private lands may be acquired for the purpose of exchange for federal lands when the department of land and natural resources and the governor determine that such acquisition and exchange are necessary for the completion of any projects authorized by this Act.

SECTION 217. 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 this Act or any other act of the legislature.

SECTION 218. After the objectives of appropriations made in this Act from the general obligation bond fund or the general fund for capital investment purposes have been met, unrequired balances 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, 1994, as provided in section 105 of this Act.

SECTION 219. In the event that currently authorized appropriations specified for capital investment projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund or the general fund, the governor may make supplemental allotments from the project adjustment fund appropriated in Part II and described in Part IV of this Act; provided that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project.

SECTION 220. Any provision in this Act to the contrary notwithstanding, allotments from the project adjustment fund may be made to supplement any currently authorized capital investment cost elements.

SECTION 221. Any law or any provision to the contrary notwithstanding, the governor may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the project authorized by this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or by any other prior or future act, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project.

SECTION 222. 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 funds, 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 unexpired 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 funds; 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 223. The governor may authorize the expenditure of funds for capital investment projects not previously authorized in this Act to cope with the effects of recession, unemployment, unforeseen emergencies, and for any federal aid portion of any capital investment project described in this Act where application for such aid had been made and approval has been denied; provided that the recessionary effects, unemployment, 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 of this Act to accomplish the purposes of this section; provided further that the governor shall submit a report to the legislature of all expenditures as of December 31 and June 30 of each fiscal year.

SECTION 224. The governor is authorized to transfer savings as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of recession, unemployment and unforeseen emergencies; provided that the recessionary effects, unemployment, or such emergencies create an urgent need to pursue a course of action which is in the best interest of the State.

SECTION 225. 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 or project scope; provided that the scope of a project shall not be reduced solely because the appropriation for a project is insufficient; provided further that the governor shall submit a report to the legislature of all expenditures as of December 31 and June 30 of each fiscal year.

SECTION 226. In the event that requirements associated with the removal of asbestos such as rental, renovation, and moving costs, exceed appropriations made for such purpose, the comptroller with the approval of the governor or the director of finance, if so delegated, is authorized to utilize savings from appropriations in this Act to meet such purposes; provided further that the governor shall submit a report to the legislature on the use of savings as of December 31 and June 30 of each fiscal year.

SECTION 227. In releasing funds for capital 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 228. Provided that for all appropriation provisions under Part III and Part IV of this Act, funds provided under any section shall be held separate

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and apart from all other funds appropriated to the program, department or agency; provided further that:

- (1) these funds shall be used for only the specific purpose stated in the language of the appropriating section or item, and shall not be diverted, transferred, or otherwise used for any other purpose until the requirements of the appropriating section or item have been satisfied; and
- (2) upon satisfying the requirements of paragraph (1), the governor, or the director of finance if so delegated by the governor, may transfer any remaining funds between appropriations within an expending agency for operating purposes.

PART VII. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 229. MISCELLANEOUS. If any portion of this Act or its application to any person, entity or circumstance 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 expended to fulfill the objective of such appropriation to the extent possible.

SECTION 230. In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 231. Statutory material to be repealed is bracketed. New material in prior enacted law is underscored.

SECTION 232. EFFECTIVE DATE. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

Note

- 1. Item vetoed by the governor.

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H.B. NO. 24

A Bill for an Act Relating to Higher Education.

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

SECTION 1. Section 304-8.1, Hawaii Revised Statutes, is amended to read as follows:

“§304-8.1 Research and training revolving fund. (a) There is established a University of Hawaii research and training revolving fund into which shall be deposited fifty per cent of the total amount of indirect overhead funds generated by the university for research and training purposes in the prior fiscal

year. [All] Unless otherwise provided by law, all other receipts shall immediately be deposited to the credit of the general fund of the State. The board of regents of the University of Hawaii[,] is authorized to expend funds deposited in the research and training revolving fund for research and training purposes which may result in additional research and training grants and contracts, and for purposes of facilitating research and training at the university.

(b) The University of Hawaii shall prepare and submit an annual report on the status of the research and training revolving fund to the legislature twenty days before the convening of each regular session. The annual report shall include a breakdown of travel expenses.

(c) On July 1, 1984, in addition to the amount specified in subsection (a), and notwithstanding [section] sections 304-10, 304-8.92, and 304-___ to the contrary, the amount of \$2,500,000 derived from indirect overhead sources on account of all university held federal and other research and training contracts and grants shall be deposited into a separate account of the research and training revolving fund. The board of regents [of the University of Hawaii] may expend these funds for the purpose of providing advance funding to meet reimbursable costs incurred in connection with federally financed research and training projects. Any reimbursement received as a result of providing advance funding shall be deposited into the research and training revolving fund to be used for the purpose of meeting reimbursable costs incurred in connection with federally financed projects; provided that the sum of the amounts held in the research and training revolving fund for the purpose of this subsection and the amounts advanced pursuant to this subsection shall not exceed in the aggregate \$2,500,000 at any time."

SECTION 2. Section 304-8.92, Hawaii Revised Statutes, is amended to read as follows:

"§304-8.92 Discoveries and inventions revolving fund. (a) There is [created] established a discoveries and inventions revolving fund[.] into which shall be deposited four per cent of the total indirect overhead funds generated by the university for research and training purposes in the prior fiscal year. The deposit of overhead funds shall be terminated at the end of the 1995-1996 fiscal year. Appropriations by the state legislature subject to the approval of the governor, proceeds from the commercial exploitation of inventions and intellectual property developed at the university, gifts, donations, fees collected, and grants from public agencies and private persons may also be deposited into the fund for the purposes of supporting innovation and research commercialization and the patenting, copyrighting, licensing, and marketing of discoveries, inventions, and technologies developed at the university. The fund shall be used to develop technologies which have potential commercial value, support the administration of technology transfer activities, and facilitate economic development through education and research undertaken at the university.

[[[b]]] The University of Hawaii shall provide an annual report to the governor and the legislature describing all transactions and activities involved in the administration of the discoveries and inventions revolving fund."

SECTION 3. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§304- University of Hawaii housing assistance revolving fund. (a) There is established a housing assistance revolving fund into which shall be deposited twelve per cent of the total indirect overhead funds generated by the

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university for research and training purposes in the prior fiscal year. The fund shall be used to (1) implement the University of Hawaii housing assistance master plan, in accordance with policies adopted by the board of regents, and (2) account for all transactions of the university housing assistance program, including but not limited to revenues, expenditures, loans, and transfers. The deposit of overhead funds shall be terminated at the end of the 1995-1996 fiscal year.

(b) The University of Hawaii shall provide an annual report to the governor and the legislature describing all transactions and activities involved in the administration of the housing assistance revolving fund.”

SECTION 4. Section 304-14.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of regents shall waive all tuition fees for any qualified enlisted person, warrant or company grade officer (0-1 through 0-3) in the Hawaii national guard or in the reserve components of the army, navy, air force, marine corps, and coast guard of the United States of America who is a resident of the State as defined by the board of regents under section 304-4 and who is an undergraduate student or graduate student working towards a degree on any campus of the University of Hawaii; provided that [the]:

- (1) The exemption for tuition shall [be applicable] apply only for the academic year excluding summer session and courses offered by the college of continuing education and public service which are not directly supported by an appropriation from the state general fund; and [provided that the]
- (2) The person maintains a satisfactory performance with that person’s guard or reserve unit and pursues a course of study at the University of Hawaii campus which satisfies that school’s academic requirements.”

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 26, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

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H.B. NO. 513

A Bill for an Act Relating to Sterilization of Adult Wards.

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

SECTION 1. Section 560:5-610, Hawaii Revised Statutes, is amended to read as follows:

“[§560:5-610] **Reproductive rights protection committee.** (a) [To carry out the purposes of this part, the reproductive rights committee is created.] There is established the reproductive rights protection committee within the department of health, state planning council on developmental disabilities, for administrative purposes. The committee shall consist of not [less] fewer than five nor more than seven persons appointed, with the consent of the senate, by the governor[.] for staggered terms as provided in section 26-34. The state planning council [for] on developmental disabilities shall provide the governor with a list of nominees. The governor shall not be limited to the nominees provided in appointing the members of the committee. The committee shall include a person with a disability or the parent or guardian of such a person and persons from at least the following disciplines:

- (1) Law;
- (2) Medicine;
- (3) Theological or philosophical ethics;
- (4) Social work; and
- (5) Psychology[.] or psychiatry.

(b) The committee shall review and make recommendations to the court on all petitions for sterilization. In making its recommendation to the court, the committee shall investigate and determine whether the ward is capable of giving informed assent and, if not, whether sterilization is in the best interests of the ward. The committee shall consider the criteria set forth in section 560:5-608, in determining whether the ward is capable of providing informed assent or whether sterilization is in the best interest of the ward.

(c) The committee or designated members of the committee may interview or request written statements from the ward, physicians, relatives, concerned individuals, and others who, in [their] the committee members' judgment, possess relevant information concerning the petition for sterilization. Conversely, the ward, the guardian ad litem, the petitioner, or any other person may request to speak to the committee or submit a written statement to the committee concerning the proposed sterilization.

(d) The committee shall submit a report in writing to the court containing its recommendation together with supporting documentation. Committee members who do not concur with the majority recommendation also shall [also] submit a report in writing to the court detailing the basis for their dissent.

(e) The members of the committee shall serve without pay but shall be reimbursed for their actual and necessary expenses, including travel expenses incurred in carrying out their duties.

(f) The committee may hire staff, subject to chapters 76 and 77, to assist in the performance of the committee's duties."

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 26, 1991.)

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. This Act shall be known as the Judiciary Appropriations Act of 1991.

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 abbreviations 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. 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, 1991, and ending June 30, 1993. The total expenditures and the number of permanent positions established in each fiscal year shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
The Judicial System							
1.	JUD101	COURTS OF APPEAL					
		OPERATING	JUD	69.00 *		69.00 *	
				4,206,160 A		4,281,628 A	
2.	JUD111	CIRCUIT COURTS					
		OPERATING	JUD	489.50 *		493.50 *	
				22,220,943 A		22,794,273 A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
3.	JUD112	FAMILY COURTS					
		OPERATING	JUD	397.50 *		401.50 *	
				23,787,140 A		24,676,441 A	
4.	JUD121	DISTRICT COURTS					
		OPERATING	JUD	500.50 *		501.50 *	
				15,848,418 A		15,967,715 A	
		JUD		54.00 *		54.00 *	
				1,650,001 B		1,642,457 B	
5.	JUD201	ADMIN. DIRECTOR SERVICES					
		OPERATING	JUD	234.50 *		237.50 *	
		INVESTMENT CAPITAL	JUD	14,865,489 A		15,402,985 A	
				39,747,000 C		4,300,000 C	

SECTION 4. Provided that 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; provided further that a report identifying all transfers implemented during the previous fiscal year shall be submitted to the legislature twenty days prior to the convening of each regular session.

SECTION 5. Provided that 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 further that such transfer shall not be made to implement any collective bargaining contracts signed after this legislature adjourns sine die; provided further that a report identifying all transfers implemented during the previous fiscal year shall be submitted to the legislature twenty days prior to the convening of each regular session.

SECTION 6. Provided that 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 organizations or individuals; provided further that while most federal aid allocations are known and state matching funds are provided in this Act, in such instances where programs for which federal-state cost sharing is not yet determined, 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 a report of all transfers for the prior fiscal year shall be submitted to the legislature twenty days prior to the convening of each regular session.

SECTION 8. Provided that whenever the expending program of the judiciary, to which a general fund appropriation is made, finds it necessary to purchase computer-related equipment, savings from the program may be used for such purpose; provided further that all equipment purchases be reviewed by the chief information officer or the chief information officer's designate; provided further that a report identifying all such expenditures with a stated purpose of equipment purchase during the previous fiscal year shall be submitted to the legislature twenty days prior to the convening of the 1992 regular session and each regular session thereafter.

SECTION 9. Provided that whenever the expending program of the judiciary to which a general fund appropriation is made finds it necessary to attend off-island educational or training conferences, meetings, or classes, savings from the program may be used for such purpose; provided further that all non-intrastate training shall first be approved by the chief justice or the chief justice's designate; provided further that a report identifying all such expenditures with stated purpose of trip during the previous fiscal year shall be submitted to the legislature twenty days prior to the convening of the 1992 regular session and each regular session thereafter.

SECTION 10. Provided that, in order to ensure the efficient expenditure of funds, the judiciary shall submit a report to the legislature containing a detailed breakdown for each program reflecting funds expended for services on fees, and all service contracts for the prior fiscal year; provided further that the total amount of the contract fees and services on fees reflected in the report shall correspond to the amount of each line item shown on the budget details table; provided further that the report shall be submitted to the legislature twenty days prior to the convening of each regular session.

SECTION 11. Provided that, in order to ensure the efficient expenditure of funds, the judiciary shall submit a report to the legislature containing a detailed breakdown for each program reflecting funds expended for all computer hardware and software for the prior fiscal year; provided further that the report shall be submitted to the legislature twenty days prior to the convening of each regular session.

SECTION 12. Provided that of the general fund appropriation for administrative services (JUD 201), the sum of \$263,943 in fiscal year 1991-92 and \$267,615 in fiscal year 1992-93 shall be expended to establish the following three positions: one Judicial Education Officer; one Judicial Education Staff Assistant; and one Clerk Typist III; provided further that these positions shall be responsible for establishing a Judicial Education Office. The functions of the Judicial Education Office shall include, but not be limited to, instituting a comprehensive and structured program for judicial orientation, continuing education, and training in the state court system.

PART III. CAPITAL IMPROVEMENT PROJECTS

SECTION 13. The sum of \$44,047,000 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 a combination is advantageous or convenient, for planning, land

acquisition, design, and construction purposes; 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 and are to be expended by the judiciary.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
The Judicial System							
JUD201 - ADMIN. DIRECTOR SERVICES							
1.		HILO JUDICIARY COMPLEX, HAWAII					
		DESIGN AND CONSTRUCTION FOR A JUDICIARY COMPLEX IN HILO TO ACCOMMODATE THE CIRCUIT, FAMILY, AND DISTRICT COURTS.					
		DESIGN			687		
		CONSTRUCTION			37,000		
		TOTAL FUNDING	JUD		37,687	C	C
2.		FAMILY COURT CENTER, OAHU					
		PLANS AND DESIGN FOR A FAMILY COURT CENTER ON OAHU.					
		PLANS			100		
		DESIGN					3,700
		TOTAL FUNDING	JUD		100	C	3,700 C
3.		JUVENILE DETENTION CENTER, OAHU					
		PLANS FOR A NEW JUVENILE DETENTION CENTER ON OAHU.					
		PLANS			125		
		TOTAL FUNDING	JUD		125	C	C
4.		KAUAI JUDICIARY COMPLEX, KAUAI					
		LAND ACQUISITION AND DESIGN FOR A NEW KAUAI JUDICIARY COMPLEX.					
		LAND			450		
		DESIGN			470		
		TOTAL FUNDING	JUD		920	C	C
5.		MOLOKAI DISTRICT COURT, MOLOKAI					
		DESIGN FOR A NEW MOLOKAI DISTRICT COURT.					
		DESIGN			215		
		TOTAL FUNDING	JUD		215	C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
6.		REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE.					
		DESIGN		75		75	
		CONSTRUCTION		500		500	
		EQUIPMENT		25		25	
		TOTAL FUNDING	JUD	600 C		600 C	
7.		NAALEHU DISTRICT COURT/MULTI-PURPOSE FACILITY, HAWAII					
		PLANS FOR A NEW NAALEHU DISTRICT COURT/MULTI-PURPOSE FACILITY, HAWAII					
		PLANS		100			
		TOTAL FUNDING	JUD	100 C			C

PART IV. CAPITAL IMPROVEMENT PROVISIONS

SECTION 14. Provided that the plans and design for the Family Court Center (JUD 201) shall also consider other alternative sites, including the Ewa/Kapolei area, as the permanent site for the new facility; provided further that the plans and possible alternatives shall be submitted to the legislature twenty days prior to the convening of the 1992 regular session.

SECTION 15. Provided that the plans for the Juvenile Detention Center (JUD 201) shall be coordinated with the Office of Youth Services (HMS 501) in conjunction with the Hawaii Youth Correctional Facility to ensure the necessary building requirements, proper facilities and construction schedules are incorporated into a uniform and efficient juvenile system; provided further that of the general obligation bond appropriations for the Juvenile Detention Center, the sum of \$50,000 shall be used to consider other alternative sites, including the Ewa/Kapolei area, as the permanent site for the new facility; provided further that the plans and possible alternatives shall be submitted to the legislature twenty days prior to the convening of the 1992 regular session.

SECTION 16. Any law to the contrary notwithstanding, the appropriation under Act 315, Session Laws of Hawaii 1989, Section 31, as amended and renumbered by Act 301, Session Laws of Hawaii 1990, Section 6, in the amount indicated or balance thereof, is hereby lapsed:

<u>Item Number</u>	<u>Amount (MOF)</u>
JUD 201-1	\$15,204,000 C

PART V. ISSUANCE OF BONDS

SECTION 17. 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 \$44,047,000.

PART VI. SPECIAL PROVISIONS

SECTION 18. 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 1991-93 which are unencumbered as of June 30, 1994, shall lapse as of that date.

SECTION 19. 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 20. All unrequired balances, after the objectives of appropriations made in Part II for capital investment purposes from the general obligation bond fund and listed as projects in Part III have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 21. 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 for the period ending December 31 of each calendar year shall be made to the legislature by February 1 of the following calendar year.

SECTION 22. 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.

SECTION 23. The chief justice shall determine when and the manner in which the authorized projects shall be initiated. The chief justice 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 V.

SECTION 24. Any law or any provision to the contrary notwithstanding, the chief justice may supplement funds for any early-phased cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for later-phased cost elements for the same project authorized by the legislature in this Act or in a prior year or which may be authorized by the legislature in the future, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriations for that project.

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PART VII. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 25. 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 26. 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 27. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 300

H.B. NO. 608

A Bill for an Act Relating to Administrative License Revocation.

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

SECTION 1. All personnel employed pursuant to this Act shall be hired without regard to chapter 76.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,308,464, or so much thereof as may be necessary for fiscal year 1991-1992, and \$1,111,588, or so much thereof as may be necessary for fiscal year 1992-1993, to implement the provisions of Act 188, Session Laws of Hawaii 1990, relating to administrative license revocation including equipment, training, public information and education, and the hiring of necessary staff.

SECTION 3. The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 301

H.B. NO. 701

A Bill for an Act Relating to the Office of Hawaiian Affairs Budget.

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

SECTION 1. Purpose. The purpose of this Act is to appropriate funds for the biennial budget of the office of Hawaiian affairs.

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 office of Hawaiian affairs 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 funds
- B special funds

(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. Appropriations. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 1991, and ending June 30, 1993. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided elsewhere in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
Office of Hawaiian Affairs							
1.	OHA100	POLICY AND ADMINISTRATION					
		OPERATING	OHA	9.50 *		9.50 *	
			OHA	418,321 A		420,421 A	
			OHA	9.50 *		9.50 *	
			OHA	418,321 B		420,422 B	
2.	OHA101	ADMINISTRATIVE SERVICES					
		OPERATING	OHA	8.00 *		8.00 *	
			OHA	634,347 A		575,705 A	
			OHA	8.00 *		8.00 *	
			OHA	634,347 B		575,705 B	
3.	OHA102	PUBLIC INFORMATION					
		OPERATING	OHA	2.00 *		2.00 *	
			OHA	239,832 A		219,265 A	
			OHA	2.00 *		2.00 *	
			OHA	239,831 B		219,265 B	
4.	OHA103	HUMAN RESOURCES					
		OPERATING	OHA	1.00 *		1.00 *	
			OHA	447,973 A		446,645 A	
			OHA	1.00 *		1.00 *	
			OHA	447,972 B		446,644 B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
5.	OHA104	PLANNING AND RESEARCH					
		OPERATING	OHA	2.00 *		2.00 *	
				248,333 A		216,181 A	
			OHA	2.00 *		2.00 *	
				248,333 B		216,180 B	
6.	OHA105	CULTURE					
		OPERATING	OHA	1.00 *		1.00 *	
				91,752 A		88,252 A	
			OHA	1.00 *		1.00 *	
				91,752 B		88,252 B	
7.	OHA106	GOVERNMENT AND COMMUNITY AFFAIRS					
		OPERATING	OHA	1.00 *		1.00 *	
				102,441 A		70,082 A	
			OHA	1.00 *		1.00 *	
				102,440 B		70,082 B	
8.	OHA107	LAND AND NATURAL RESOURCES					
		OPERATING	OHA	2.00 *		2.00 *	
				562,682 A		637,564 A	
			OHA	2.00 *		2.00 *	
				562,682 B		637,564 B	
9.	OHA108	ECONOMIC DEVELOPMENT					
		OPERATING	OHA	3.00 *		3.00 *	
				439,145 A		432,708 A	
			OHA	3.00 *		3.00 *	
				439,145 B		432,708 B	
10.	OHA109	EDUCATION					
		OPERATING	OHA	3.00 *		3.00 *	
				276,019 A		283,255 A	
			OHA	3.00 *		3.00 *	
				276,019 B		283,255 B	
11.	OHA110	HOUSING					
		OPERATING	OHA	1.00 *		1.00 *	
				30,858 A		33,144 A	
			OHA	1.00 *		1.00 *	
				30,858 B		33,144 B	

SECTION 4. Provided that the general fund appropriations in section 3 of this Act shall be expended by the office of Hawaiian affairs.

SECTION 5. Provided that 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 further that these transfers shall not go against legislative intent; provided further that a report of all such transfers shall be made to the legislature not less than twenty days prior to the convening of the 1992 and the 1993 legislative sessions.

SECTION 6. Provided that the office of Hawaiian affairs and the State of Hawaii shall share equally in the costs of wages and fringe benefits paid

for employees of the office of Hawaiian affairs; provided further that for the purposes of this Act "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, workers compensation, social security, and retirement benefits.

SECTION 7. Provided that the sums appropriated in Section 3 include a protocol fund of \$10,520 in fiscal year 1991-92 and \$11,067 in fiscal year 1992-93.

SECTION 8. Provided that of the funds appropriated for planning and research (OHA 104), the sum of \$39,953 in general funds and \$39,994 in special funds for fiscal year 1991-92 and \$7,453 in general funds and \$7,453 in special funds for fiscal year 1992-93 shall be expended to facilitate the creation of a comprehensive master plan for Hawaiians developed cooperatively by representatives of public and private organizations that shall serve as a guiding document for Hawaiian programs for Hawaiians statewide; provided further that the office of Hawaiian affairs shall submit a status report on the development of the master plan to the legislature not less than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 9. Provided that of the funds appropriated for planning and research (OHA 104), the sum of \$61,250 in general funds and \$61,250 in special funds for fiscal year 1991-92 and \$61,000 in general funds and \$61,000 in special funds for fiscal year 1992-93 shall be expended to conduct an independent program evaluation on all new programs funded by the legislature during the fiscal biennium 1991-93; provided further that the report shall include, but not be limited to, an evaluation of the effectiveness of the office of Hawaiian affairs' programs; provided further that the office of Hawaiian affairs shall submit the report no less than twenty days prior to the convening of the 1993 regular session.

SECTION 10. Provided that of the funds appropriated for culture (OHA 105), the sum of \$49,200 in general funds and \$49,200 in special funds for fiscal year 1991-92 and \$49,000 in general funds and \$49,000 in special funds for fiscal year 1992-93 shall be expended to establish one-stop genealogy centers for people of Hawaiian ancestry; provided further that the office of Hawaiian affairs shall submit a status report on this project to the legislature not less than twenty days prior to the convening of the 1992 and 1993 regular sessions.

SECTION 11. Provided that of the sums appropriated for land and natural resources (OHA 107), the sum of \$25,000 in general funds and \$25,000 in special funds for fiscal year 1991-92 shall be used for a sovereignty advisory council. Organizations represented on the council may include, but not be limited to the following:

1. Trustees of the Office of Hawaiian Affairs;
2. Department of Hawaiian Home Lands;
3. Ka Pakaukau;
4. Ka Lahui Hawaii;
5. Ohana O Hawaii;
6. Pro-Hawaiian-Sovereignty Working Group;
7. Na Kane O Ka Malo;
8. Institute for the Advancement of Hawaiian Affairs;
9. Hawaiian Association of Civic Clubs Political Action Committee;

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10. Na Oiwi;
11. Council of Hawaiian Organizations; and
12. State Council Hawaiian Homestead Association.

The council shall develop a plan to discuss and study the sovereignty issue.

SECTION 12. Provided that of the funds appropriated for land and natural resources (OHA 107), the sum of \$75,000 in general funds and \$75,000 in special funds in fiscal year 1992-93 shall be expended by the sovereignty advisory council; provided that the funds are matched on a dollar-for-dollar basis with federal funds.

SECTION 13. Provided that of the funds appropriated for economic development (OHA 108), the sum of \$125,750 in general funds and \$125,750 in special funds in fiscal year 1991-92 and \$126,250 in general funds and \$126,250 in special funds in fiscal year 1992-93 shall be used to provide technical assistance, training opportunities, and special start-up financing; provided further that no funds shall be used to pay for travel expenses.

SECTION 14. Provided that of the funds appropriated for economic development (OHA 108), the sum of \$17,500 in general funds and \$17,500 in special funds in fiscal year 1991-92 shall be used to conduct a feasibility study on the establishment of retail outlets featuring products made in Hawaii by Hawaiians; provided further that the study shall examine whether it is feasible and practical to establish retail outlets; provided further that the study shall be submitted not less than twenty days prior to the convening of the 1992 legislative session.

SECTION 15. Provided that of the funds appropriated for education (OHA 109), the sum of \$25,000 in general funds and \$25,000 in special funds in fiscal year 1991-92 and \$25,000 in general funds and \$25,000 in special funds in fiscal year 1992-93 shall be expended to establish at least twenty-five annual scholarships for each fiscal year; provided further that the scholarship program shall be for college students, new and continuing, undergraduate and graduate students; provided further that the scholarship program shall be for, but not limited to, students who do not qualify for existing scholarships and grant programs.

SECTION 16. This Act shall take effect July 1, 1991.

(Approved June 26, 1991.)

ACT 302

H.B. NO. 1177

A Bill for an Act Making an Appropriation for a Totally Electronic Voting System.

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

SECTION 1. The legislature finds that Hawaii's current voting system is reliable; however, there are several factors that make it important to consider a totally electronic voting system at this time. The present system is labor-intensive, requiring hundreds of election workers to process and tabulate ballots, and it requires an inordinate amount of technical support. It has also become increasingly expensive to print the number of ballots required in each election, and with the rapidly changing technology occurring in the computer industry, the system will

become increasingly obsolete and expensive to maintain and operate.

A temporary advisory committee on electronic voting systems was convened in 1989 at the request of the legislature to do the following:

- (1) Evaluate totally electronic voting systems for use by the State of Hawaii;
- (2) Make recommendations regarding the selection of a vendor to supply an electronic voting system; and
- (3) Make recommendations regarding standards the State should adopt pertaining to the use of a totally electronic voting system.

The committee, having met and researched the feasibility of an electronic voting system, made the following recommendations:

- (1) Hawaii should replace its current voting system with a totally electronic voting system to be used in the 1992 elections;
- (2) The committee should continue its investigation and evaluation of electronic voting systems prior to recommending selection of a vendor; and
- (3) The standards adopted by the State should comply with state election laws and, to the extent possible, should be consistent with the voluntary standards established by the Federal Election Commission.

The purpose of this Act is to appropriate moneys to the office of the lieutenant governor to replace the current voting system with a new, totally electronic voting system.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 1991-1992, for costs related to the acquisition of a totally electronic voting system, including the hiring of necessary staff exempt from the provisions of chapters 76, 77, and 89, Hawaii Revised Statutes.

The sum appropriated shall be expended by the office of the lieutenant governor for the purposes of this Act.

SECTION 3. As provided by Act 174, Session Laws of Hawaii 1990, the selection and negotiation process shall be exempt from the provisions of chapter 103, Hawaii Revised Statutes. The temporary advisory committee on electronic voting systems is further authorized to negotiate a contract with an election system vendor and to terminate negotiations at any time when it is in the best interests of the State.

SECTION 4. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 303

H.B. NO. 1685

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for Not-for-profit Corporations that Provide 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.

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SECTION 2. The department of budget and finance is authorized to issue special purpose revenue bonds in the sum of \$39,000,000, or so much thereof as may be necessary, to assist not-for-profit corporations that provide health care facilities to the general public to be used for financing or refinancing as follows:

The Queen's health systems and its not-for-profit subsidiary	
For 160-bed skilled nursing facility	\$15,000,000
For Halawa laundry and storage facility	10,000,000
For other long-term care facilities	14,000,000

SECTION 3. The department of budget and finance is authorized to issue special purpose revenue bonds in a total amount not to exceed \$9,500,000, in one or more series, for the purpose of assisting G.N. Wilcox memorial hospital or G.N. Wilcox health center properties to accomplish the following:

Refinancing short-term bond equipment purchases	2,500,000
Construction of a parking facility and expansion of ancillary and support space	3,000,000
Renovations to emergency room and the purchase of imaging and diagnostic equipment	4,000,000

SECTION 4. The department of budget and finance is authorized to issue special purpose revenue bonds in a total amount not to exceed \$135,000,000, in one or more series, for the purpose of assisting the Episcopal Homes of Hawaii, Inc., a Hawaii nonprofit corporation, for the planning, design, and construction of a senior citizens lifecare retirement community.

SECTION 5. The department of budget and finance shall not issue special purpose revenue bonds authorized in Sections 2, 3, and 4, until such time that the respective organizations have obtained a certificate of need approval from the state health planning and development agency and is otherwise in compliance with laws, ordinances, and rules and regulations of the State or any political subdivision thereof, or any departments or boards thereof with respect to the construction, operation, and maintenance of projects, compliance with health care planning laws or regulations, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules of similar nature pertaining to the project.

SECTION 6. 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 sections 2, 3, and 4. 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 7. The special purpose revenue bonds and refunding special purpose revenue bonds issued under this Act shall be issued pursuant to 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 8. This Act shall take effect upon its approval.

(Approved June 26, 1991.)

ACT 304

H.B. NO. 2194

A Bill for an Act Making an Appropriation to Adjust the Salaries of University of Hawaii Administrative Professional and Technical Employees.

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 \$500,000, or so much thereof as may be necessary for fiscal year 1991-1992, for salary adjustments for University of Hawaii administrative professional and technical employees in salary ranges APT 9 through APT 15.

SECTION 2. The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 305

S.B. NO. 249

A Bill for an Act Relating to County Building Codes.

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

SECTION 1. Findings and purpose. The legislature finds that burns caused by household water that is too hot is a serious problem affecting young children, the elderly, and some disabled people. About half of all burn incidents involving young children are due to their immersion in water that is too hot. The legislature also finds that many apartment dwellers are particularly vulnerable because they cannot easily control water-heater temperatures. As a result, it is the purpose of this Act to prevent or reduce the number of these incidents by requiring that all counties incorporate in their building codes, a requirement that all new showerheads and bathtub faucets have anti-scald devices.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- **Individual shower control valves required.** Every county building code shall require that all showers in new dwelling units shall be equipped with individual shower control valves of the pressure balance or the thermostatic mixing valve type unless the temperature of the water serving the showers is limited to 110 degrees Fahrenheit. The requirements of this section shall be applicable to building permits issued after December 31, 1992.”

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SECTION 3. New statutory material is underscored.¹

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

(Approved June 26, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 306

S.B. NO. 420

A Bill for an Act Relating to Medicaid.

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

SECTION 1. The legislature finds that low reimbursement to providers of medical care has been a primary reason for private practitioners choosing either to drop out of the Medicaid program or limiting their Medicaid patient load. The legislature also finds that the Omnibus Budget Reconciliation Act of 1989 requires that states provide adequate payment to practitioners to assure sufficient access to health care for Medicaid patients. Yet, there are currently some geographic "pockets" within the State where access to health care is inadequate. Many patients have been flown into Honolulu to receive the care which is not available to Medicaid patients on their home island. An increase in the reimbursement rate to providers of medical care will encourage wider provider participation and promote continued compliance with federal mandates.

The purpose of this Act is to increase Medicaid's private practitioner reimbursement from the current rate of fifty-six per cent of customary fees to sixty per cent of customary fees.

SECTION 2. Pursuant to its authority under section 346-59, Hawaii Revised Statutes, the department of human services, on July 1, 1991, shall increase the rate of payment to providers of medical care from fifty-six per cent of customary fees to sixty per cent of customary fees.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,595,152, or so much thereof as may be necessary for fiscal year 1991-1992, to carry out the purposes of this Act.

SECTION 4. The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 307

S.B. NO. 621

A Bill for an Act Making an Appropriation for Professional Development.

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 \$3,039,993, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$4,663,298, or so much thereof as may be necessary for fiscal year 1992-1993, to implement section 297-31.1, Hawaii Revised Statutes, relating to teacher classification.

SECTION 2. The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 308

S.B. NO. 693

A Bill for an Act Making an Appropriation for Nursing Home Without Walls.

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 \$740,330 or so much thereof as may be necessary for fiscal year 1991-1992, and \$880,729 or so much thereof as may be necessary for fiscal year 1992-1993, to serve as the State's share in obtaining federal matching funds for individuals being served by the nursing home without walls program annually at the federally approved expenditure ceiling.

SECTION 2. The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 309

S.B. NO. 809

A Bill for an Act Making an Appropriation for Design and Construction of a Bike Path and Walkway.

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 \$400,000, or so much thereof as may be necessary for fiscal year 1991-1992, for design and construction of a bike path and walkway makai of Kamehameha Highway from the entrance of Waimea Bay to the proposed city and county of Honolulu Waialea beach park.

SECTION 2. The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- **Annual report.** The board of regents shall submit an annual report to the legislature containing the salaries paid to all executive, managerial, and faculty members, including that paid to the president, in the University of Hawaii, not fewer than twenty days prior to the convening of each regular session.”

SECTION 2. Section 26-52, Hawaii Revised Statutes, is amended to read as follows:

“§26-52 **Department heads and executive officers.** The salaries of the following state officers shall be as follows:

- (1) [Effective January 1, 1989, and January 1, 1990, the] The salary of the superintendent of education shall be [\$86,164 and] \$90,041 a year[, respectively.];
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents[, but shall not exceed \$95,000 a year.]; provided that effective July 1, 1996, the salary of the president of the University of Hawaii shall be set by the legislature;
- (3) [Effective January 1, 1989, and January 1, 1990, the] The salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, business, economic development, and tourism, commerce and consumer affairs, Hawaiian home lands, health, human services, labor and industrial relations, land and natural resources, personnel services, public safety, taxation, and transportation shall be [\$81,629 and] \$85,302 a year[, respectively.]; and
- (4) [Effective January 1, 1989, and January 1, 1990, the] The salary of the adjutant general shall be [\$81,629 and] \$85,302 a year[, respectively]. If the salary is in conflict with the pay and allowance fixed by the tables of the regular army or air force of the United States, the latter shall prevail.”

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 26, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 311

S.B. NO. 1167

A Bill for an Act Relating to the Establishment of a Juvenile Justice Information System.

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

SECTION 1. The purpose of this Act is to establish a juvenile justice information system containing juvenile offender information which will be used by agencies with juvenile justice responsibilities. The statewide juvenile justice information system will provide current juvenile information to enable juvenile justice agencies to provide the most effective identification, protection, counseling, rehabilitation, and education programs and other services that help juvenile offenders to become law-abiding and productive citizens.

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

**“CHAPTER
JUVENILE JUSTICE INFORMATION SYSTEM**

§ -1 **Responsibility for system.** (a) The department of the attorney general shall be responsible for the collection, storage, dissemination, and analysis of all juvenile justice custodial, adjudicative, and program data from all agencies which have primary investigative, action, or program responsibility for minors, including the county police departments, the county prosecutors, the family courts, and the Hawaii youth correctional facilities, in such a manner as to balance the right of the public and press to be informed and the right of privacy and confidentiality of minors and their families, and to provide accurate, comprehensive, and timely information to government agencies concerned with juvenile offenders to carry out their responsibilities.

(b) The information collected and stored in the juvenile justice information system shall not include any fingerprints, psychiatric reports, or social and clinical studies or examinations, but may contain information indicating the availability of reports and the procedures for requesting such information.

(c) The attorney general shall develop the system and the procedures for reporting, inputting, accessing, and protecting the information and obtaining the agreement of agencies permitted to directly input and access information.

§ -2 **Juvenile justice information committee.** There is established within the department of the attorney general a juvenile justice information committee, which shall include, but not be limited to, representatives from the family courts, the police departments of the various counties, the prosecutors of the various counties, the Hawaii youth correctional facilities, and the department of the attorney general. The committee shall meet as needed to promote interagency cooperation and coordination in the development and management of an accurate, complete, timely, and fully integrated statewide juvenile justice information reporting and retrieval system.

The members of the committee shall be appointed by the attorney general and shall have the decision-making authority of the represented agencies.

§ -3 **Responsibility of agencies.** Agencies that have investigative, detention, custodial, adjudicative, and program responsibility for juveniles shall

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cooperate with the attorney general in establishing the juvenile justice information system by:

- (1) Providing information in the agency files that can be included pursuant to the format approved by the juvenile justice information committee;
- (2) Maintaining procedures internally consistent with uniform procedures and guidelines provided by the juvenile justice information committee;
- (3) Reporting information to the attorney general that is timely, complete, and accurate, after the occurrence of an event over which the agency had direct responsibility; and
- (4) Maintaining procedures for the periodic checking of information to minimize the possibility of storing and maintaining inaccurate information.

§ -4 **Limitations on dissemination.** Dissemination of information from the juvenile justice information system shall be limited whether directly or through any intermediary only to:

- (1) Agencies which have primary investigative, detention, custodial, adjudicative, and program responsibility for minors, including but not limited to the county police departments, the county prosecutors, the family courts, and the Hawaii youth correctional facilities;
- (2) Individuals and agencies pursuant to a specific agreement with an agency with primary investigative, detention, custodial, and program responsibility to provide services to fulfill that responsibility; provided that the agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the purpose of this chapter;
- (3) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a juvenile justice agency; provided that the agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purpose of this chapter;
- (4) The minor, the minor's parents or guardians, and the minor's attorney and guardian ad litem for the purpose of examining records pertaining to the minor; or
- (5) Persons who have been injured or damaged, their subrogees, and legal representatives; provided that the information is limited only to that information that may be disclosed as provided under section 571-84(f) and (g).

§ -5 **Responsibility of agencies.** Any agency that has access to information available through the juvenile justice information system shall:

- (1) Select and supervise all persons authorized to have direct access to the information or any terminals or stations by which the information is transmitted;
- (2) Place responsibility on the persons permitted direct access for the physical security of juvenile justice data which the agency has received or can receive to protect against unauthorized access, disclosure, or dissemination;

- (3) Provide security training for all persons given direct access to information in the juvenile justice information system which shall include the substance and intent of this chapter and of rules adopted thereunder; and
- (4) Maintain procedures to protect data terminals or stations from unauthorized access, theft, sabotage, fire, or other natural or human caused disasters.

§ -6 **Additional dissemination.** Information from the juvenile justice information system may be disseminated to:

- (1) The governor in accordance with the governor's constitutional duty to ensure that the laws will be faithfully executed;
- (2) The courts in accordance with their adjudicative responsibility;
- (3) The attorney general in accordance with the attorney general's statutory authority and duties in the administration and enforcement of this chapter; and
- (4) Other individuals and agencies who are provided for in this chapter or by rule adopted thereunder.

§ -7 **Penalty.** Any person who knowingly permits the dissemination of information in violation of this chapter, or any person who gains unauthorized access to information in the juvenile justice information system, shall be guilty of a misdemeanor."

SECTION 3. Section 352-7, Hawaii Revised Statutes, is amended to read as follows:

"§352-7 Records. The director shall establish a record of all facts relating to the admission, discharge, escape, death, medical history, programs, and significant occurrences concerning a committed person. An exact account shall also be kept of all moneys received for work performed by the committed persons and from authorized sources for the use of any committed person, as well as of the expenditure of such moneys as shall be authorized from time to time by the director. The director shall report any information collected except psychiatric reports to the juvenile justice information system. The date of preparation, the preparer, and the existence of a psychiatric report may be included in the juvenile justice information system."

SECTION 4. Section 571-74, Hawaii Revised Statutes, is amended to read as follows:

"§571-74 Rules and standards; investigation and questioning; fingerprinting and photographing. The judges of the family courts shall make such rules and set up such standards of investigation and questioning as they consider necessary to guide and control the police, within their respective jurisdictions, in the handling of cases involving minors coming within the provisions of this chapter. The rules and standards may include limitations and restriction concerning the fingerprinting and photographing of any child in police custody, provided that when any child commits an act which, if committed by an adult, would be a felony, such rules and standards shall not apply. The police shall report all police designated fields of information collected on juvenile offenders to the juvenile justice information system. The rules shall be enforceable as orders of the court."

SECTION 5. Section 571-84, Hawaii Revised Statutes, is amended to read as follows:

“§571-84 Records. (a) The court shall maintain records of all cases brought before it. In proceedings under section 571-11, and in paternity proceedings under chapter 584, the following records shall be withheld from public inspection: the court docket, petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be open to inspection by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings from the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, treatment, or disposition of the minor.

(b) Reports of social and clinical studies or examinations made pursuant to this chapter shall be withheld from public inspection, except that information from [such] the reports may be furnished, in a manner determined by the judge, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare, treatment, or disposition of the minor.

(c) No information obtained or social records prepared in the discharge of official duty by an employee of the court shall be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive [such] the information, unless and until otherwise ordered by the judge.

(d) Except for [the] immediate use in a criminal case, any photograph or fingerprint taken of any child shall not be used or circulated for any other purpose and shall be subject to all rules and standards provided for in section 571-74.

(e) The records of any police department, and of any juvenile crime prevention bureau thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection only by persons whose official duties are concerned with the provisions of this chapter, except as provided in subsection (f) [herein] or as otherwise ordered by the court.

(f) Any [such] police records concerning traffic accidents in which a child or minor coming within 571-11(1) is involved [shall], after the termination of any proceeding under 571-11(1) arising out of any such accident, or in any event after six months from the date of the accident, shall be available for inspection by the parties directly concerned in the accident, or their duly licensed attorneys acting under written authority signed by either party. Any person who may sue because of death resulting from any such accident shall be deemed a party concerned.

(g) In all proceedings concerning violations other than traffic violations, in which a minor coming within section 571-11(1) is involved and after the termination of any proceeding under section 571-11(1) arising out of any such violation, the court may disclose to a party directly concerned the disposition of a case involving an offense against a person or property. This disclosure shall be made only upon written request of the party directly concerned. If the minor has been adjudicated a law violator, the name and address of the minor, and, when practicable, the name of the parent or guardian shall be disclosed pursuant to the order of the court or the Hawaii Family Court Rules, to the parties directly concerned with the alleged violation, or their duly licensed attorneys acting under written authority signed by either party. For the purpose of this section “parties directly

concerned” means any person who may sue because of death, injury, or damage resulting from any violation other than a traffic violation in which a minor coming within section 571-11(1) is involved.

The minor, and, when practicable, the minor’s parents or custodian, and the attorney of the minor shall be notified when the minor’s name and address have been released.

(h) Evidence given in proceedings under section 571-11(1) or (2) shall not in any civil, criminal, or other cause be lawful or proper evidence against the child or minor therein involved for any purpose whatever, except in subsequent proceedings involving the same child under section 571-11(1) or (2).

(i) All information in the records except reports of social studies and clinical studies or examinations shall be recorded in the juvenile justice information system. Information about the dates, length, preparer, and subject of social studies may be included in the juvenile justice information system.”

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$88,710, or so much thereof as may be necessary for fiscal year 1991-1992, for the purposes of this Act, including the hiring of necessary staff, as follows:

Personnel:		\$70,992.00
Project Coordinator	\$48,312.00	
Clerk-Typist	22,680.00	
Operating Cost:		\$17,718.00
Rent	\$14,958.00	
Telephone	2,760.00	
TOTAL		\$88,710.00

The sum appropriated shall be expended by the department of the attorney general.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 312

S.B. NO. 1311

A Bill for an Act Relating to Parks.

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

PART I.

SECTION 1. The legislature finds that the State and the counties have discussed the transfer of certain parks for a number of years and that they have reached a general agreement on these transfers.

The purpose of this Act is to provide for the transfer of certain state parks to the counties and certain county parks to the State in order to better utilize the resources of each jurisdiction. This Act also appropriates funds for the master planning of the old Kona airport state recreation area on the Big Island.

The legislature is aware that Article VIII, section 5, of the Constitution of the State of Hawaii requires that if any new program or increase in the level of service of an existing program is mandated to any of the counties by the legislature, the State shall share in the cost. Under this requirement, the transfer of parks provided for in this Act would require increased funding support to the counties.

However, the legislature further finds that Act 185, Session Laws of Hawaii 1990, allocated among the counties the revenues generated by the transient accommodations tax. The sharing of these revenues, which previously had been deposited into the state general fund, was intended to provide the counties with a stable source of funds and increased the level of state funding support. The legislature believes that the dedication of the revenues generated by the transient accommodations tax to the counties, in providing this increased level of support, was intended to coincide with the transfer of additional responsibilities to the counties and would fulfill the requirement of Article VIII, section 5, of the Constitution of the State of Hawaii. The legislature therefore finds that the transfer of parks provided for in this Act can be executed with no concomitant funding support without violating constitutional requirements.

SECTION 2. (a) On January 1, 1992, the estate, right, title, and interest, and any appurtenance thereto, of the State relating to:

- (1) Sans Souci state recreation area;
- (2) Aina Moana (Magic Island) state recreation area;
- (3) Waimanalo bay state recreation area;
- (4) 16th avenue park (TMK nos. 3-3-14:15, 16, and 17; 3-3-17:1; and 3-3-19:2 and 5); and
- (5) Kaiaka state recreation area,

shall be vested in the city and county of Honolulu; provided that, as a condition of its transfer to the city and county of Honolulu, the 16th avenue park shall be utilized for recreational uses only.

(b) On January 1, 1992, the estate, right, title, and interest, and any appurtenance thereto, of the city and county of Honolulu relating to Kahana bay beach park and Kalihi valley park (TMK nos. 1-4-16:03; and 1-4-14:1 and 26) shall be vested in the State; provided that the estate, right, title, and interest, and any appurtenance thereto, of the city and county of Honolulu relating to Kaihi valley park shall be vested in the State only as long as the same is maintained for passive and meditative uses.

(c) On January 1, 1992, the estate, right, title, and interest, and any appurtenance thereto, of the State relating to Lydgate and Wailua Beach sections of Wailua River state park (except the Hikinaakala heiau and refuge areas) shall be vested in the county of Kauai.

(d) On January 1, 1992, the estate, right, title, and interest, and any appurtenance thereto, of the State relating to:

- (1) Wahikuli state wayside;
- (2) Launiupoko state wayside;
- (3) Papalaua state wayside; and
- (4) Kihei beach reserve,

shall be vested in the county of Maui.

(e) On January 1, 1992, the estate, right, title, and interest, and any appurtenance thereto, of the State relating to Wailoa River state recreation area (soccer/archery area only), shall be vested in the county of Hawaii.

(f) On January 1, 1992, the estate, right, title, and interest, and any appurtenance thereto, of the county of Hawaii relating to Napoopoo beach park (Kealakekua bay park) shall be vested in the State.

(g) On January 1, 1992, any employee of the department of land and natural resources who is on a full-time basis assigned to or services the state lands and appurtenances listed in subsections (a), (c), (d), and (e) shall be transferred to the appropriate county in order to continue to be assigned to or service the listed lands and appurtenances and to perform their regular duties upon their transfer, subject to personnel laws and this Act.

All personnel transferred shall acquire county civil service status without any loss of salary, seniority, prior service credits, vacation, sick leave, or other employee benefits or privileges as a consequence of the transfer; provided that subsequent changes in status may be made pursuant to applicable personnel laws of the respective counties.

If an office or position held by any employee having tenure is affected by workload changes or is abolished, the employee shall not thereby be separated from public employment, but shall remain in the employment of the State in accordance with the state civil service law, the applicable bargaining unit contract, or the state personnel rules, whichever is applicable.

(h) On January 1, 1992, any employee of the counties who is on a full-time basis assigned to or services the county lands and appurtenances listed in subsections (b) and (f) shall be transferred to the department of land and natural resources in order to continue to be assigned to or service the listed lands and appurtenances and to perform their regular duties upon their transfer, subject to personnel laws and this Act.

All personnel transferred shall acquire state civil service status without any loss of salary, seniority, prior service credits, vacation, sick leave, or other employee benefits or privileges as a consequence of the transfer; provided that subsequent changes in status may be made pursuant to applicable state personnel laws.

If an office or position held by any employee having tenure is affected by workload changes or is abolished, the employee shall not thereby be separated from public employment, but shall remain in the employment of the county from which the employee was transferred in accordance with applicable collective bargaining agreements and county civil service and personnel laws and rules.

(i) All records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other property heretofore made, used, acquired, or held by the department of land and natural resources or by a county concerning the lands and appurtenances transferred by this Act shall be transferred with those lands and appurtenances on January 1, 1992, under the direction of the governor or the mayor of the appropriate county.

SECTION 3. The costs associated with the transfer of personnel, records, equipment, and other personal property and all other costs involved in effectuating the purposes of this Act shall be borne by the State or the county making the transfer.

SECTION 4. County funding requirements for operations, maintenance, and capital improvement costs for parks transferred from the state to the counties shall be from each county's share of the revenues generated by the transient accommodations tax according to Act 185, Session Laws of Hawaii 1990.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1991-1992, for the development of a master plan for the old Kona

airport state recreation area on the Big Island. The sum appropriated shall be expended by the department of land and natural resources.

SECTION 6. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State, the city and county of Honolulu, or the counties of Kauai, Maui, or Hawaii, or any agency thereof, to the holder of any bond issued by the State, the city and county of Honolulu, or the counties of Kauai, Maui, or Hawaii, or any agency thereof, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

PART II.

SECTION 7. The Legislature finds that Hawaii's natural beauty and environment are priceless resources that should be protected for the public benefit as a trust pursuant to Article XI, section 1 of the Hawaii State Constitution. The state park system offers the State the opportunity to create parks of distinctions, 'AINA HOOMALU (places to seek peace), that will offer users a variety of experiences that will enhance their appreciation for Hawaii's unique cultural, ecological, and recreational resources.

This system of parks will include opportunities not only for traditional hiking, picnicking, fishing, and stream and shoreline swimming or camping, but they would also offer:

- (1) Educational tours of ancient Hawaiian cultural features with unparalleled interpretive value;
- (2) Opportunities to explore the terrain and ecology of a traditional ahupua'a;
- (3) Guided tours of areas containing unique or rare plants and animals; and
- (4) Nature museums, outdoor interpretive exhibits, and native arts and crafts centers.

The legislature intends to revitalize the state park system by committing sufficient resources to create safe and clean parks that will provide users with a variety of cultural, recreational, and ecological activities.

The legislature finds that Hawaii's people and visitors have increasingly encountered crowding, congestion, and decay in our public parks. In past years, administration of our parks has not received the priority in funding and management necessary to create and maintain a park system marked by distinction and excellence. With a permanent source of funding from a special interpretive program fund, 'AINA HOOMALU will provide Hawaii residents and visitors options that will enhance our quality of life and build our reputation for protecting our precious natural resources. The special fund can be financed by revenue generated directly by the parks themselves whose revenues now total over \$1,200,000 per year.

SECTION 8. Chapter 184, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . 'AINA HOOMALU STATE PARKS

§184- 'Aina hoomalu state parks program established; designation

of 'aina hoomalu sites. The department shall establish and manage a state parks interpretive program to be known as the, "'aina hoomalu state parks program". The 'aina hoomalu state parks program shall consist of those parks which contain unique and significant natural or cultural history or features. The department shall designate those state parks throughout the State which are to be included in the 'aina hoomalu state parks program and shall develop interpretive programs for these parks.

§184- 'Aina hoomalu special fund. (a) There is established within the state treasury a special fund to be known as the 'aina hoomalu special fund. All proceeds collected by the state parks program involving park user fees or any leases or concession agreements shall be deposited into this fund, provided that proceeds derived from the operation of 'Iolani Palace shall be used to supplement its educational and interpretive programs.

(b) The department shall expend the moneys from the 'aina hoomalu special fund after July 1, 1992. The funds shall be used for the following purposes:

- (1) Permanent staff positions;
- (2) Planning and development of interpretive programs;
- (3) Construction of interpretive facilities;
- (4) Repairs, replacements, additions, and extensions; and
- (5) Operation and maintenance costs of programs."

SECTION 9. Section 184-4, Hawaii Revised Statutes, is repealed.

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.

SECTION 11. Statutory material to be repealed is bracketed.¹

SECTION 12. This Act shall take effect upon approval; provided that sections 5, 7, 8, and 9 shall take effect on July 1, 1991.

(Approved June 26, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 313

S.B. NO. 1354

A Bill for an Act Relating to Public Assistance.

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

SECTION 1. Part IX of chapter 346, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect on October 1, 1991.

(Approved June 26, 1991.)

A Bill for an Act Relating to Persons Dispossessed or Displaced by Volcanic Eruptions.

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

SECTION 1. The legislature finds that a special trust obligation to native Hawaiians is evidenced by Sections 4 and 7 of Article XII of the Constitution of the State of Hawaii and that by virtue of these provisions, the State has an affirmative obligation to reaffirm and protect the cultural rights, including fishing and subsistence rights of native Hawaiians and their descendents.

The legislature further finds that pursuant to Public Law 86-3, Admissions Act of 1959, the State assumed title to certain ceded lands adjacent to the Kalapana Extension in the Kikala-Keokea area. Section 5(f) of the Admissions Act of 1959 provides that these lands may be utilized for the betterment of conditions of native Hawaiians.

There is a further finding that legislative action to relieve the hardships and stress of Hawaiians displaced by volcanic eruptions was provided to the residents of the Milolii-Hoopuloa area after an eruption and lava flow of Mauna Loa. Act 62, Session Laws of Hawaii 1982 and Act 83, Session Laws of Hawaii 1984 address a nearly identical need in language after which this Act is patterned.

The legislature also finds that in 1938 the United States Congress enacted Public Law 680, the Kalapana Extension Act, which authorized the addition of Kalapana lands to the Hawaii National Park. The law further provided that native Hawaiian residents of the area were to be provided with leases for home sites and that fishing was to be permitted only by native Hawaiian residents of the area or adjacent villages, and by visitors under their guidance.

The legislature also finds that through the years the Hawaiian residents of Kalapana on the island of Hawaii have maintained a unique community promoting the Hawaiian way of life. However, the continuation of their way of life has been threatened as a result of the volcanic eruptions which began on January 3, 1983. The eruptions have caused severe disruptions to the Hawaiian residents of Kalapana and have destroyed one of the last Hawaiian settlements on the island of Hawaii. The legislature agrees that the only remedy is an after-the-fact humanitarian act to help replace what has been lost by these residents. The legislature further finds that it is in the public interest to provide for relocation assistance to the Hawaiians of Kalapana to enable them to perpetuate their way of life and traditions.

The legislature further finds that to assist the Kalapana residents to continue as a unique Hawaiian community requires them to be as close as possible to Kalapana. An ideal site for the displaced Kalapana residents to maintain their Kalapana heritage is the Kikala-Keokea homestead area which is adjacent to and mauka of Kalapana-Kapoho beach road and identified as TMK 1-2-07, parcels 2 and 30 (two contiguous parcels totaling 1,012 acres). Up to 150 acres at the site may be used to provide leases under this Act. The site will allow them to develop the land in a manner that will enable them to continue their traditional way of life in raising small animals, planting sustenance crops, growing herbal medicines, and gathering additional food resources from the nearby ocean and uplands.

The purpose of this Act is to award long-term leases on state lands to those residents of Kalapana who are of Hawaiian ancestry and who were dispossessed or displaced from their homes as a result of the recent volcanic eruptions on the island of Hawaii.

SECTION 2. The department of land and natural resources is authorized to negotiate and enter into long-term leases of sixty-five years in duration, subject to renewal by mutual agreement, with persons who meet both the following criteria:

- (1) Persons living in Kalapana who were dispossessed or displaced as a result of the volcanic eruptions on the island of Hawaii which began on January 3, 1983; and
- (2) Persons who meet the qualifications of section 13D-3(b), Hawaii Revised Statutes.

SECTION 3. The lands eligible for long-term residential lease negotiations under this Act are limited to those lands situated at Kikala-Keokea homestead area, which is adjacent to and mauka of Kalapana-Kapoho beach road and identified as TMK 1-2-07, parcels 2 and 30. No more than 150 acres of the homestead area shall be used for the purposes of this Act. The size of any lot leased under this Act shall be at least one acre.

SECTION 4. The department of land and natural resources or its designated agency is authorized to subdivide and provide for the creation of residential subdivision in Kikala-Keokea homestead area for persons who receive long-term leases under the provisions of this Act, which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, the development and improvement of land, and the construction of units thereon; provided that the department of land and natural resources finds the project is consistent with the purpose and intent of this Act and meets minimum requirements of health and safety.

SECTION 5. Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into lease arrangements in accordance with the provisions and limitations of this Act; provided that the authority granted by this Act shall expire:

- (1) When leases have been negotiated and recorded in the bureau of conveyances for all parcels meeting the criteria in this Act; or
- (2) On January 1, 1994; whichever occurs first.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 26, 1991.)

ACT 315

S.B. NO. 1523

A Bill for an Act Relating to Government Mineral Rights.

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

SECTION 1. Section 182-7, Hawaii Revised Statutes, is amended to read as follows:

“§182-7 Lease. (a) Prior to the public auction contemplated in section

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182-4 or 182-5, or the granting of mining lease without public auction contemplated in section 182-5, the board of land and natural resources shall cause a mining lease for the land in question to be drawn. The lease shall describe the land and shall contain, in addition to such other provisions which the board may deem appropriate, specific provisions [to the following effect:] as provided in this section.

[1] (b) The term of the lease shall be sixty-five years or for a lesser period at the discretion of the board.

[2] (c) The payments to the State as fixed by the board[;] shall be specified; provided that [in]:

- (1) In the case of bauxite, bauxitic clay, gibbsite, diaspore, boehmite, and all ores of aluminum, the amount of royalties for each long dry ton of ore as beneficiated shall not be less than twenty-five cents or the equivalent of the price of one pound of virgin pig aluminum, whichever is higher, nor shall it exceed the equivalent of the price of three pounds of virgin pig aluminum; [provided further that the]
- (2) The rate of royalty for ore processed into aluminous oxide in the State shall be set at eighty per cent of the rate of royalty for ore not processed to aluminous oxide in the State; and [provided further that the]
- (3) The royalty shall be fixed at a rate which will tend to encourage the establishment and continuation of the mining industry in the State.

The prices of virgin pig aluminum for the purpose of determining the royalties [hereunder] under this section shall be the basic price on the mainland United States market for virgin pig, not refined, f.o.b. factory. The royalties shall be in lieu of any severance or other similar tax on the extracting, producing, winning, beneficiating, handling, storing, treating, or transporting of the mineral or any product into which it may be processed in the State, and shall not be subject to reopening or renegotiating for and during the first twenty years of the lease term.

In the event the lessee desires to mine other minerals, the lessee [shall], before mining the minerals, shall so notify the board in writing, and the board and the lessee shall negotiate and fix the royalties for [such] the minerals.

Any other law to the contrary notwithstanding, thirty per cent of all royalties received by the State from geothermal resources shall be paid to the county in which mining operations covered under a State geothermal resource mining lease are situated.

[3] (d) The lessee shall covenant and agree that the lessee shall commence mining operations upon the leased lands within three years from the date of execution of the lease; provided that so long as the lessee is actively and on a substantial scale engaged in mining operations on at least one such lease on the same minerals, the covenant shall be suspended as to all other leases held by the lessee.

Any interested party may, however, request that a mining lease contain a research period under which the lessees shall be required to expend money in research and development to establish a method to make economical the mining and processing of the mineral deposits contained in the lease. If the board determines that the research period would be beneficial it shall fix the period of research and shall also fix a minimum expenditure for labor performed or money spent by the lessee in research and development and the method by which the lessee shall establish that such expenditure in fact be made. In such leases, the obligation to commence mining operations within three years shall not commence until the expiration of the research period.

[(4)] (e) For the period of the lease the lessee shall have the exclusive right of possession of the minerals leased and the exclusive rights to mine and remove the minerals by means which shall be reasonable and satisfactory to the board and to occupy and use so much of the surface of the land as may reasonably be required, subject to the provisions of section 182-3. The right to use the surface shall include the right to erect transportation facilities thereon, construct plants for beneficiating, drying, and processing the minerals for electric power generation and transmission and such other uses as may be necessary or convenient to the winning and processing of the minerals; provided that the lessee shall comply with all water and air pollution control laws, and rules [and regulations] of the State or its political subdivisions.

[(5)] (f) The lessee may retain all minerals separated from the land as a part of the process of mining the minerals specified in the mining lease; provided that the lease may prescribe the accounting and testing procedures by which the amount and quality of such additional materials shall be determined for the purpose of computing the excise tax thereon."

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 26, 1991.)

ACT 316

S.B. NO. 2006

A Bill for an Act Relating to State Tort Liability Act.

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

SECTION 1. Section 662-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Employees of the State” also includes persons employed by a county of this State as lifeguards and designated to provide lifeguard services at a designated state beach park under an agreement between the State and that county.”

SECTION 2. Section 662-16, Hawaii Revised Statutes, is amended to read as follows:

“[[§662-16]] Defense of state employees. The attorney general may defend any civil action or proceeding brought in any court against any employee of the State for damage to property or for personal injury, including death, resulting from the act or omission of any state employee while acting within the scope of his employment. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the attorney general, all process or complaint served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the department of the attorney general.

No judgment by default shall be entered against a state employee based on

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a cause of action arising out of an act or omission of such employee while acting within the scope of his employment unless the department of the attorney general has received a copy of the complaint or other relevant pleadings and a period of twenty days has elapsed from the date of such receipt.

The attorney general may also defend any civil action or proceeding brought in any court against a county based on an allegedly negligent or wrongful act or omission of persons employed by a county as lifeguards and designated to provide lifeguard services at a designated state beach park under an agreement between the State and a county."

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 26, 1991.)

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S.B. NO. 2101

A Bill for an Act Relating to Capital Improvement Project.

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

SECTION 1. This Act shall be known and may be cited as the General Improvements Act of 1991.

SECTION 2. The following sums, or so much thereof as shall be sufficient to finance the projects listed in this Act, are appropriated or authorized, as the case may be, for fiscal year 1991-1992, to be expended by the department of accounting and general services, unless otherwise specified, out of moneys in the treasury received from general obligation bond funds:

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F

C. TRANSPORTATION FACILITIES

TRN195 - AIRPORTS ADMINISTRATION

1. JS0225 ELLISON S. ONIZUKA SPACE CENTER, HAWAII

CONSTRUCTION AND EQUIPMENT FOR THE ELLISON S. ONIZUKA SPACE CENTER, HAWAII.							
		CONSTRUCTION			25		
		EQUIPMENT			250		
		TOTAL FUNDING	TRN		275C		C

TRN501 - OAHU HIGHWAYS

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
2.	JP4542	FARRINGTON HIGHWAY SIDEWALK IMPROVEMENTS, OAHU					
		IMPROVEMENT OF EXISTING, AND CONSTRUCTION OF NEW SIDEWALKS ALONG FARRINGTON HIGHWAY, MAKAI SIDE FROM AWANUI TO AWAMOKU STREETS.					
		DESIGN				127	
		CONSTRUCTION				40	
		TOTAL FUNDING	TRN			167C	C
3.	SP0601	FARRINGTON HIGHWAY, OAHU					
		DESIGN FOR THE LANDSCAPING, RENOVATIONS AND BEAUTIFICATION OF THE MEDIAL STRIP AND ROADSIDE ISLANDS ON FARRINGTON HIGHWAY FROM WAIPAHA HIGH SCHOOL TO KUNIA/FORT WEAVER ROAD.					
		DESIGN				28	
		TOTAL FUNDING	TRN			28C	C
4.	HP2312	WIDEN BIKEWAY, H-1 ON-RAMP/WAIALAE AVENUE, OAHU					
		PLANS, DESIGN AND CONSTRUCTION OF A NEW BIKELANE.					
		PLANS				1	
		DESIGN				2	
		CONSTRUCTION				23	
		TOTAL FUNDING	TRN			26C	C
5.	HP1508	KAALAEA STREAM PEDESTRIAN WALKWAY, OAHU					
		CONSTRUCT PEDESTRIAN WALKWAY OVER KAALAEA STREAM.					
		CONSTRUCTION				25	
		TOTAL FUNDING	TRN			25C	C
6.	SP0802	KAAAWA FLOOD CONTROL PROJECT, OAHU					
		PLANS, DESIGN AND CONSTRUCTION OF PHASE II OF THE KAAAWA FLOOD CONTROL PROJECT INCLUDING THE INSTALLATION OF DRAINAGE CULVERTS.					
		PLANS				1	
		DESIGN				3	
		CONSTRUCTION				206	
		TOTAL FUNDING	TRN			210C	C
7.	HP1508	STREET LIGHTS IMPROVEMENT - ADDITIONAL FUNDING, OAHU					
		COMPLETION OF STREET LIGHTS					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		INSTALLATION ON KAHEKILI HIGHWAY BETWEEN AHUIMANU PLACE AND INTERSECTION OF KAMEHAMEHA HIGHWAY AND KAHEKILI.					
		CONSTRUCTION			90		
		TOTAL FUNDING	TRN		90C		C
8.	HP1507	STREET LIGHTS IMPROVEMENT - ADDITIONAL FUNDING, OAHU					
		COMPLETION OF STREET LIGHTS INSTALLATION ON KAMEHAMEHA HIGHWAY BETWEEN LAIE AND KAHUKU.					
		CONSTRUCTION			10		
		TOTAL FUNDING	TRN		10C		C
9.	HP1307	TWO-WAY LEFT-TURN LANE ON KAMEHAMEHA HIGHWAY, WAHIAWA, OAHU					
		INSTALLATION OF A CONTINUOUS TWO-WAY LEFT-TURN LANE ON KAMEHAMEHA HIGHWAY FROM AVOCADO/OHAI STREETS TOWARDS KILANI AVENUE.					
		DESIGN			20		
		CONSTRUCTION			105		
		TOTAL FUNDING	TRN		125C		C
10.	HP2512	PALOLO RETAINING WALL, OAHU					
		CONSTRUCTION OF RETAINING WALL BORDERING 10TH AVENUE.					
		CONSTRUCTION			79		
		TOTAL FUNDING	TRN		79C		C
11.	SP2402	PUUHULU ROAD STREAM BRIDGE, OAHU					
		PLANS AND DESIGN FOR FLOOD CONTROL IMPROVEMENTS AT PUUHULU ROAD STREAM BRIDGE.					
		PLANS			10		
		DESIGN			10		
		TOTAL FUNDING	TRN		20C		C
12.	JP1020	WAIMANALO FLOOD ALLEVIATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR WELLS AND/OR DRAINAGE SYSTEMS TO ALLEVIATE FLOODING FRONTING THE POST OFFICE, BUSINESSES, AND HOMES ON KALANIANAOLE HIGHWAY FROM PUUONE STREET TO ALA KOA STREET IN WAIMANALO.					
		PLANS			5		
		DESIGN			10		
		CONSTRUCTION			120		
		TOTAL FUNDING	TRN		135C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
TRN511 - HAWAII HIGHWAYS							
13.	HP0402	PEDESTRIAN WALK ON AKAKA FALLS ROAD, HAWAII					
		PLANS, LAND ACQUISITION, AND DESIGN FOR ASPHALT WALKWAY AND APPURTENANCES ON AKAKA FALLS ROAD, FROM HONOMU POST OFFICE TOWARD MAUKA.					
		PLANS				1	
		LAND				15	
		DESIGN				34	
		TOTAL FUNDING	TRN			50C	C
14.	HP0603	SOLAR POWERED EMERGENCY PHONE ON KAAHUMANU HIGHWAY, HAWAII					
		INSTALL 1 EMERGENCY PHONE ON QUEEN KAAHUMANU HIGHWAY.					
		CONSTRUCTION				9	
		TOTAL FUNDING	TRN			9C	C
15.	SP0101	STREET LIGHTS, FIRST SENATORIAL DISTRICT, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR STREET OR TRAFFIC LIGHTS AT VARIOUS INTERSECTIONS IN THE FIRST SENATORIAL DISTRICT, COUNTY OF HAWAII.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				37	
		EQUIPMENT				1	
		TOTAL FUNDING	TRN			40C	C

D. ENVIRONMENTAL PROTECTION

LNR404 - WATER RESOURCES

1.	HP2512	UPPER LA'I ROAD WATER TANK, OAHU					
		CONSTRUCTION OF A NEW WATER TANK, ASPHALT, EASEMENT IMPROVEMENT, BOOSTER PUMP, AND APPURTENANCES FOR PALOLO FARM AREA.					
		CONSTRUCTION				34	
		TOTAL FUNDING	LNR			34C	C

E. HEALTH

HTH211 - HILO HOSPITAL

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
1.	HP0302	HILO HOSPITAL, HAWAII DESIGN OF HANDICAP PARKING FOR HILO HOSPITAL.					
		DESIGN			10		
		TOTAL FUNDING	AGS		10C		C
HTH214 - KOHALA HOSPITAL							
2.	SP0301	KOHALA HOSPITAL, HAWAII PLANS, LAND ACQUISITION AND DESIGN TO ADD A 20-BED LONG TERM CARE WING TO THE EXISTING FACILITY INCLUDING EQUIPMENT, NURSING STATION AND SPECIAL ACTIVITIES AREA FOR ALZHEIMERS DISEASE PATIENTS.					
		PLANS			1		
		LAND			1		
		DESIGN			33		
		TOTAL FUNDING	AGS		35C		C
HTH223 - KULA HOSPITAL							
3.	JP0407	KULA HOSPITAL, MAUI PLANS, DESIGN, AND CONSTRUCTION FOR OUT-PATIENT CLINIC ON THE GROUNDS OF KULA HOSPITAL.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			38		
		TOTAL FUNDING	AGS		40C		C
HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL							
4.	HP5125	KAUAI VETERANS MEMORIAL HOSPITAL, KAUAI EQUIPMENT FOR THE REPLACEMENT OF THE OUTDATED, NON-EPA STANDARD INCINERATOR.					
		EQUIPMENT			85		
		TOTAL FUNDING	AGS		85C		C
HTH242 - LEAHI HOSPITAL							
5.	SP1302	LEAHI HOSPITAL NURSES' DORMITORY, OAHU PLANS, DESIGN AND CONSTRUCTION FOR THE RENOVATIONS AND/OR IMPROVEMENTS TO THE NURSES' DORMITORY AT LEAHI HOSPITAL.					
		PLANS			1		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			1		
		CONSTRUCTION			138		
		TOTAL FUNDING	AGS		140C		C
HTH610 - ENVIRONMENTAL HEALTH SERVICES							
6.		HP2211 RELATING TO KALANIANAOLE HIGHWAY WIDENING PROJECT/ALL NIGHT CONSTRUCTION					
		TO PROVIDE AIR CONDITIONERS TO HOMES ALONG THE CONSTRUCTION ROUTE OF KAL HIGHWAY TO HELP EASE THE ENVIRONMENTAL IMPACT OF NOISE AND DUST DURING ALL-NIGHT CONSTRUCTION.					
		EQUIPMENT			125		
		TOTAL FUNDING	AGS		125C		C
HTH907 - GENERAL ADMINISTRATION							
7.		HP2010 WAIMANALO HEALTH CENTER, OAHU					
		DESIGN AND CONSTRUCT SEWAGE LATERAL HOOK-UP, WATER LINE AND WATER METER.					
		DESIGN			3		
		CONSTRUCTION			12		
		TOTAL FUNDING	AGS		15C		C
F. SOCIAL SERVICES							
DEF112 - SERVICES TO VETERANS							
1.		SP2501 VETERAN'S CENTER, KAUAI					
		CONSTRUCTION AND EQUIPMENT FOR A KAUAI VETERAN'S CENTER TO INCLUDE SEWER, WATER, FURNITURE, AND OTHER EQUIPMENT.					
		CONSTRUCTION			215		
		EQUIPMENT			5		
		TOTAL FUNDING	DEF		220C		C
HMS220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE							
2.		HP3920 KAAHUMANU HOUSING, OAHU					
		PLANS, DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO THE PLAY AREA, TO INCLUDE LANDSCAPING.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			27		

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	DHS		29C		C
3.	HP3417	KALANIHUIA ELDERLY HOUSING PROJECT, OAHU					
		DESIGN AND CONSTRUCTION FOR FOUR SECURITY LIGHTS FOR BUILDINGS.					
		DESIGN			2		
		CONSTRUCTION			6		
		TOTAL FUNDING	DHS		8C		C
4.	HP1005	MAUNALOA HOUSING PROJECT, MOLOKAI					
		DESIGN AND CONSTRUCTION OF SIDEWALKS FOR MAUNALOA HOUSING PROJECT.					
		DESIGN			3		
		CONSTRUCTION			30		
		TOTAL FUNDING	DHS		33C		C
5.	SP0801	HOOKIPA WASTE RECEPTACLES, KAHALUU, OAHU					
		CONSTRUCTION FOR THE INSTALLATION OF WASTE RECEPTACLES AT HOOKIPA.					
		CONSTRUCTION			3		
		TOTAL FUNDING	HMS		3C		C
6.	HP3517	PUNCHBOWL HOMES, OAHU					
		DESIGN AND CONSTRUCTION FOR REFURBISHING BUILDINGS AND GROUNDS FOR SAFETY AND PROPER MAINTENANCE.					
		DESIGN			2		
		CONSTRUCTION			23		
		TOTAL FUNDING	DHS		25C		C
7.	HP4924	WAIMAHA SUNFLOWER PROJECT, OAHU					
		INSTALLATION OF WASTE RECEPTACLES.					
		CONSTRUCTION			4		
		TOTAL FUNDING	DHS		4C		C
8.	HP5125	HAWAII HOUSING AUTHORITY, KEKAHA HA'AHEO, KAUAI					
		CONSTRUCTION FOR THE INSTALLATION OF PARKING LOT BARRICADES.					
		CONSTRUCTION			10		
		TOTAL FUNDING	HMS		10C		C
9.	H5125A	HAWAII HOUSING AUTHORITY, HALE HOONANEA, ELEELE, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION FOR THE INSTALLATION OF REAR SCREEN DOORS.					
		CONSTRUCTION			12		
		TOTAL FUNDING	HMS		12C		C
10.	HP5025	HAWAII HOUSING AUTHORITY, HALE NANI KAI O KEA, KAPAA, KAUAI					
		CONSTRUCTION FOR THE INSTALLATION OF REAR SCREEN DOORS.					
		CONSTRUCTION			14		
		TOTAL FUNDING	HMS		14C		C
GOV602 - ELDERLY							
11.	HP2312	SENIOR CITIZEN CENTER; EAST HONOLULU, OAHU					
		INITIAL PLANS.					
		PLANS			10		
		TOTAL FUNDING	AGS		10C		C
G. FORMAL EDUCATION							
EDN105 - REGULAR INSTRUCTION PROGRAM							
1.	HP4221	AIEA HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR SECURITY GATE UNDER GYM.					
		DESIGN			5		
		CONSTRUCTION			33		
		TOTAL FUNDING	AGS		38C		C
2.	SP2101	AIEA HIGH SCHOOL, OAHU					
		CONSTRUCTION FOR ADDITIONAL IMPROVEMENTS FOR THE LOCKER/SHOWER ROOM AT AIEA HIGH SCHOOL GYMNASIUM.					
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		250C		C
3.	HP4121	AIEA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR SECURITY SCREENS FOR TYPING ROOM A-5.					
		DESIGN			2		
		CONSTRUCTION			9		
		TOTAL FUNDING	AGS		11C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
4.	HP4121	AIEA INTERMEDIATE SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR SECURITY SCREENS FOR WEIGHT ROOM.					
		DESIGN			2		
		CONSTRUCTION			8		
		TOTAL FUNDING	AGS		10C		C
5.	HP1910	AIKAHI ELEMENTARY SCHOOL, OAHU INSTALLATION OF SIDEWALK TO CONNECT SCHOOL BUILDING.					
		PLANS			1		
		DESIGN			2		
		CONSTRUCTION			13		
		TOTAL FUNDING	AGS		16C		C
6.	JP1223	AINA HAINA ELEMENTARY SCHOOL, OAHU PLANS, DESIGN, AND CONSTRUCTION TO ENCLOSE THE LANAI'S OF BUILDINGS A, B, C, AND D, AND OTHER IMPROVEMENTS.					
		PLANS			1		
		DESIGN			2		
		CONSTRUCTION			42		
		TOTAL FUNDING	AGS		45C		C
7.	JP1530	ALA WAI ELEMENTARY SCHOOL, OAHU DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE REPLACEMENT OF HAZARDOUS LOUVRES AND/OR WINDOWS.					
		DESIGN			10		
		CONSTRUCTION			160		
		EQUIPMENT			10		
		TOTAL FUNDING	AGS		180C		C
8.	JP3015	ALA WAI ELEMENTARY SCHOOL, OAHU EXTEND PARKING LOT BY PAVING IT, AND INSTALL PROPER DRAINAGE.					
		CONSTRUCTION			50		
		TOTAL FUNDING	AGS		50C		C
9.	HP3920	ALIAMANU INTERMEDIATE SCHOOL, OAHU PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATIONS TO THE PHYSICAL EDUCATION BUILDING.					
		PLANS			1		
		DESIGN			4		
		CONSTRUCTION			13		
		TOTAL FUNDING	AGS		18C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
10.	SP1202	ALIOLANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL OF FRIABLE ASBESTOS IN BUILDING A.					
		DESIGN			10		
		CONSTRUCTION			100		
		TOTAL FUNDING	AGS		110C		C
11.	JP4623	JAMES CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN FOR TWO WATER FOUNTAINS AT THE BASEBALL FIELD.					
		DESIGN			2		
		TOTAL FUNDING	AGS		2C		C
12.	JP4623	JAMES CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A SCOREBOARD AT THE BASEBALL FIELD.					
		DESIGN			2		
		CONSTRUCTION			2		
		TOTAL FUNDING	AGS		4C		C
13.	JP4623	JAMES CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR CHAIN LINK FENCE FOR THE BASEBALL FIELD.					
		DESIGN			3		
		CONSTRUCTION			13		
		TOTAL FUNDING	AGS		16C		C
14.	JP4623	JAMES CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A STORAGE ROOM FOR THE BASEBALL FIELD.					
		DESIGN			3		
		CONSTRUCTION			9		
		TOTAL FUNDING	AGS		12C		C
15.	SP2303	JAMES CAMPBELL HIGH SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR VARIOUS FACILITIES AND SCHOOL IMPROVEMENTS FOR CAMPBELL HIGH SCHOOL. THIS PROJECT MAY BE COMBINED WITH ANY PREVIOUS PROJECT FOR CAMPBELL HIGH SCHOOL.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			64		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		67C		C
16.	JP4623	JAMES CAMPBELL HIGH SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN AND CONSTRUCTION FOR A NEW SCOREBOARD FOR THE GYMNASIUM.					
		DESIGN			2		
		CONSTRUCTION			8		
		TOTAL FUNDING	AGS		10C		C
17.	SP0903	CASTLE HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AIR CONDITIONING IN THE COMPUTER ROOM (ROOM 50).					
		DESIGN			5		
		CONSTRUCTION			13		
		TOTAL FUNDING	AGS		18C		C
18.	JS0809	CASTLE HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR NEW BASEBALL DUG-OUTS AND THE INSTALLATION OF CHAIN LINK FENCE AROUND THE BASEBALL FIELD.					
		DESIGN			2		
		CONSTRUCTION			50		
		TOTAL FUNDING	AGS		52C		C
19.	HP3517	CENTRAL INTERMEDIATE SCHOOL, OAHU					
		EQUIPMENT FOR STUDENT/TEACHER STUDY/WORKROOM.					
		EQUIPMENT			15		
		TOTAL FUNDING	AGS		15C		C
20.	SP0906	ENCHANTED LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF SECURITY SCREENS FOR THE COMPUTER ROOM (D-3).					
		DESIGN			2		
		CONSTRUCTION			7		
		TOTAL FUNDING	AGS		9C		C
21.	SP2304	EWA BEACH ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE PUBLIC ADDRESS SYSTEM IN BUILDING F.					
		DESIGN			2		
		CONSTRUCTION			35		
		TOTAL FUNDING	AGS		37C		C
22.	JP2036	FARRINGTON HIGH SCHOOL, OAHU					
		PHASE I PLANS AND DESIGN TO RESURFACE FIELD, INCLUDING TRACK AND FOOTBALL FIELD, WITH SPRINKLER SYSTEM.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PLANS DESIGN			199		
		TOTAL FUNDING	AGS		100C		C
23.	SP0303	HAAHEO ELEMENTARY SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION OF PAVED AREA FOR BUS LOADING AND ADDITIONAL PARKING SPACES.					
		DESIGN			124		
		CONSTRUCTION			25C		C
		TOTAL FUNDING	AGS		25C		C
24.	SP1103	HAHAIONE ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN AND CONSTRUCTION OF COVERED WALKWAYS FOR HAHAIONE ELEMENTARY SCHOOL.					
		PLANS DESIGN			52		
		CONSTRUCTION			28		
		TOTAL FUNDING	AGS		35C		C
25.	HP0603	HANA ELEMENTARY AND HIGH SCHOOL, MAUI					
		EQUIPMENT FOR HANA ELEMENTARY AND HIGH SCHOOL.					
		EQUIPMENT			14		
		TOTAL FUNDING	AGS		14C		C
26.	SP0702	HELEMANO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PAVING AND FENCING OF AREA ADJACENT TO THE FRONT PARKING LOT.					
		DESIGN			15		
		CONSTRUCTION			76		
		TOTAL FUNDING	AGS		91C		C
27.	SP2201	HIGHLANDS INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF THE RETAINING WALL FRONTING "I", "B", AND "D" BUILDINGS.					
		DESIGN			3		
		CONSTRUCTION			60		
		TOTAL FUNDING	AGS		63C		C
28.	HP0302	HILO HIGH SCHOOL, HAWAII					
		INSTALLATION OF AIR CONDITIONERS IN THE COMPUTER ROOM AND "L" BUILDING AT HILO HIGH SCHOOL.					
		DESIGN			1		

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION			18		
		TOTAL FUNDING	AGS		19C		C
29.	JH2512	HOKULANI ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION OF A WALL TO CREATE TWO SELF CONTAINED CLASSROOMS.					
		DESIGN			5		
		CONSTRUCTION			14		
		TOTAL FUNDING	AGS		19C		C
30.	HP0804	IAO INTERMEDIATE SCHOOL, MAUI					
		CONSTRUCT ROOF BETWEEN BUILDING "G" AND "C" AND ALSO BETWEEN THE BOYS AND GIRLS LOCKER ROOMS.					
		WIDEN SIDEWALK TO SIX FEET ON CAMPUS DUE TO INCREASED STUDENT ENROLLMENT.					
		CONSTRUCT RETAINING WALLS WHERE NEEDED.					
		PLANS			1		
		DESIGN			2		
		CONSTRUCTION			65		
		TOTAL FUNDING	AGS		68C		C
31.	JP4623	ILMA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL FLOOR CARPETING IN BAND ROOM.					
		DESIGN			8		
		CONSTRUCTION			10		
		TOTAL FUNDING	AGS		18C		C
32.	HP2512	JARRETT INTERMEDIATE SCHOOL, OAHU					
		CONSTRUCTION FOR INSTALLATION OF SECURITY SCREENS IN THE D-3 COMPUTER AND EQUIPMENT ROOMS.					
		CONSTRUCTION			8		
		TOTAL FUNDING	AGS		8C		C
33.	SP0703	KAALA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR CHAIN LINK FENCE EXTENSION NEAR MAHELE AND CALIFORNIA AVENUE.					
		DESIGN			5		
		CONSTRUCTION			20		
		TOTAL FUNDING	AGS		25C		C
34.	SP0904	KAELEPULU ELEMENTARY SCHOOL, OAHU					
		PLANS TO CONDUCT A DRAINAGE STUDY TO ASSESS PROBLEMS OF THE HILLSIDE BEHIND BUILDING C.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PLANS			2		
		TOTAL FUNDING	AGS		2C		C
35.	SP0905	KAELEPULU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL TWO OUTSIDE FLOOD LIGHTS ON BUILDING B.					
		DESIGN			2		
		CONSTRUCTION			5		
		TOTAL FUNDING	AGS		7C		C
36.	HP1407	KAHUKU ELEMENTARY SCHOOL, OAHU					
		EXTERIOR PAINTING OF TWO PORTABLE CLASSROOMS, KAHUKU ELEMENTARY SCHOOL.					
		CONSTRUCTION			10		
		TOTAL FUNDING	AGS		10C		C
37.	HP0804	KAHULUI ELEMENTARY AND INTERMEDIATE SCHOOL, MAUI					
		CONSTRUCT CONCRETE SIDEWALK, EIGHT FEET WIDE, BETWEEN CLASSROOMS I AND G, G AND E, AND E AND C.					
		CONSTRUCTION			40		
		TOTAL FUNDING	AGS		40C		C
38.	HP1910	KAILUA ELEMENTARY SCHOOL, OAHU					
		ADDITION OF SECURITY SCREENS AND AIR CONDITIONING TO PROTECT COMPUTER ROOM.					
		PLANS			2		
		DESIGN			7		
		CONSTRUCTION			66		
		TOTAL FUNDING	AGS		75C		C
39.	SP1001	KAILUA INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS, INCLUDING SECURITY WINDOWS FOR SPECIAL EDUCATION ROOM AND THE PURCHASE AND INSTALLATION OF AN INTERCOM SYSTEM FOR THE SCHOOL.					
		DESIGN			5		
		CONSTRUCTION			65		
		EQUIPMENT			40		
		TOTAL FUNDING	Q		110C		C
40.	HP2814	KAIMUKI HIGH SCHOOL, OAHU					
		RENOVATION OF RESTROOM FIXTURES AND PIPES.					
		PLANS			20		
		EQUIPMENT			80		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	AGS	100C			C
41.	SP1405	KAIMUKI HIGH SCHOOL, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR PAVEMENT AND IMPROVEMENTS OF ROADWAY BY THE THEATER/LEARNING CENTER.					
		PLANS		7			
		DESIGN		7			
		CONSTRUCTION		51			
		TOTAL FUNDING	AGS	65C			C
42.	HP1910	KAINALU ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION OF COVERED WALKWAY CONNECTING BUILDINGS.					
		DESIGN		4			
		TOTAL FUNDING	AGS	4C			C
43.	HP3613	KAIULANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF PERMANENT OUTDOOR STAGE.					
		DESIGN		1			
		CONSTRUCTION		19			
		TOTAL FUNDING	AGS	20C			C
44.	HP1910	KALAHEO HIGH SCHOOL, OAHU					
		INSTALLATION OF STUDENT LOCKERS AT KALAHEO HIGH SCHOOL.					
		PLANS		1			
		DESIGN		2			
		CONSTRUCTION		27			
		TOTAL FUNDING	AGS	30C			C
45.	JH2312	KALANI HIGH SCHOOL, OAHU					
		ELECTRIC CONDUITS FOR POWER TO THE AIR CONDITIONERS FOR THE COMPUTER ROOM AND REPLACE WOODEN LOUVERS WITH GLASS LOUVERS.					
		DESIGN		7			
		CONSTRUCTION		27			
		TOTAL FUNDING	AGS	34C			C
46.	SP0601	KALEIOPUU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF A THREE HUNDRED FOOT CHAIN LINK FENCE AT THE ENTRANCE OF KALEIOPUU ELEMENTARY SCHOOL.					
		DESIGN		2			
		CONSTRUCTION		10			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		TOTAL FUNDING	AGS		12C		C
47.	HP2111	KAMILOIKI ELEMENTARY SCHOOL, OAHU					
		CORK OR TACKBOARD ON CLASS ROOM PARTITIONS.					
		CONSTRUCTION			30		
		TOTAL FUNDING	AGS		30C		C
48.	SP1104	KAMILOIKI ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF LIGHTS WITH TIMERS FOR THE PARKING LOT.					
		PLANS			5		
		DESIGN			5		
		CONSTRUCTION			20		
		EQUIPMENT			20		
		TOTAL FUNDING	AGS		50C		C
49.	SP0601	KANOELANI ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION FOR A SIDEWALK FROM BUILDING A AND B TO THE PORTABLES.					
		CONSTRUCTION			20		
		TOTAL FUNDING	AGS		20C		C
50.	HP0302	KAPIOLANI ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR BUILDING F WINDOWS AT KAPIOLANI SCHOOL.					
		CONSTRUCTION			11		
		EQUIPMENT			22		
		TOTAL FUNDING	AGS		33C		C
51.	SP0901	KAPUNAHALA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE CONVERSION OF DOUBLE CLASSROOMS INTO SINGLE CLASSROOMS (A3-A4, A5-A6, AND B1-B2).					
		DESIGN			9		
		CONSTRUCTION			36		
		TOTAL FUNDING	AGS		45C		C
52.	SP1101	KAISER HIGH SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE REPLACEMENT AND INSTALLATION OF A NEW PUBLIC ADDRESS SYSTEM FOR KAISER HIGH SCHOOL.					
		PLANS			15		
		DESIGN			5		
		CONSTRUCTION			25		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		EQUIPMENT			75		
		TOTAL FUNDING	AGS		120C		C
53.	HP4924	KILAUEA ELEMENTARY SCHOOL, KAUAI					
		ONE PORTABLE CLASSROOM BUILDING FOR KILAUEA ELEMENTARY SCHOOL.					
		CONSTRUCTION			50		
		TOTAL FUNDING	AGS		50C		C
54.	JH5025	KAUAI HIGH SCHOOL, KAUAI					
		PLANS AND CONSTRUCTION FOR ONE PORTABLE CLASSROOM BUILDING.					
		PLANS			12		
		CONSTRUCTION			108		
		TOTAL FUNDING	AGS		120C		C
55.	HP3417	KAULUWELA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF CLASSROOM DIVIDER WALL BETWEEN S201/203 AND S202/204.					
		DESIGN			1		
		CONSTRUCTION			15		
		TOTAL FUNDING	AGS		16C		C
56.	JP1734	KAULUWELA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF FOUR CLASSROOM DIVIDER WALLS BETWEEN E1/2, E3/4, E5/6, AND E7/8.					
		DESIGN			6		
		CONSTRUCTION			60		
		TOTAL FUNDING	AGS		66C		C
57.	HP3317	KAWANANAKOA INTERMDIATE SCHOOL, OAHU					
		LOCKERS IN SIZE 12" BY 12" FOR STUDENTS.					
		EQUIPMENT			45		
		TOTAL FUNDING	AGS		45C		C
58.	HP3317	KAWANANAKOA INTERMEDIATE SCHOOL, OAHU					
		PLANS FOR COVERED STUDENT LANAI.					
		PLANS			5		
		TOTAL FUNDING	AGS		5C		C
59.	SP0501	KIHEI THIRD ELEMENTARY SCHOOL, MAUI					
		PLANS AND DESIGN FOR A THIRD					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		ELEMENTARY SCHOOL IN KIHAI.					
		PLANS			25		
		DESIGN			75		
		TOTAL FUNDING	AGS		100C		C
60.	HP4924	KILAUEA ELEMENTARY SCHOOL, KAUAI					
		DESIGN AND CONSTRUCTION FOR ONE PORTABLE CLASSROOM BUILDING.					
		DESIGN			12		
		CONSTRUCTION			108		
		TOTAL FUNDING	AGS		120C		C
61.	SP0502	KUALAPUU ELEMENTARY SCHOOL, MOLOKAI					
		PLANS AND DESIGN FOR A SIX-CLASSROOM BUILDING AT KUALAPUU ELEMENTARY SCHOOL.					
		PLANS			25		
		DESIGN			75		
		TOTAL FUNDING	AGS		100C		C
62.	SP1502	KUHIO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING FOR THE COMPUTER ROOM AT KUHIO ELEMENTARY SCHOOL.					
		DESIGN			5		
		CONSTRUCTION			45		
		TOTAL FUNDING	AGS		50C		C
63.	HP1005	LANAI HIGH AND ELEMENTARY SCHOOL, LANAI					
		CONSTRUCTION OF COVERED WALKWAYS BETWEEN CLASSROOM BUILDINGS.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			40		
		TOTAL FUNDING	AGS		42C		C
64.	J17343	LANAKILA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF COVERED WALKWAYS.					
		DESIGN			8		
		CONSTRUCTION			60		
		TOTAL FUNDING	AGS		68C		C
65.	SP0701	LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO THE FOOTBALL FIELD.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			5		
		CONSTRUCTION			65		
		TOTAL FUNDING	AGS		70C		C
66.	SP1803	LEIHOKU ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN AND CONSTRUCTION OF A CHAIN LINK FENCE AROUND THE ENTIRE CAMPUS OF LEIHOKU ELEMENTARY SCHOOL.					
		PLANS			5		
		DESIGN			5		
		CONSTRUCTION			35		
		TOTAL FUNDING	AGS		45C		C
67.	HP0804	LIHIKAI ELEMENTARY AND INTERMEDIATE SCHOOL, MAUI					
		INTERIOR IMPROVEMENTS TO PERFORMING ARTS CLASSROOM (BAND ROOM). REPAINTING AND REPLACEMENT OF WORN CARPETS AND CURTAINS.					
		REPLACEMENT OF FORTY METAL CHAIRS.					
		CONSTRUCTION			16		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		17C		C
68.	HP2613	LIHOLIHO ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION FOR A FENCE AROUND BASKETBALL COURT TO RESTRICT UNAUTHORIZED ACCESS.					
		CONSTRUCTION			20		
		TOTAL FUNDING	AGS		20C		C
69.	HP3613	LIKELIKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PLAY COURT.					
		DESIGN			1		
		CONSTRUCTION			59		
		TOTAL FUNDING	AGS		60C		C
70.	HP3920	MAKALAPA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF A TEACHERS' WORKROOM IN BUILDING I.					
		DESIGN			13		
		CONSTRUCTION			51		
		TOTAL FUNDING	AGS		64C		C
71.	JP4422	MANANA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THREE CLASSROOM WALLS.					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			4		
		CONSTRUCTION			26		
		TOTAL FUNDING	AGS		30C		C
72.	SP0902	MAUNAWILI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY FROM THE CAFETERIA TO THE PARKING LOT.					
		DESIGN			30		
		CONSTRUCTION			124		
		TOTAL FUNDING	AGS		154C		C
73.	SP0403	MAKAWAO ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT OF CARPETS FOR KINDERGARTEN AND FIRST GRADE CLASSES.					
		CONSTRUCTION			1		
		EQUIPMENT			9		
		TOTAL FUNDING	AGS		10C		C
74.	SP0404	LAHAINALUNA HIGH SCHOOL, MAUI					
		PLANS, DESIGN AND CONSTRUCTION FOR ONE PORTABLE CLASSROOM.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			73		
		TOTAL FUNDING	AGS		75C		C
75.	JP3517	MCKINLEY HIGH SCHOOL, OAHU					
		REPLACE FAULTY VENTILATION/NOISE ABATEMENT SYSTEM IN MCKINLEY'S SCIENCE BUILDING TO IMPROVE HEALTH AND LEARNING CONDITIONS FOR STUDENTS AND TEACHERS.					
		CONSTRUCTION			30		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		130C		C
76.	HP1206	MILILANI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A CLOSED CIRCUIT TV SYSTEM FOR SCHOOL COMMUNICATION AND INSTRUCTION.					
		CONSTRUCTION			31		
		TOTAL FUNDING	AGS		31C		C
77.	JP0612	MILILANI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AN INTERCOM					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		SYSTEM FOR CAMPUS SECURITY.					
		DESIGN			18		
		CONSTRUCTION			101		
		EQUIPMENT			25		
		TOTAL FUNDING	AGS		144C		C
78.	SP0601	MILILANI HIGH SCHOOL, OAHU					
		PLANS FOR A SWIMMING POOL AT MILILANI HIGH SCHOOL.					
		PLANS			140		
		TOTAL FUNDING	AGS		140C		C
79.	JP2040	MOANALUA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR BASIC PRACTICAL ARTS CLASSROOM IN ADDITION TO DISTRICT CIP.					
		DESIGN			10		
		CONSTRUCTION			200		
		TOTAL FUNDING	AGS		210C		C
80.	HP0101	MOUNTAIN VIEW ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION OF A PORTABLE CLASSROOM.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			88		
		TOTAL FUNDING	AGS		90C		C
81.	JH4221	MOMILANI ELEMENTARY SCHOOL, OAHU					
		INSTALLATION OF TWO MOVEABLE PARTITIONS FOR CLASSROOMS - PHASE I.					
		DESIGN			6		
		CONSTRUCTION			54		
		TOTAL FUNDING	AGS		60C		C
82.	HP4824	NANAKULI HIGH SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF A PORTABLE CLASSROOM BEHIND BUILDING B ON THE NANAKULI HIGH AND INTERMEDIATE CAMPUS.					
		PLANS			5		
		DESIGN			10		
		CONSTRUCTION			80		
		TOTAL FUNDING	AGS		95C		C
83.	SP0402	PAIA ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION FOR THE INSTALLATION OF CHAIN					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)					
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F		
		LINK FENCE ENCLOSING THE SCHOOL GROUNDS. CONSTRUCTION				10			
		TOTAL FUNDING	AGS			10C			C
84.		SP1205 PALOLO ELEMENTARY SCHOOL, OAHU							
		PLANS, DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A CHAIN LINK FENCE OR GUARD RAIL ALONG UNPROTECTED SIDEWALK AREAS ALONG 10TH AVENUE; ALSO ALONG THE NARROW WALKS WHICH RUN FROM 10TH AVENUE ONTO THE SCHOOL CAMPUS ALONG BOTH THE ENTRANCE AND EXIT DRIVEWAYS.							
		PLANS				1			
		DESIGN				1			
		CONSTRUCTION				38			
		TOTAL FUNDING	AGS			40C			C
85.		JH4221 PEARLRIDGE ELEMENTARY SCHOOL, OAHU							
		DESIGN AND CONSTRUCTION OF WALL IN THE C BUILDING IN C1 AND C2 PODS.							
		DESIGN				10			
		CONSTRUCTION				34			
		TOTAL FUNDING	AGS			44C			C
86.		J23485 POHAKEA ELEMENTARY SCHOOL, OAHU							
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING IN VARIOUS CLASSROOMS.							
		DESIGN				2			
		CONSTRUCTION				18			
		TOTAL FUNDING	AGS			20C			C
87.		SP1002 BLANCHE POPE ELEMENTARY SCHOOL, OAHU							
		DESIGN, CONSTRUCTION AND EQUIPMENT TO PURCHASE AND INSTALL PLAYGROUND EQUIPMENT AND ANY OTHER GROUNDS IMPROVEMENTS.							
		DESIGN				2			
		CONSTRUCTION				16			
		EQUIPMENT				12			
		TOTAL FUNDING	AGS			30C			C
88.		HP0704 PUKALANI ELEMENTARY SCHOOL, MAUI							
		PLANS AND INSTALLATION OF ONE PORTABLE CLASSROOM.							
		PLANS				1			
		DESIGN				1			
		EQUIPMENT				98			
		TOTAL FUNDING	AGS			100C			C

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
89.	SP0401	PUKALANI ELEMENTARY SCHOOL, MAUI					
		PLANS, DESIGN AND CONSTRUCTION FOR PARKING LOT IMPROVEMENTS.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			98		
		TOTAL FUNDING	AGS		100C		C
90.	JH3920	ADMIRAL ARTHUR RADFORD HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF A REPLACEMENT BACKSTOP FOR THE BASEBALL FIELD.					
		DESIGN			6		
		CONSTRUCTION			22		
		TOTAL FUNDING	AGS		28C		C
91.	HP3517	ROYAL ELEMENTARY SCHOOL, OAHU					
		EQUIPMENT FOR STUDENT/TEACHER STUDY/WORKROOM.					
		EQUIPMENT			10		
		TOTAL FUNDING	AGS		10C		C
92.	HP4121	ALVAH SCOTT ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PURCHASE AND INSTALLATION OF AIR CONDITIONING UNITS IN BUILDING F.					
		DESIGN			4		
		CONSTRUCTION			30		
		EQUIPMENT			12		
		TOTAL FUNDING	AGS		46C		C
93.	HP1407	SUNSET BEACH ELEMENTARY SCHOOL, OAHU					
		EXTERIOR PAINTING OF PORTABLE BUILDINGS; P15, P16, P17, P18, P24, AND GANG TOILETS.					
		CONSTRUCTION			28		
		TOTAL FUNDING	AGS		28C		C
94.	HP3819	38TH REPRESENTATIVE DISTRICT SCHOOLS, OAHU					
		CONSTRUCTION FOR UNRESTRICTED CAPITAL IMPROVEMENT PROJECTS FOR THE 38TH REPRESENTATIVE DISTRICT.					
		CONSTRUCTION			25		
		TOTAL FUNDING	AGS		25C		C

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
95.	SP2401	WAIANAE HIGH SCHOOL, OAHU CONSTRUCTION AND EQUIPMENT FOR THE WEIGHT ROOM AND OTHER APPURTENANCES.					
		CONSTRUCTION		200			
		EQUIPMENT		30			
		TOTAL FUNDING	AGS	230C			C
96.	HP4221	WAI AU ELEMENTARY SCHOOL, OAHU SECURITY SCREENS FOR COMPUTER ROOM WINDOWS.					
		DESIGN		2			
		CONSTRUCTION		18			
		TOTAL FUNDING	AGS	20C			C
97.	HP4221	WAIMALU ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR THE CHANGE AND REFURBISHING OF GANG TOILETS IN BUILDINGS A, D, AND E.					
		DESIGN		14			
		CONSTRUCTION		55			
		TOTAL FUNDING	AGS	69C			C
98.	SP1003	WAIMANALO ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR AIR CONDITIONING OF THE COMPUTER LABS IN BUILDING "T".					
		DESIGN		5			
		CONSTRUCTION		30			
		TOTAL FUNDING	AGS	35C			C
99.	HP0603	WAIMEA ELEMENTARY AND INTERMEDIATE SCHOOL, KAUAI DESIGN AND CONSTRUCTION FOR ONE PORTABLE CLASSROOM AT WAIMEA ELEMENTARY AND INTERMEDIATE SCHOOL.					
		DESIGN		10			
		CONSTRUCTION		80			
		TOTAL FUNDING	AGS	90C			C
100.	HP3216	WASHINGTON INTERMEDIATE SCHOOL, OAHU CONSTRUCTION, EQUIPMENT, AND VARIOUS APPURTENANCES FOR FOUR STUDENT AND ONE STAFF RESTROOMS IN THE FRED WRIGHT BUILDING AT WASHINGTON INTERMEDIATE SCHOOL.					
		CONSTRUCTION		30			
		EQUIPMENT		20			
		TOTAL FUNDING	AGS	50C			C

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
101.	HP2312	JOHN H. WILSON ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PLAYGROUND IMPROVEMENTS.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			12		
		TOTAL FUNDING	AGS		14C		C
102.	SP0102	IMPROVEMENTS AND DEVELOPMENTS, DEPARTMENT OF EDUCATION, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR DEPARTMENT OF EDUCATION PROJECTS IN THE FIRST SENATORIAL DISTRICT.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			207		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		210C		C
EDN106 - OTHER REGULAR INSTRUCTION							
103.	JP4723	BARBERS POINT ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDINGS TO HOUSE THE CHALLENGER LEARNING CENTER.					
		DESIGN			10		
		CONSTRUCTION			25		
		TOTAL FUNDING	AGS		35C		C
104.	J12234	KALANI HIGH SCHOOL, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE CHORUS/BANDROOM TO INCLUDE A SMALL AUDITORIUM WITH CARPETING, THEATER SEATS FOR APPROXIMATELY 100 PEOPLE AND OTHER IMPROVEMENTS.					
		PLANS			2		
		DESIGN			18		
		CONSTRUCTION			50		
		TOTAL FUNDING	AGS		70C		C
EDN107 - SPECIAL EDUCATION							
105.	HP1407	HALEIWA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCT COVERING FOR EXISTING WALKWAY FOR SPECIAL EDUCATION AND OTHER STUDENTS, HALEIWA ELEMENTARY SCHOOL.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			5		
		CONSTRUCTION			45		
		TOTAL FUNDING	AGS		50C		C
106.	HP2413	JEFFERSON ORTHOPEDIC SCHOOL, OAHU					
		INSTALLATION OF AN ELECTRIC WHEELCHAIR LIFT ON THE STAGE OF THE CAFETORIUM.					
		DESIGN			3		
		CONSTRUCTION			15		
		TOTAL FUNDING	AGS		18C		C
107.	HP2412	KAIMUKI/POHUKAINA SPECIAL EDUCATION SCHOOL, OAHU					
		SHOWERS FOR BATHROOM, V-5 (PART HOME LIVING UNIT); BATHROOM, C-BLDG-G&B.					
		DESIGN			10		
		CONSTRUCTION			65		
		TOTAL FUNDING	AGS		75C		C
108.	HP1407	WAIALUA ELEMENTARY SCHOOL, OAHU					
		CONVERSION OF LIGHT FIXTURES IN SPECIAL EDUCATION CLASSROOM, WAIALUA ELEMENTARY SCHOOL.					
		CONSTRUCTION			8		
		TOTAL FUNDING	AGS		8C		C
109.	HP1407	SPECIAL EDUCATION CLASSROOM IMPROVEMENTS					
		INSTALL CARPET IN SPECIAL EDUCATION CLASSROOM.					
		CONSTRUCTION			7		
		TOTAL FUNDING	AGS		7C		C
EDN203 - SCHOOL ADMINISTRATION							
110.	HP4623	EWA BEACH ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A PUBLIC ADDRESS SYSTEM IN BUILDING #F.					
		CONSTRUCTION			12		
		EQUIPMENT			25		
		TOTAL FUNDING	AGS		37C		C
111.	SP1801	KAPALAMA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO COMPLETE THE AIR CONDITIONING OF THE ADMINISTRATION/LIBRARY BUILDING.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN			10		
		CONSTRUCTION			70		
		TOTAL FUNDING	AGS		80C		C
112.	HP3216	WASHINGTON INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR PUBLIC ADDRESS SYSTEM AND POWER INFRASTRUCTURE REQUIREMENTS.					
		DESIGN			7		
		CONSTRUCTION			10		
		EQUIPMENT			8		
		TOTAL FUNDING	AGS		25C		C
EDN204 - INSTRUCTIONAL MEDIA							
113.	HP3517	CENTRAL INTERMEDIATE SCHOOL, OAHU					
		DESIGN FOR RENOVATION AND ENLARGEMENT OF LIBRARY.					
		DESIGN			16		
		TOTAL FUNDING	AGS		16C		C
114.	HP3819	FORT SHAFTER ELEMENTARY SCHOOL, OAHU					
		PLAN AND INSTALL AIR CONDITIONING IN THE FORT SHAFTER ELEMENTARY SCHOOL LIBRARY.					
		PLANS			5		
		EQUIPMENT			35		
		TOTAL FUNDING	AGS		40C		C
115.	SP1203	HOKULANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AIR CONDITIONING FOR THE LIBRARY.					
		DESIGN			5		
		CONSTRUCTION			20		
		TOTAL FUNDING	AGS		25C		C
116.	HP4623	ILIMA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL FLOOR CARPETING IN THE ILIMA INTERMEDIATE SCHOOL LIBRARY.					
		DESIGN			11		
		CONSTRUCTION			3		
		TOTAL FUNDING	AGS		14C		C
117.	HP2010	KAILUA INTERMEDIATE SCHOOL, OAHU					
		INSTALLATION OF COMPUTERIZED CIRCULATION SYSTEM FOR SECURITY PURPOSES FOR THE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		KAILUA INTERMEDIATE SCHOOL LIBRARY.					
		DESIGN			1		
		CONSTRUCTION			5		
		EQUIPMENT			9		
		TOTAL FUNDING	AGS		15C		C
118.	JP1937	KALIHI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF SCHOOL LIBRARY, EXPANSION AND IMPROVEMENTS, INCLUDING INSTALLATION OF AIR CONDITIONING.					
		DESIGN			25		
		CONSTRUCTION			150		
		TOTAL FUNDING	AGS		175C		C
119.	SP2001	KALIHI KAI ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THE RENOVATION OR CONVERSION OF THE SCHOOL CAFETORIUM INTO A NEW LIBRARY.					
		PLANS			5		
		DESIGN			10		
		CONSTRUCTION			75		
		TOTAL FUNDING	AGS		90C		C
120.	HP2111	KOKO HEAD ELEMENTARY SCHOOL, OAHU					
		COVERED WALKWAYS AROUND THE KOKO HEAD ELEMENTARY SCHOOL LIBRARY TO OTHER BUILDINGS.					
		DESIGN			8		
		CONSTRUCTION			72		
		TOTAL FUNDING	AGS		80C		C
121.	JP1733	MAEMAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR EXISTING LIBRARY TO INCLUDE DUMB WAITER, EQUIPMENT AND FURNITURE TO ALLOW COMPLETION OF THE ONGOING PROJECT.					
		DESIGN			10		
		CONSTRUCTION			45		
		TOTAL FUNDING	AGS		55C		C
122.	J17335	NUUANU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONTSTRUCTION TO RENOVATE AND AIR-CONDITION THE NUUANU ELEMENTARY SCHOOL LIBRARY TO PRESERVE BOOKS AND AUDIOVISUAL AND COMPUTERS; AND TO PREVENT THE OCCURRENCES OF MOLD AND MILDEW ON THE CARPET AND SHELVES.					
		DESIGN			45		

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION			76		
		TOTAL FUNDING	AGS		121C		C
123.	HP1709	PUOHALA ELEMENTARY SCHOOL, OAHU.					
		DESIGN FOR RENOVATION AND AIR-CONDITIONING OF PUOHALA ELEMENTARY SCHOOL LIBRARY.					
		DESIGN			105		
		TOTAL FUNDING	AGS		105C		C
124.	JP1631	ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN OF ROOSEVELT HIGH SCHOOL LIBRARY EXPANSION TO MEET EDUCATIONAL SPECIFICATION REQUIREMENTS.					
		DESIGN			150		
		TOTAL FUNDING	AGS		150C		C
125.	SP0202	WAIAKEA INTERMEDIATE SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION TO ENCLOSE THE BREEZEWAY OF THE SCHOOL LIBRARY FOR A COMPUTER CENTER FACILITY.					
		DESIGN			3		
		CONSTRUCTION			97		
		TOTAL FUNDING	AGS		100C		C
126.	HP1407	WAIALUA ELEMENTARY SCHOOL, OAHU					
		INSTALL NEW CARPET IN WAIALUA ELEMENTARY SCHOOL LIBRARY.					
		CONSTRUCTION			15		
		TOTAL FUNDING	AGS		15C		C
127.	JP1848	WAIANAE ELEMENTARY SCHOOL, OAHU					
		DESIGN OF CENTRAL AIR-CONDITIONING FOR WAIANAE ELEMENTARY SCHOOL LIBRARY. MORE FUNDS ARE NEEDED FOR DESIGN PHASE OF PROJECT.					
		DESIGN			30		
		CONSTRUCTION			30		
		TOTAL FUNDING	AGS		60C		C
128.	SP0705	WHEELER INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM AND CARPETING IN THE LIBRARY.					
		DESIGN			5		
		CONSTRUCTION			35		
		TOTAL FUNDING	AGS		40C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
EDN305 - SCHOOL FOOD SERVICES							
129.	HP3819	FERN ELEMENTARY SCHOOL, OAHU CONSTRUCT NEW CAFETERIA CEILING AT FERN ELEMENTARY SCHOOL. CONSTRUCTION				10	
		TOTAL FUNDING	AGS			10C	C
130.	HP0603	HAIKU SCHOOL, MAUI CURTAINS FOR HAIKU SCHOOL CAFETERIA. EQUIPMENT				2	
		TOTAL FUNDING	AGS			2C	C
131.	SP0704	HALEIWA ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION OF CEILING FANS FOR THE CAFETERIA. DESIGN				4	
		CONSTRUCTION				20	
		TOTAL FUNDING	AGS			24C	C
132.	HP1709	KANEOHE ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION OF IMPROVING THE LIGHTING IN THE DINING AREA OF KANEOHE ELEMENTARY SCHOOL'S CAFETERIA. DESIGN				2	
		CONSTRUCTION				18	
		TOTAL FUNDING	AGS			20C	C
133.	HP3618	KAPALAMA ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR INSTALLATION OF CEILING FANS IN KAPALAMA ELEMENTARY SCHOOL CAFETORIUM AND COOKING AREAS. DESIGN				1	
		CONSTRUCTION				19	
		TOTAL FUNDING	AGS			20C	C
134.	HP2613	LIHOLIHO ELEMENTARY SCHOOL CAFETERIA CEILING FANS, OAHU DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CEILING FANS IN LIHOLIHO ELEMENTARY SCHOOL'S CAFETERIA. DESIGN				1	
		CONSTRUCTION				1	
		EQUIPMENT				7	
		TOTAL FUNDING	AGS			9C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
135.	SP1303	LILIUOKALANI ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE ELECTRICAL SYSTEM AND SOUND SYSTEMS IN THE CAFETERIA.					
		PLANS			1		
		DESIGN			2		
		CONSTRUCTION			21		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		25C		C
136.	SP1902	LINAPUNI ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW CAFETERIA AT LINAPUNI ELEMENTARY SCHOOL.					
		PLANS			20		
		DESIGN			30		
		CONSTRUCTION			150		
		TOTAL FUNDING	AGS		200C		C
137.	J14272	NOELANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TWO SETS OF CAFETERIA PARTITIONS.					
		DESIGN			4		
		CONSTRUCTION			66		
		TOTAL FUNDING	AGS		70C		C
138.	JH2714	STEVENSON INTERMEDIATE SCHOOL, OAHU					
		INSTALLATION OF CEILING FANS IN STEVENSON INTERMEDIATE SCHOOL CAFETERIA.					
		DESIGN			2		
		CONSTRUCTION			38		
		TOTAL FUNDING	AGS		40C		C
EDN306 - SAFETY AND SECURITY SERVICES							
139.	HP4623	JAMES CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AN ASPHALT WALKWAY ALONG NORTH ROAD FRONTING JAMES CAMPBELL HIGH SCHOOL AND THE EWA BEACH COMMUNITY/SCHOOL LIBRARY.					
		DESIGN			8		
		CONSTRUCTION			8		
		TOTAL FUNDING	AGS		16C		C
140.	JP1121	KAISER HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A CEMENT WALL FOR THE SWIMMING POOL FOR SECURITY					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PURPOSES.					
		DESIGN			3		
		CONSTRUCTION			42		
		TOTAL FUNDING	AGS		45C		C
141.	JP4723	MAKAKILO ELEMENTARY SCHOOL, OAHU					
		INSTALL SECURITY GATES IN BUILDINGS C & F.					
		DESIGN			5		
		CONSTRUCTION			12		
		TOTAL FUNDING	AGS		17C		C
142.	JP1427	MANOA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A STORM SYSTEM TO DRAINAGE DITCH.					
		DESIGN			3		
		CONSTRUCTION			47		
		TOTAL FUNDING	AGS		50C		C
143.	JP2347	MAUKA LANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL A CHAIN LINK FENCE IN REAR OF THE SCHOOL PROPERTY.					
		DESIGN			3		
		CONSTRUCTION			34		
		TOTAL FUNDING	AGS		37C		C
144.	HP3317	PAUOA ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION FOR THE INSTALLATION OF A FENCE TO PROTECT CHILDREN IN LOWER RECESS AREA.					
		CONSTRUCTION			10		
		TOTAL FUNDING	AGS		10C		C
145.	HP4317	PEARL CITY HIGHLANDS ELEMENTARY SCHOOL, OAHU					
		TO ADDRESS HEALTH AND SAFETY CONCERNS BY STABILIZING THE MAUKA HILLSIDE THROUGH SITE IMPROVEMENTS.					
		DESIGN			8		
		CONSTRUCTION			45		
		TOTAL FUNDING	AGS		53C		C
146.	JH2714	ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF FENCE FOR STEVENSON INTERMEDIATE BASEBALL FIELD ALONG PROSPECT STREET.					
		DESIGN			2		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		CONSTRUCTION			68		
		TOTAL FUNDING	AGS		70C		C
147.	JP1324	WAIALAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL CURBING AND CONSTRUCT SAFETY SIDEWALK AROUND THE PERIMETER OF THE CAMPUS.					
		DESIGN			2		
		CONSTRUCTION			67		
		TOTAL FUNDING	AGS		69C		C
EDN307 - PHYSICAL PLANT OPERATIONS & MAINTENANCE							
148.	JP4723	BARBERS POINT ELEMENTARY SCHOOL, OAHU					
		INSTALL WATER SPRINKLER SYSTEM ON THE GROUNDS OF BARBERS POINT ELEMENTARY SCHOOL.					
		CONSTRUCTION			30		
		TOTAL FUNDING	AGS		30C		C
149.	HP2010	BLANCHE POPE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCT, RENOVATE AND/OR REPAIR FACILITIES AND GROUNDS.					
		DESIGN			3		
		CONSTRUCTION			27		
		TOTAL FUNDING	AGS		30C		C
150.	HP1608	HEEIA ELEMENTARY SCHOOL, OAHU					
		CONSTRUCT COVERED WALKWAY.					
		DESIGN			5		
		CONSTRUCTION			80		
		TOTAL FUNDING	AGS		85C		C
151.	HP4221	HIGHLANDS INTERMEDIATE SCHOOL, OAHU					
		DESIGN FOR A NEW SPRINKLER SYSTEM.					
		DESIGN			14		
		TOTAL FUNDING	AGS		14C		C
152.	HP0501	HOLUALOA ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION OF A PARKING LOT.					
		CONSTRUCTION			125		
		TOTAL FUNDING	AGS		125C		C
153.	JP4623	KAIMILOA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ASPHALT					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		PAVEMENT BETWEEN BUILDING #F AND PARKING AREA.					
		DESIGN			2		
		CONSTRUCTION			5		
		TOTAL FUNDING	AGS		7C		C
154.	HP0402	KALANIANAOLE ELEMENTARY SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION OF A COVERED WALKWAY.					
		DESIGN			7		
		CONSTRUCTION			68		
		TOTAL FUNDING	AGS		75C		C
155.	HP0302	KAPIOLANI ELEMENTARY SCHOOL, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION OF A DRAINAGE SYSTEM AT KAPIOLANI ELEMENTARY SCHOOL.					
		PLANS			4		
		DESIGN			5		
		CONSTRUCTION			44		
		TOTAL FUNDING	AGS		53C		C
156.	HP0603	KEALAKEHE ELEMENTARY SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR AN IRRIGATION SYSTEM.					
		DESIGN			1		
		CONSTRUCTION			9		
		TOTAL FUNDING	AGS		10C		C
157.	HP4221	LEHUA ELEMENTARY SCHOOL, OAHU					
		PLANNING STUDY FOR THE CORRECTION OF THE SINKING OF BUILDING B.					
		PLANS			15		
		TOTAL FUNDING	AGS		15C		C
158.	HP2613	LILUOKALANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF GENERAL LANDSCAPING, INCLUDING PARKING LOT AND QUEEN'S BUST.					
		DESIGN			1		
		CONSTRUCTION			9		
		TOTAL FUNDING	AGS		10C		C
159.	HP3116	LINCOLN ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION TO WIDEN EXISTING DRIVEWAY AND PARKING LOT TO PROVIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		AN ACCESS.				35	
		CONSTRUCTION				35C	C
		TOTAL FUNDING	AGS				
160.	JP3216	KING WILLIAM C. LUNALILO ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION OF PARKING LOT, LOCATED BETWEEN BUILDING E, WILL INCLUDE PAVING FENCING AND MARKING OF STALLS.				25	
		CONSTRUCTION				25C	C
		TOTAL FUNDING	AGS				
161.	HP0101	NAALEHU ELEMENTARY SCHOOL, HAWAII					
		SUPPLEMENTAL FUNDS FOR PRIOR APPROPRIATION FOR PAVED TURNAROUND AREA FOR DROP-OFF AND PICK-UP OF CHILDREN.				35	
		CONSTRUCTION				35C	C
		TOTAL FUNDING	AGS				
162.	HP1608	PARKER ELEMENTARY SCHOOL, OAHU					
		INSTALL SPRINKLER SYSTEM.				40	
		CONSTRUCTION				40C	C
		TOTAL FUNDING	AGS				
163.	HP4422	PEARL CITY ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL BEHIND SCHOOL PROPERTY LINE TO HOLD BACK EROSION OF LAND.				5	
		DESIGN				60	
		CONSTRUCTION				65C	C
		TOTAL FUNDING	AGS				
164.	HP2010	WAIMANALO ELEMENTARY & INTERMEDIATE SCHOOL, OAHU					
		TO COMPLETE FUNDING FOR LANDSCAPING FOR PLAYGROUND AREA AND ALSO FOR IMPROVEMENT, EXPANSION AND/OR RENOVATION TO EXISTING FACILITIES AND GROUNDS.				5	
		CONSTRUCTION				5C	C
		TOTAL FUNDING	AGS				
165.	JP4623	WAIPAHAU INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A GROUND SPRINKLER SYSTEM.				9	
		DESIGN				30	
		CONSTRUCTION				39C	C
		TOTAL FUNDING	AGS				

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
EDN407 - PUBLIC LIBRARIES							
166.	HP3417	LILIHA PUBLIC LIBRARY, OAHU					
		DESIGN OF AIR-CONDITIONING FOR MEETING ROOM.					
		DESIGN				10	
		TOTAL FUNDING	AGS			10C	C
167.	SP1501	MCCULLY-MOILILI PUBLIC LIBRARY, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF BIRD BARRIERS TO ALLEVIATE BIRDS ROOSTING IN THE RAFTERS WITHIN THE PUBLIC PARKING LOT AT THE MCCULLY-MOILILI PUBLIC LIBRARY.					
		PLANS				5	
		DESIGN				5	
		CONSTRUCTION				70	
		TOTAL FUNDING	AGS			80C	C
UOH215 - STUDENT SERVICES - UOH, HILO							
168.	HP0201	UNIVERSITY OF HAWAII-HILO BASEBALL FIELD RESTROOM FACILITY, HAWAII					
		PLAN, DESIGN AND CONSTRUCTION AND OTHER APPURTENANCES FOR RESTROOM FACILITIES FOR UNIVERSITY OF HAWAII-HILO BASEBALL FIELD.					
		PLANS				5	
		DESIGN				10	
		CONSTRUCTION				110	
		TOTAL FUNDING	AGS			125C	C
169.	HP0302	COMMUNITY SWIMMING POOL, UNIVERSITY OF HAWAII AT HILO, HAWAII					
		DESIGN OF A COMMUNITY SWIMMING POOL AT THE UNIVERSITY OF HAWAII AT HILO.					
		DESIGN				10	
		TOTAL FUNDING	AGS			10C	C
UOH324 - STUDENT SERVICES-LEEWARD COMMUNITY COLLEGE							
170.	JP2211	LEEWARD COMMUNITY COLLEGE, OAHU					
		PROVIDE ADDITIONAL FUNDS FOR THE DESIGN, CONSTRUCTION AND EQUIPMENT FOR MINOR IMPROVEMENTS INCLUDING NEW CONSTRUCTION AND RENOVATION OF EXISTING FACILITIES, INCLUDING SITE WORK AND UTILITIES, FOR CHILD CARE FACILITIES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
		DESIGN				17	
		CONSTRUCTION				100	
		TOTAL FUNDING	AGS			117C	C
UOH332 - PUBLIC SERVICE-WINDWARD COMMUNITY COLLEGE							
171.		HP1809 WINDWARD COMMUNITY COLLEGE, OAHU					
		MOVE A DONATED HOUSE ON TO THE CAMPUS FOR THE WINDWARD TRANSITION CENTER.					
		CONSTRUCTION				60	
		TOTAL FUNDING	UOH			60C	C
UOH334 - STUDENT SERVICES-WINDWARD COMMUNITY COLLEGE							
172.		HP1809 WINDWARD COMMUNITY COLLEGE, OAHU					
		AIR-CONDITIONING UNITS FOR IOLANI ART GALLERY, WINDWARD COMMUNITY COLLEGE.					
		CONSTRUCTION				45	
		TOTAL FUNDING	UOH			45C	C
H. CULTURE AND RECREATION							
AGS881 - PERFORMING & VISUAL ARTS EVENTS							
1.		SP1601 ALEXANDER JOY CARTWRIGHT MEMORIAL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A STATUE OR MEMORIAL TO HONOR ALEXANDER JOY CARTWRIGHT, TO BE PLACED ON THE STATE LIBRARY GROUNDS OR ANY OTHER SUITABLE LOCATION IN THE STATE CAPITOL DISTRICT.					
		PLANS				10	
		DESIGN				10	
		CONSTRUCTION				220	
		EQUIPMENT				10	
		TOTAL FUNDING	AGS			250C	C
LNR802 - HISTORIC PRESERVATION							
2.		HP3518 ART WORK, OAHU					
		DESIGN AND CONSTRUCT A WORK OF ART HONORING ALEXANDER CARTWRIGHT, TO BE PLACED ON THE STATE LIBRARY GROUNDS.					
		CONSTRUCTION				50	
		TOTAL FUNDING	AGS			50C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
3.	HP1809	ULUPO HEIAU, KAILUA, OAHU					
		APPRAISAL FEE OF 2 UNDEVELOPED LOTS (TMK 4-2-13:31) LOCATED TO THE NORTH AND EAST OF ULUPO HEIAU OF APPROXIMATELY 3.8 ACRES TO MEET THE LONG-RANGE GOAL OF SITE PRESERVATION, EXCLUDING THE AREA DEVELOPED FOR THE YMCA FACILITY.					
		PLANS			20		
		TOTAL FUNDING	AGS		20C		C
TRN801 - OCEAN-BASED RECREATION							
4.	SP0503	MALA WHARF PARK, MAUI					
		CONSTRUCTION OF RESTROOM FACILITIES AND OTHER AMENITIES AT MALA WHARF AS FUNDING PROVIDES.					
		CONSTRUCTION			75		
		TOTAL FUNDING	TRN		75C		C
I. PUBLIC SAFETY							
LNR810 - PREVENTION OF NATURAL DISASTERS							
1.	HP2714	MANOA STREAM, OAHU					
		STUDY OF MANOA STREAM FOR MAINTENANCE.					
		PLANS			20		
		TOTAL FUNDING	AGS		20C		C
2.	HP2312	WAILUPE STREAM, AINA HAINA, OAHU					
		PLANS AND DESIGN FOR FLOOD CONTROL MEASURES AND IMPROVEMENTS.					
		PLANS			2		
		DESIGN			18		
		TOTAL FUNDING	AGS		20C		C
3.	HP2714	MANOA STREAM, OAHU					
		PLANNING FOR MANOA STREAM MAINTENANCE.					
		PLANS			25		
		TOTAL FUNDING	AGS		25C		C

K. GOVERNMENT-WIDE SUPPORT**LNR101 - PUBLIC LANDS MANAGEMENT**

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
1.	SP0304	LAUPAHOEHOE HOMESTEAD ROAD, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE LAUPAHOEHOE HOMESTEAD ROAD.					
		PLANS			1		
		LAND			1		
		DESIGN			3		
		CONSTRUCTION			50		
		TOTAL FUNDING	LNR		55C		C
AGS221 - CONSTRUCTION							
2.	JP1326	KAPAHULU COMMUNITY SERVICE CENTER, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A KAPAHULU COMMUNITY SERVICE CENTER LOCATED AT 3410 CAMPBELL AVENUE.					
		PLANS			10		
		DESIGN			40		
		CONSTRUCTION			50		
		TOTAL FUNDING	AGS		100C		C
3.	SP2203	CULTURAL CENTER, PEARL CITY, OAHU					
		CONSTRUCTION FOR A CULTURAL CENTER TO INCLUDE AN AUDITORIUM LOCATED IN PEARL CITY.					
		CONSTRUCTION			52		
		TOTAL FUNDING	AGS		52C		C
4.	HP1407	WAIALUA COMMUNITY ADSSOCIATION BUILDING, OAHU					
		CONSTRUCTION FOR THE RENOVATION OF THE WAIALUA COMMUNITY ASSOCIATION BUILDING, SECOND FLOOR.					
		CONSTRUCTION			5		
		TOTAL FUNDING	AGS		5C		C
SUB201 - CITY AND COUNTY OF HONOLULU							
5.	HP2312	16TH AVENUE PARK; KAIMUKI, OAHU					
		PLANS AND DESIGN TO IMPROVE THE 16TH AVENUE PARK FOR RECREATIONAL AND PARK USE; TO INCLUDE BUT NOT LIMITED TO GRADING, LANDSCAPING, PLAYGROUND EQUIPMENT AND SIDEWALKS.					
		PLANS			2		
		DESIGN			13		
		TOTAL FUNDING	CCH		15C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
6.	SP2204	PALISADES RECREATION CENTER, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR SIDEWALKS IN THE FRONT AND SIDES OF THE RECREATION CENTER AT INTERSECTION OF KOMO MAI DRIVE AND AUMAKUA STREET.					
		PLANS			10		
		DESIGN			10		
		CONSTRUCTION			80		
		TOTAL FUNDING	CCH		100C		C
7.	JP3015	RENOVATE WAIKIKI POLICE SUB-STATION, OAHU					
		MOVE ENTRANCE FROM SIDE RELOCATING DOOR FROM SIDE TO FRONT WITH NICE ENTRANCE VISIBLE FROM KALAKAUA.					
		LAND			5		
		CONSTRUCTION			10		
		TOTAL FUNDING	CCH		15C		C
8.	SP1105	WAILUPE VALLEY STREAM, OAHU					
		CONSTRUCTION FOR THE BANK STABILIZATION OF THE WAILUPE STREAM. FUNDS TO BE MATCHED BY THE CITY AND COUNTY OF HONOLULU.					
		CONSTRUCTION			30		
		TOTAL FUNDING	CCH		30C		C
SUB301 - COUNTY OF HAWAII							
9.	SP0302	NORTH KOHALA WATER SYSTEM IMPROVEMENTS, HAWAII					
		CONSTRUCTION AND INSTALLATION OF PIPELINES AND FIRE HYDRANTS IN THE DISTRICT OF NORTH KOHALA, INCLUDING KOHALA HIGH SCHOOL, TO PROVIDE AND IMPROVE FIRE PROTECTION IN THE AREA.					
		CONSTRUCTION			100		
		TOTAL FUNDING	COH		100C		C
10.	SP1802	ONEKAHAKAHA BEACH SEAWALL EXTENSION, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION TO EXTEND THE BREAKWATER AT ONEKAHAKAHA BEACH.					
		PLANS			5		
		DESIGN			5		
		CONSTRUCTION			35		
		TOTAL FUNDING	COH		45C		C

ACT 317

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1991-92	M O F	FISCAL YEAR 1992-93	M O F
11.	SP0201	POHOIKI BEACH PARK, PUNA, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION OF COUNTY WATER LINE TO THE POHOIKI BEACH PARK.					
		PLANS			1		
		DESIGN			4		
		CONSTRUCTION			95		
		TOTAL FUNDING	COH		100C		C
SUB401 - COUNTY OF MAUI							
12.	HP1005	NAPILI FIRE STATION, MAUI					
		PLANS, DESIGN AND CONSTRUCTION FOR A FIRE STATION AND EMERGENCY SERVICES BUILDING IN NAPILI, WEST MAUI.					
		CONSTRUCTION			50		
		TOTAL FUNDING	COM		50C		C
13.	HP0905	KIHEI COMMUNITY CENTER, MAUI					
		PLANS AND DESIGN OF A COMMUNITY CENTER IN KIHEI, MAUI.					
		PLANS			25		
		DESIGN			100		
		TOTAL FUNDING	COM		125C		C
SUB501 - COUNTY OF KAUAI							
14.	SP2502	VIDINHA STADIUM TRACK, KAUAI					
		PLANS AND DESIGN FOR THE RUBBERIZATION OF THE VIDINHA STADIUM TRACK AND OTHER RELATED IMPROVEMENTS.					
		PLANS			5		
		DESIGN			25		
		TOTAL FUNDING	COK		30C		C

SECTION 3. The appropriations and authorizations in Section 2 of this Act include land acquisition, plans, design, site preparation, improvements to land, construction, equipment, and necessary off-site improvements.

SECTION 4. Where an 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 the agency with the governor's approval, shall have the power to enter into each undertaking.

SECTION 5. If the State should assume 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, or such nongovernmental agency. The credit shall be applicable regardless of when such acquisition takes place.

SECTION 6. Any law or any provision of this Act to the contrary notwithstanding, all authorizations for capital improvement projects made for fiscal year 1991-92 which are unencumbered as of June 30, 1994, shall lapse as of that date; provided that the lapsing date shall not apply to projects necessary to qualify for federal aid financing and reimbursement if the legislature redetermines that such projects are essential.

SECTION 7. Section 2 of Act 2, Special Session Laws of 1988, is amended as follows:

(1) By amending Item SUB 301-46 to read:

“46. HP0101 WATER SYSTEM IMPROVEMENTS AND DEVELOPMENTS, HAWAII

INCREMENTAL DEVELOPMENT OF[: (a) KALAPANA-KAIMU WATERLINE PHASE IV; (b) KAPOHO-POHIKI WATER SYSTEM; AND (c) KEAAU-PAHOA TRUNKLINE] WATER SYSTEM IMPROVEMENTS AND DEVELOPMENTS, FIRST SENATORIAL DISTRICT, HAWAII.

CONSTRUCTION			140
TOTAL FUNDING	COH	A	140 A”

SECTION 8. Section 2 of Act 300, Session Laws of Hawaii 1990, is amended as follows:

(1) By amending Item HMS 220-8 to read:

“[HMS 220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE

8. SP2402 KAHUMANA ELDERLY HOME, OAHU]

HTH 420 - ADULT MENTAL HEALTH

1. SP2402 KAHUMANA MENTAL HEALTH PROJECT, OAHU

DESIGN AND CONSTRUCTION TO RENOVATE BARN INTO A SHOP AND WORK AREA.
(GRANT-IN-AID)

DESIGN			1
CONSTRUCTION			79
TOTAL FUNDING	[HMS] <u>HTH</u>	A	80 A”

PART II. SPECIAL PROVISIONS

SECTION 9. GOVERNOR'S DISCRETIONARY POWERS. When it is deemed in the public interest of the State, the governor, in the governor's discretion, is authorized to use general fund savings or balances determined to be available from authorized general fund program appropriations to finance capital improvement projects authorized for this fiscal biennium in this Act, where the method of financing is designated to be the general obligation bond funds. Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

SECTION 10. If the amount specified for any capital improvement project is not totally required to complete the work of such project or after it is definitely found by the expending officer that not more than a specified amount will be required to complete such work, such unrequired amount may be expended with the approval of the governor for any other capital improvement project authorized by the legislature in this Act or in a prior year or which may be authorized by the legislature in the future.

SECTION 11. If general obligation bond proceeds have been allocated to an authorization 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 authorization, the amount of such excess proceeds shall be transferred to a separate account and allocated to the satisfaction of other authorizations which may be satisfied from general obligation bond proceeds made in the same or any other act of the legislature; provided that a report of such allocations for the period ending December 31 of each year shall be made to the legislature by February 1 of the following year.

SECTION 12. In releasing funds for projects, the governor shall consider legislative intent; the objectives of the user agency and its programs; the scope and level of the user agency's intended services; 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 and its programs, the scope and level of the user agency's intended service and thereby construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 13. The designated expending agency for capital improvements authorized in this Act is authorized to delegate to other state or county agencies the acquisition of land, design, and construction of such projects when it is determined by such agency that it is advantageous to do so; provided that a report of all such 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 14. Any law or any provision to the contrary notwithstanding, the governor may supplement funds for any early-phased cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds authorized for later-phased cost elements for the same project authorized by the legislature in this Act or in a prior year or which may be authorized by the legislature in the future.

SECTION 15. Where it has been determined that changed conditions, such as a reduction in the particular population being served, permit the reduction in the scope of a capital improvement 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 authorization for a project is insufficient.

SECTION 16. 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 to the completion of any project authorized in this Act.

SECTION 17. Where county capital improvement projects are partially or totally funded by state funds 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 18. No authorization in this Act shall be considered to be a mandate under Article VIII, Section 5 of the Hawaii State Constitution, for a political subdivision to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any authorization in this Act falls within the provision of Article VIII, Section 5 of the Hawaii State Constitution, such authorization shall be void, and in the case of capital improvement authorizations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized under section 2 of this Act shall be correspondingly decreased.

SECTION 19. 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 authorization 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 authorization to the extent possible. If any portion of a specific lapse is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be lapsed to fulfill the objective of such lapse to the extent possible.

SECTION 20. If 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 21. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 22. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

A Bill for an Act Making an Appropriation for the Ala Moana Gateway Improvement Project.

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

SECTION 1. The legislature finds that present world and national events seriously threaten the State's economy. These events have already resulted in lower hotel occupancies and reduced bookings, and caused the cancellation of tours to Hawaii. Some Hawaii hotels have recently announced the possibility of room closures and employee layoffs.

New and attractive Pacific basin, Asian, and European visitor destinations have heightened worldwide competition for tourist-related dollars, and further competition will develop throughout the next five to ten years as additional visitor destinations open up.

Positive steps taken today will help revitalize Hawaii's travel industry and allow the State to take advantage of positive changes in world and national events when they occur.

The enhancement of Waikiki is one step that should be continued since Waikiki is still the major focal point of Hawaii. The private sector spent approximately \$500,000,000 to give Waikiki a much-needed face-lift. The public sector contributed several million dollars to improve Kalakaua and Kuhio avenues, to stabilize and widen Waikiki beach, to clean up the Ala Wai canal, and to upgrade Waikiki's parks, yet nothing has been done to enhance the gateways to Waikiki.

The purpose of this Act is to appropriate moneys for the planning and design of improvements to the Ala Moana gateway to Waikiki.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,264,000, or so much thereof as may be necessary for fiscal year 1991-1992, for plans and designs for the Ala Moana gateway improvement project.

SECTION 3. The Ala Moana gateway improvement project, aimed at improving and enhancing the western Waikiki gateway, shall consist of improvements to Ala Moana boulevard. The two components of the project shall include:

- (1) Beautification and landscaping of the pedestrian areas of Ala Moana boulevard between Atkinson boulevard and Kalakaua avenue, enlarging the sidewalk area by removing a portion of the median, adding a landscaped planter between the boulevard and the widened sidewalk, shade trees, lower-level landscaping, sidewalk furniture and other pedestrian amenities, and replacing the existing median with a pedestrian barrier to deter jaywalking, which may consist of a lava rock wall; and
- (2) The addition of a traffic lane in the mauka direction from three-hundred feet makai of Kalia road to Kalakaua avenue, providing a right-turn-only lane into Kalia road and another lane between Kalia road and Kalakaua avenue.

SECTION 4. The sum appropriated shall be expended by the department of transportation for the purposes of this Act; provided that the department shall expend the moneys in consultation with the Waikiki Improvement Association.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved June 26, 1991.)

ACT 319

S.B. NO. 2102

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 1990-1991 and estimated for each fiscal year from 1991-1992 to 1994-1995, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1987-88	\$2,135,842,312	
1988-89	\$2,344,160,356	
1989-90	\$2,418,273,831	
1990-91	\$2,523,242,000	\$425,393,717
1991-92	\$2,697,088,000	\$449,283,365
1992-93	\$2,868,787,000	\$471,047,236
1993-94	\$3,050,008,000	\$498,890,548
1994-95	(not applicable)	\$531,374,452

For fiscal years 1990-91, 1991-92, 1992-93, 1993-94, and 1994-95, 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 1987-88, 1988-89, and 1989-90 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, 1990, dated November 28, 1990. The net general fund revenues for fiscal years 1991-92 to 1993-94 are estimates, based on general fund revenue estimates made as of March 10, 1991, 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. According to the department of budget and finance, 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, as of April 1, 1991, is as follows for fiscal year 1991-92 to fiscal year 1997-98:

Fiscal Year	Principal and Interest
1991-92	\$213,920,056
1992-93	\$213,649,061
1993-94	\$211,633,856
1994-95	\$200,417,174
1995-96	\$191,216,198
1996-97	\$178,341,579
1997-98	\$166,163,803

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit continues to decline each year from fiscal year 1998-99 to fiscal year 2011-2012 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, 1991, adjusted for the \$150,000,000 general obligation bonds dated June 1, 1990, Series BS and \$250,000,000 general obligation bonds dated February 1, 1991, Series BT and further adjusted for the lapsing of prior appropriations and change in means of financing from general obligation bond funds or general obligation bond funds with debt service cost to be paid from special funds to other means of financing as provided in House Bill No. 139, H.D. 1, S.D. 1, C.D. 1 (the General Appropriations Act of 1991)¹ and House Bill No. 316, H.D. 2, S.D. 1, C.D. 1 (the Judiciary Appropriations Act of 1991)² (totalling \$179,446,000), the amount of authorized but unissued general obligation bonds is \$113,521,187. The total amount of general obligation bonds authorized by this Act is \$686,346,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is \$799,867,187.
- (5) Proposed general obligation bond issuance. As reported by the department of budget and finance for fiscal years 1991-92, 1992-93, 1993-94 and 1994-95, the State proposes to issue \$100,000,000 semiannually in each of fiscal years 1991-92, 1992-93, 1993-94 and 1994-95. 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 fiscal years 1991-92 and 1993-94 is \$600,000,000. An additional \$200,000,000 is proposed to be issued in fiscal year 1994-95. The total amount of \$600,000,000 which is proposed to be issued through fiscal year 1993-94 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 \$799,867,187 as reported in paragraph (4), except for \$199,867,187. It is assumed that the appropriations to which an additional \$199,867,187 in bond issuance needs to be applied will have been encumbered as of June 30, 1994. The \$200,000,000 which is proposed to be issued in fiscal year 1994-95 will be sufficient to meet the requirements of the June 30, 1994, encumbrances in the amount of \$199,867,187. The amount of assumed encumbrances as of June 30, 1994 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, 1994, and the amount of June 30, 1994, encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 1994-95, 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, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from calculation

against the debt limit is 9.91 per cent for the ten years from fiscal year 1991-92 to fiscal year 2000-01. 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 8.5 per cent, 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
1st half FY 1991-92 \$90,000,000	\$449,283,365	\$278,420,165 (FY 1993-94)
2nd half FY 1991-92 \$90,000,000	\$449,283,365	\$289,805,240 (FY 1994-95)
1st half FY 1992-93 \$90,000,000	\$471,047,236	\$297,455,240 (FY 1994-95)
2nd half FY 1992-93 \$90,000,000	\$471,047,236	\$305,105,240 (FY 1994-95)
1st half FY 1993-94 \$90,000,000	\$498,890,548	\$312,755,240 (FY 1994-95)
2nd half FY 1993-94 \$90,000,000	\$498,890,548	\$320,405,240 (FY 1994-95)
1st half FY 1994-95 \$90,000,000	\$531,374,452	\$324,230,240 (FY 1994-95)
2nd half FY 1994-95 \$90,000,000	\$531,374,452	\$324,230,240 (FY 1994-95)

- (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 House Bill No. 139, H.D. 1, S.D. 1,

C.D. 1 (the General Appropriations Act of 1991),¹ House Bill No. 316, H.D. 2, S.D. 1, C.D. 1 (the Judiciary Appropriations Act of 1991),² Senate Bill No. 2101, S.D. 1, H.D. 1, C.D. 1 (the General Improvements Act of 1991)³ and Senate Bill No. 2114, S.D. 2, H.D. 2, C.D. 1 (Making An Appropriation For The Ala Moana Gateway Improvement Project),⁴ passed by this regular session of 1991, 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 \$686,346,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, 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 sections 1 and 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 27, 1991.)

Notes

1. Act 296.
2. Act 299.
3. Act 317.
4. Act 318.

ACT 320

H.B. NO. 370

A Bill for an Act Making an Appropriation for the Repatriation of Native Hawaiian Human Remains.

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

SECTION 1. Recent congressional legislation has mandated the repatriation of American Indian, Alaskan native, and native Hawaiian human remains from the Smithsonian Institution and all other curatorial facilities receiving federal funds. Additional legislation relating to native cultural patrimony over sacred objects now held by such institutional facilities has also been enacted. In order to encourage and enhance these efforts to assure the return of native Hawaiian ancestral remains and sacred objects, state funds are needed to assist in the inventory, return, and proper treatment of these remains. These funds will also be used for the following purposes: to assure culturally appropriate treatment of native Hawaiian ancestral bones, associated burial goods, and sacred objects; to meet costs associated with repatriation; and to meet costs associated with the implementation of cultural patrimony.

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SECTION 2. There are appropriated or authorized from the sources of funding indicated below the following sums, or so much thereof as may be necessary, for the purposes of this Act:

	<u>FY 1991-1992</u>	<u>FY 1992-1993</u>
General Funds	\$ 50,000	\$ 50,000
Special Funds	<u>\$ 50,000</u>	<u>\$ 50,000</u>
Total	\$100,000	\$100,000

SECTION 3. The sums appropriated shall be expended by the office of Hawaiian affairs for the purposes of this Act.

SECTION 4. The office of Hawaiian affairs shall submit a report on the expenditure of these funds to the legislature at least twenty days prior to the convening of the regular sessions of 1992 and 1993.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved July 2, 1991.)

ACT 321

H.B. NO. 515

A Bill for an Act Relating to Living Wills.

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

SECTION 1. Chapter 327D, Hawaii Revised Statutes, is amended by adding a section to be appropriately designated and to read as follows:

“§327D- Validity of provisions. (a) The declaration of a person, executed subsequent to July 1, 1991, shall be effective under this chapter only if it includes the checklist in section 327D-4.

(b) Except as otherwise provided in subsection (a), if any provisions of a declaration are found to be invalid, the entire declaration is not invalidated but the instructions that are valid can still be used.”

SECTION 2. Section 327D-1, Hawaii Revised Statutes, is amended to read as follows:

“[[§327D-1]] **Purpose.** The legislature finds that all competent persons have the fundamental right to control the decisions relating to their own medical care, including the decision to have medical or surgical means or procedures calculated to prolong their lives provided, continued, withheld, or withdrawn. The legislature further finds that the artificial prolongation of life for persons with a terminal condition, or a permanent loss of the ability to communicate concerning medical treatment decisions, may secure only a precarious and burdensome existence, while providing nothing medically necessary or beneficial to the [patient.] person.

In order that the rights of patients may be respected [even] after they are no longer able to participate actively in decisions about [themselves,] their medical care and treatment, the legislature hereby declares that the laws of the State [of Hawaii shall] recognize the right of an adult person to make a written declaration instructing [his or her] the person's physician to provide, continue, withhold,

or withdraw life-sustaining procedures [in the event of a terminal condition].”

SECTION 3. Section 327D-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Permanent loss of the ability to communicate concerning medical treatment decisions” means a state in which a person is diagnosed by a physician as:

- (1) Being in a persistent vegetative state with no reasonable expectation of regaining consciousness;
- (2) Being in a deep coma with no reasonable expectation of regaining consciousness; or
- (3) Having a permanent loss of the capacity to participate in medical treatment decisions, secondary to severe neurological or brain damage, with no reasonable expectation of regaining this capacity.”

2. By adding a new definition to be appropriately inserted and to read:

““Health care facility” includes any program, institution, place, building, or agency, or portion thereof, private or public, whether organized for profit or not, used, operated or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons. The term includes, but is not limited to, health care facilities that are commonly referred to as hospitals, extended care and rehabilitation centers, nursing homes, skilled nursing facilities, intermediate care facilities, hospices for the terminally ill that require licensure or certification by the department of health, kidney disease treatment centers including freestanding hemodialysis units, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, home health agencies, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.”

3. By amending the definition of “life-sustaining procedure” to read:

““Life-sustaining procedure” means any medical procedure or intervention [except for] including the artificial provision of fluids, nourishment, medication, or other procedures [necessary for patient comfort or pain relief,] that when administered to a [qualified] patient, will serve only to prolong the dying process[.] but does not include procedures necessary for patient comfort or relief.”

4. By amending the definition of “terminal condition” to read:

““Terminal condition” means any incurable or irreversible disease, illness, injury, or condition which without the administration of life-sustaining procedure will, as a medical probability, [result in death in a relatively short time.] only serve to delay the moment of death of the patient.”

5. By deleting the definition of “incompetent person”.

[“Incompetent person” means any person who is impaired by reason of mental illness, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause to the extent that the person lacks sufficient understanding

or capacity to make or communicate responsible decisions concerning that person's health care.”]

6. By deleting the definition of “qualified patient”.

[““Qualified patient” means a patient who has executed a declaration in accordance with this chapter, and who has been diagnosed and certified in writing to be in a terminal condition by two physicians who have personally examined the patient, one of whom is the patient’s attending physician. Provided, that if there is more than one attending physician, all such attending physicians must certify in writing that the patient is in a terminal condition.”]

SECTION 4. Section 327D-3, Hawaii Revised Statutes, is amended to read as follows:

“[§327D-3] **Execution of declaration.** (a) Any competent person who has attained the age of majority may[, at any time,] execute a [written] declaration directing the provision, continuation, withholding, or withdrawal of life-sustaining procedures [in the event such person should have a terminal condition].

(b) The declaration made pursuant to this chapter:

- (1) Shall be in writing;
- (2) Shall be signed by the person making the declaration, or by another person in the declarant’s presence and at the declarant’s expressed direction;
- (3) Shall be dated; and
- (4) Shall be signed in the presence of two or more witnesses who:
 - (A) Are at least 18 years of age;
 - (B) Are not related to the declarant by blood, marriage, or adoption; and
 - (C) Are not [the], at the time that the declaration is executed, attending [physician] physicians, [an employee] employees of [the] an attending physician, or [an employee] employees of [the medical] a health care facility in which the declarant is a patient[;].
- (5) Shall have all signatures notarized at the same time.”

SECTION 5. Section 327D-4, Hawaii Revised Statutes, is amended to read as follows:

“[§327D-4] **[Suggested form of written declaration.** A declaration executed pursuant to this chapter requesting that medical treatment be withheld or withdrawn may, but need not, be substantially in the following form, and may include other specific directions. Should any of the specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction, and to this end the directions in a declaration are severable.] Declaration sample form. The following declaration sample form may be copied and used by filling in the blanks or may be changed to add more individualized instructions; or an entirely different format may be used to provide health care instructions.

DECLARATION

A. Statement of Declarant

Declaration made this _____ day of _____ (month, year). I, _____, being of sound mind,

and understanding that I have the right to request that my life be prolonged to the greatest extent possible, wilfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

[If at any time I should have an incurable or irreversible condition certified to be terminal by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that I am unable to make decisions concerning my medical treatment, and that without administration of life-sustaining treatment my death will occur in a relatively short time, and where the application of life-sustaining procedures would serve only to prolong artificially the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, nourishment, or fluids or the performance of any medical procedure deemed necessary to provide me with comfort or to alleviate pain.]

My instructions shall prevail even if they create a conflict with the desires of my relatives, hospital policies, or the principles of those providing my care.

If I should develop a terminal condition or a permanent loss of the ability to communicate concerning medical treatment decisions, with no reasonable chance of regaining this ability, I do not want to have my life prolonged. I would not want to be subjected to surgery or resuscitation. Nor would I then wish to have life sustaining medicine or procedures. Instead, I request care, including medicine and procedures, for the purpose of providing comfort and pain relief.

CHECKLIST

I have also considered whether I want tube feeding to be provided and have selected one of the following provisions by putting a mark in the space provided:

() I do NOT want my life prolonged by tube or other artificial feeding or provision of fluids by a tube if my condition is as stated above.

() I DO want my life prolonged by tube or other artificial feeding and provision of fluids by a tube if my condition is as stated above.

If neither provision is selected or if both are selected, it shall be presumed that tube or other artificial feeding or provision of fluids by a tube are requested to prolong the declarant's life.

This declaration shall control in all circumstances.

[In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expressions of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.]

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed _____
Address _____

B. Statement of Witnesses

I am at least 18 years of age and

- not related to the declarant by blood, marriage, or adoption; and
- not currently the attending physician, an employee of the attending physician, or an employee of the [medical] health care facility in which the declarant is a patient.

The declarant is personally known to me and I believe the declarant to be of sound mind.

Witness _____
Address _____

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Witness _____
Address _____

C. Notarization

Subscribed, sworn to and acknowledged before me by _____,
the declarant, and subscribed and sworn to before me by _____
and _____,
witnesses, this _____ day of _____, 19____.
(SEAL) Signed _____

(Official capacity of officer)”

SECTION 6. Section 327D-5, Hawaii Revised Statutes, is amended to read as follows:

“[§327D-5]¹ **Presumed validity of declaration.** (a) If the [qualified] patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures, a declaration executed in accordance with section 327D-3 is presumed to be valid.

(b) For the purpose of this chapter, a physician or [medical] health care facility may presume, in the absence of actual notice to the contrary, that an individual who executed or revoked a declaration was of sound mind when the declaration was executed[.] or revoked.

(c) The fact of an individual’s having executed a declaration shall not be considered an indication of a declarant’s mental incompetency. Age of itself shall not bar a determination of competency.”

SECTION 7. Section 327D-6, Hawaii Revised Statutes, is amended to read as follows:

“[[§327D-6]] **Pregnancy.** A declaration of a [qualified] patient diagnosed as pregnant by the attending physician shall be given no force or effect during the course of the pregnancy.”

SECTION 8. Section 327D-8, Hawaii Revised Statutes, is amended to read as follows:

“[[§327D-8]] **Declaration becomes part of medical records.** It shall be the responsibility of the declarant to provide for the delivery of the notarized declaration to the attending physician. In the event the declarant is comatose, incompetent, or otherwise mentally or physically incapable, any other person may deliver the notarized declaration to the physician. An attending physician who is so notified shall promptly make the declaration a part of the declarant’s medical records.”

SECTION 9. Section 327D-9, Hawaii Revised Statutes, is amended to read as follows:

“[[§327D-9]] **Duty to deliver.** Any person having a declaration of another in [his or her] the person’s possession and who becomes aware that the declarant is in circumstances under which the terms of the declaration may become applicable, shall deliver the declaration to the declarant’s attending physician or to the [medical] health care facility in which the declarant is a patient.”

SECTION 10. Section 327D-10, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§327D-10]]~~ **Written certification.** (a) An attending physician who has been notified of the existence of a declaration executed under this chapter shall make all reasonable efforts to obtain the notarized declaration and[, if the declaration so requests,] shall without delay [after the diagnosis of a terminal condition of the declarant, take the necessary steps to provide for written certification of the declarant’s terminal condition by the attending physician and another physician who has examined the declarant, so that the declarant may be deemed to be a qualified patient, as defined in section 327D-2.] ascertain whether the declarant’s condition corresponds to the directions on the declaration.

(b) Written certification of a declarant’s [terminal] condition shall be made a part of the declarant’s medical record and should be substantially in the following form:

CERTIFICATION OF [INCOMPETENCE AND TERMINAL CONDITION]
CONDITION SPECIFIED IN PATIENT’S DECLARATION

[We] In my professional opinion, I hereby certify that _____

(name of patient)

[is not,] has suffered a permanent loss of the ability to communicate concerning medical treatment decisions [in our professional opinion, able to participate in decisions concerning medical treatment to be administered] and has [been diagnosed as having an incurable or irreversible disease, illness, injury or condition, specifically] the following condition or conditions: _____ ,

(diagnosis)

[and it is our professional judgment that this terminal condition will result in the death of the patient without the use of life-sustaining procedures.] According to the declaration, _____ did not want life-sustaining

(name of patient)

procedures to be administered under these circumstances.

Pursuant to the attached declaration or living will, the patient:

- DOES want tube or other artificial feeding or provision of fluids by a tube to prolong the patient’s life.
- Does NOT want tube or other artificial feeding or provision of fluids by a tube to prolong the patient’s life.

Signed _____

Attending Physician

[Signed _____

Second Attending Physician]

(c) All inpatient [medical] health care facilities shall develop a system to visibly identify when a [qualified] patient’s chart [containing the] contains a declaration as set forth in this chapter.

SECTION 11. Section 327D-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§327D-11]]~~ **Transfer to another physician.** (a) An attending physician and any other physician under [his or her] the attending physician’s direction or control, having possession of the patient’s declaration or having knowledge that [such] the declaration is part of the patient’s record in the [medical] health care facility in which the declarant is receiving care, shall [take steps to qualify the patient and shall] follow as closely as possible the terms of the declaration.

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(b) An attending physician who, because of personal beliefs or conscience, refuses[,] or is unable[,] to certify a patient [as terminal], or who is unable to comply with the terms of the patient's declaration shall, without delay, make the necessary arrangements to effect the transfer of the patient, and the appropriate medical records [that qualify or would qualify said patient,] to another physician, [chosen by the qualified patient, or by the family of the qualified patient, for effectuation of the terms of the qualified patient's declaration. Such a] A physician who transfers the patient without unreasonable delay, or who makes a good faith attempt to do so, shall not be subject to criminal prosecution, subject to civil liability, or found to have committed an act of unprofessional conduct for refusal to comply with the terms of the declaration. Transfer under these circumstances shall not constitute abandonment.

(c) Failure of an attending physician to transfer in accordance with this section constitutes professional misconduct."

SECTION 12. Section 327D-12, Hawaii Revised Statutes, is amended to read as follows:

"[[§327D-12]] Revocation. A declaration may be revoked at any time by the declarant [without regard to the declarant's mental state or competency,] by any of the following methods:

- (1) By being canceled, defaced, obliterated, [or] burnt, torn, or otherwise destroyed by the declarant or by some person in the declarant's presence and at the declarant's direction[.];
- (2) By a written revocation signed and dated by the declarant expressing [his or her] the declarant's intent to revoke. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation[.]; or
- (3) By a declarant's unambiguous verbal expression, in the presence of two adult witnesses, of an intent to revoke the declaration. [Such] The revocation shall become effective upon communication to the attending physician by the declarant or by both witnesses. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when the attending physician received notification of the revocation[.]; or
- (4) By a declarant's unambiguous verbal expression to an attending physician."

SECTION 13. Section 327D-14, Hawaii Revised Statutes, is amended to read as follows:

"[[§327D-14]] Suicide. Death resulting from the withholding or withdrawal of life-sustaining procedures from a [qualified] patient under this chapter does not, for any purpose, constitute suicide.

Execution of a declaration under this chapter does not, for any purpose, constitute attempted suicide."

SECTION 14. Section 327D-16, Hawaii Revised Statutes, is amended to read as follows:

"[[§327D-16]] Health care or health insurance. No [physician, medical care facility or other health care provider, nor any health care service plan,

insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation, mutual nonprofit hospital service corporation, or nonprofit hospital service plan] person or entity shall require any person to execute a declaration as a condition for being insured for, or receiving[,] insurance benefits or health care services.”

SECTION 15. Section 327D-17, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§327D-17]]~~ **[Penalties.] Criminal penalties.** [(a) Failure of an attending physician to certify a terminal condition in writing according to section 327D-10 or, once a patient is certified as terminal, failure of the physician to transfer according to section 327D-11, constitutes professional misconduct.]

[(b)] (a) Any person who threatens, directly or indirectly, or coerces, or intimidates any person to execute a declaration directing the withholding or withdrawal of life-sustaining procedure shall be guilty of a class C felony.

[(c)] (b) Any person who wilfully conceals, cancels, defaces, obliterates, or damages another’s declaration without the declarant’s consent or who falsifies or forges a declarant’s revocation of declaration with the intent to create the false impression that the declarant has directed that life-sustaining procedures be utilized for the prolongation of the declarant’s life shall be guilty of a misdemeanor.

[(d)] (c) A physician who wilfully fails to record a statement of revocation according to the requirements of section 327D-12 [is] shall be guilty of a misdemeanor.”

SECTION 16. Section 327D-18, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§327D-18]]~~ **Health personnel protections.** In the absence of actual notice of the revocation of a declaration, no health care provider, [medical] health care facility, physician, or other person acting under the direction of an attending physician shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the withholding or the withdrawal of life-sustaining procedures from a patient [with a terminal condition] in accordance with this chapter unless the absence of actual notice resulted from the negligence of the health care provider, physician, or other person.”

SECTION 17. Section 327D-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In the absence of a declaration, ordinary standards of current medical practice will be followed. Although declarations are desirable, nothing in this chapter shall be construed to require a declaration in order for life-sustaining procedures to be provided, continued, withheld, or withdrawn. If there is no declaration, then a verbal statement or statements if they are consistent, made by the patient to either a physician or to the patient’s friend or relative, may be considered by the physician in deciding whether the patient would want the physician to withdraw or to withhold life-sustaining procedures. Unambiguous verbal statements by the patient, or reliable reports thereof, shall be documented in the patient’s medical record.”

SECTION 18. Section 327D-23, Hawaii Revised Statutes, is amended to read as follows:

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“[[§327D-23]] No presumption. This chapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration to [consent to the] use, [or withholding] withhold, or [withdrawal of] withdraw life-sustaining procedures [in the event of a terminal condition].”

SECTION 19. Section 327D-24, Hawaii Revised Statutes, is repealed:

“[[§327D-24]] Retroactive effect. The declaration of [any qualified] a patient executed prior to June 13, 1986, and those subsequently executed in compliance with the statute in effect at the time of execution shall be given effect as provided in [this chapter] their term.”

SECTION 20. Section 327D-26, Hawaii Revised Statutes, is amended to read as follows:

“§327D-26 Effect of multiple documents. [In the event a person has one or more valid declarations executed in accordance with this chapter, and/or one or more valid durable powers of attorney executed pursuant to chapter 551D, or both, the most recently executed document shall reflect the person’s intent.] Medical treatment instructions contained in a declaration executed in accordance with this chapter shall supersede:

- (1) Any contrary or conflicting instructions given by a proxy or an attorney for health care decisions unless the proxy appointment or the power of attorney expressly provides otherwise; and
- (2) Any instructions in any prior declaration.”

SECTION 21. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 22. This Act shall take effect on July 1, 1991.

(Approved July 2, 1991.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 322

H.B. NO. 889

A Bill for an Act Relating to Family Literacy.

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

SECTION 1. The legislature finds that, according to a needs assessment conducted by the governor’s office of children and youth in 1988, an estimated 154,000 adults in Hawaii are functionally illiterate. Research done nationally indicates that the literacy levels of children are strongly linked to those of their parents — particularly the mother. Additional research done by the national center for family literacy indicates that family literacy programs have proven to be effective in breaking the cycle of illiteracy.

Furthermore, the legislature finds that Hawaii’s business community has joined in partnership with state and federal government to initiate, develop, and support literacy programs through the coordination of the governor’s office of

children and youth's governor's council for literacy program.

The purpose of this Act is to continue the active public-private partnership for literacy by establishing a family literacy endowment and by doing so, provide permanent funding for the development of family literacy programs across the State.

SECTION 2. Chapter 581, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§581- Public-private partners for literacy trust fund. (a) There shall be established as a separate fund of the Hawaii community foundation, a Hawaii nonprofit corporation, by that certain instrument of gift dated May 2, 1991, a fund known as the public-private partners for literacy trust fund, the income and capital gains from which shall be used exclusively for family literacy programs, as defined in the instrument of gift. The public-private partners for literacy trust fund shall consist of sums appropriated for deposit into the fund, private contributions to the fund made to satisfy any matching conditions set forth in legislation or otherwise, and the income and capital gains earned by the fund. The public-private partners for literacy trust fund is and shall be subject to the following restrictions:

- (1) Only the income and capital gains earned by investment of the public-private partners for literacy trust fund may be expended;
- (2) Income and capital gains earned by investment of the public-private partners for literacy trust fund may not be used during any period that the value of the fund shall be less than the aggregate principal sum contributed to the fund; and
- (3) Restrictions as may be imposed with respect to transfers of funds in future legislation appropriating sums to be contributed to the fund.

(b) All state funds deposited into the fund as principal which are not matched by private contributions by June 30, 1992, shall be due and owing to the State on July 1, 1992. For purposes of this section, the requirement for matching private contributions shall be deemed satisfied if any of the following occurs prior to the date the funds are to be matched:

- (1) Cash, including the United States dollar equivalent of foreign currency, is received by the fund;
- (2) Interest and title in personal property, including securities and cash value of life insurance policies, and real property, valued by appraisal, market quotations, or other generally accepted valuation methods, are transferred to the fund; or
- (3) Pledges to the fund of cash or interest and title to real or personal property, payable not later than five full years following the date by which the funds contributed by the State are to be matched, are received by the fund; provided that any sums appropriated by the State and matched by such pledges within the matching period shall be due and owing to the State at the end of the five-year period to the extent that the sums appropriated by the State are not matched by actual payment of such pledges within the five-year period.

(c) The aggregate principal sum deposited in the public-private partners for literacy trust fund and any income and capital gain earned by the fund but not used for family literacy programs shall be invested in accordance with the provisions of the instrument of gift creating the fund in a manner intended to maximize the rate of return on investment of the fund consistent with the objective of preserving the principal amounts contributed to the fund.

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(d) In the event of the termination of the public-private partners for literacy trust fund or the dissolution of the Hawaii community foundation, the principal amount of all contributions made by the State to the public-private partners for literacy trust fund shall be distributed to the general fund of the State and any other amounts remaining in the public-private partners for literacy trust fund shall be distributed in accordance with the provisions of the instrument of gift creating the fund.

(e) The results of the annual audit of the Hawaii community foundation shall be submitted to the office of children and youth not later than thirty days from the date the Hawaii community foundation receives the audit results. In addition, the Hawaii community foundation shall retain for a period of three years and permit the office of children and youth, the department of accounting and general services, state legislators, and the legislative auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records, and other evidence which is pertinent to the public-private partners for literacy trust fund.

(f) The purpose of this section is to create, by statute, a private charitable trust fund so that the State can appropriate matching moneys into the fund to ensure its perpetual existence. This is not a fund to be placed in the state treasury, and the State shall not administer the fund nor shall the State be liable for its operation or solvency. The fund shall be a private charitable trust fund to be administered by a private trust company as the trustee. The State may donate moneys by legislative appropriation to the fund on the same basis as a private person. The legislature intends that the public and private sectors work together as partners in making deposits into the fund. All legislative appropriations shall be on a matching basis only."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000, or so much thereof as may be necessary for fiscal year 1991-1992, for deposit into the public-private partners for literacy trust fund, to be matched by private sector donations in accordance with the provisions of this Act.

SECTION 4. The sum appropriated shall be expended by the office of children and youth for the purposes of this Act.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 1991.

(Approved July 2, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 323

H.B. NO. 895

A Bill for an Act Relating to Individual Hawaiian Home Lands Trust Claims.

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
INDIVIDUAL CLAIMS RESOLUTION UNDER THE
HAWAIIAN HOME LANDS TRUST
PART I. PURPOSE AND DEFINITIONS**

§ -1 **Purpose.** The purpose of this chapter is to establish a process under which individual beneficiaries under the Hawaiian home lands trust may resolve claims for actual damages arising out of or resulting from a breach of trust, which occurred between August 21, 1959, and June 30, 1988 and was caused by an act or omission of an employee of the state in the management and disposition of trust resources:

- (1) By establishing a Hawaiian home lands trust individual claims review panel which shall:
 - (A) Receive, review, and evaluate the merits of an individual beneficiary’s claim;
 - (B) Render findings and issue an advisory opinion regarding the merits of each claim filed with the panel, including an estimate of the probable award of actual damages or recommended corrective action that may be implemented to resolve each claim;
 - (C) Prepare and transmit a report to the governor and legislature, at least twenty days prior to the convening of the 1993 legislature in regular session, and a final report, at least twenty days prior to the convening of the 1994 legislature in regular session, on the activities of the panel including a summary of each claim brought before the panel, the panel’s findings and advisory opinion regarding the merits of each claim, and an estimate of the probable compensation or any recommended corrective action for legislation action;
 - (D) Disburse any compensation awarded by the 1993 and 1994 legislatures in regular session or undertake such other action as provided by law which is acceptable to a claimant; and
- (2) By providing an individual beneficiary claimant the right to bring an action to recover actual damages for a breach of trust, in the circuit courts of the State of Hawaii, if the action taken by the 1993 and 1994 legislatures in regular session on each claim brought before the panel is not acceptable to an individual beneficiary claimant.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Act” means the Hawaiian Homes Commission Act of 1920, as amended.

“Actual damages” means direct, monetary out-of-pocket loss, excluding non-economic damages as defined in section 663-8.5 and consequential damages, sustained by the claimant individually rather than the beneficiary class generally, arising out of or resulting from a breach of trust, which occurred between August 21, 1959 and June 30, 1988 and was caused by an act or omission by an employee of the State in the management and disposition of trust resources.

“Beneficiary” means any person eligible to receive benefits of home-steading and related programs from the Hawaiian home lands trust.

“Claimant” means a beneficiary who applies to the panel for a review of a claim for actual damages relating to the trust.

“Commission” means the Hawaiian homes commission.

“Compensation” means an award of actual damages to a claimant.

“Corrective action” means action to be taken by the department to correct a breach of trust, which occurred between August 21, 1959 and June 30, 1988 and was caused by an act or omission by an employee of the State in the management and disposition of trust resources.

“Department” means the department of Hawaiian home lands.

“Employee of the State” means the officers and employees of any state agency and any persons acting in behalf of a state agency in an official capacity.

“Native Hawaiian” means any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian islands previous to 1778.

“Panel” means the Hawaiian home lands trust individual claims review panel.

“Trust” means the Hawaiian home lands trust.

PART II. INDIVIDUAL CLAIMS REVIEW PANEL

§ -3 Establishment of the board of individual claims resolution.

There shall be a Hawaiian home lands trust individual claims review panel to be composed of five members and appointed as follows: the chairperson shall be appointed by the governor and shall be a former federal or state court judge, where possible, or an attorney licensed to practice law in the courts of the State. The governor shall appoint the remaining four members, all of whom shall be from nominations submitted by native Hawaiian organizations as defined in section 673-2. No more than two of the members shall be residents of the same island.

All of these appointments shall be subject to senatorial confirmation. The panel shall be placed within the department of commerce and consumer affairs for administrative purposes.

§ -4 Tenure and compensation of members. The term of office of each member of the panel shall be until December 30, 1995. Any member appointed to fill a vacancy shall be appointed by the governor for the remainder of the term. A vacancy in the panel shall not affect its powers.

Each member of the panel shall be compensated at the rate of \$100 per day for each day’s actual attendance to the member’s duties; provided that the compensation shall not exceed a maximum of \$10,000 per year. The members of the panel shall be paid their necessary traveling and subsistence expenses incurred in the discharge of their duties. Such costs will be paid by the department of commerce and consumer affairs.

§ -5 Panel staff; power to contract. (a) Supervisory, administrative, investigatory, hearings, and clerical personnel necessary for the efficient functioning of the panel shall be appointed by the panel and the director for the department of commerce and consumer affairs on a temporary exempt basis. There shall be a special assistant to the chairperson of the Hawaiian homes commission, to be hired by the commission, for the purposes of this chapter.

(b) Upon application by a claimant, the panel, under appropriate circumstances and in accordance with section 103-3, may retain and provide for legal services to assist a claimant in the preparation and presentation of a claim for review by the panel under this chapter.

(c) The panel shall have the power to make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter.

§ **-6 Rulemaking powers.** The panel shall adopt rules in accordance with chapter 91 within six months after the effective date of this chapter prescribing the procedures to be followed in the filing of claims and in the proceedings for review of claims under this chapter, and such other rules as the panel deems necessary to carry out the purposes of this chapter.

§ **-7 Review by panel required.** (a) Any individual beneficiary under the trust claiming actual damages arising out of or resulting from a breach of trust, which occurred between August 21, 1959 and June 30, 1988 and which was caused by an act or omission of an employee of the State in the management and disposition of trust resources under the trust, shall file a claim therefor for review by the panel no later than August 31, 1993 or shall forever be barred.

§ **-8 Powers and procedures of the panel.** (a) The panel may hold hearings or such other proceedings as it deems necessary, sit and act at such times and places, and take such testimony as the panel deems advisable. The panel shall fix a time and place for hearings or other proceedings on such claim and shall cause notice thereof to be given to the claimant, the department and commission. The panel may, for good cause, allow claims to be consolidated for review.

(b) A majority of all members to which the panel is entitled, which shall include the chairperson, shall constitute a quorum for the panel to meet and review any claim, and the concurrence of a majority of all the members to which the panel is entitled shall be necessary for any findings and advisory opinion issued by the panel to be valid.

(c) Any member of the panel may administer oaths or affirmations to witnesses appearing before the panel. The panel shall have powers of subpoena and compulsion of attendance of witnesses and production of documents and of examination of witnesses as are conferred upon a circuit court. Subpoenas shall be issued under the signature of the chairperson or any person designated by the chairperson. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required, upon the application of the panel, may enforce the attendance and testimony of any witness and the production of any document so subpoenaed. Subpoena and witness fees and mileage shall be the same as in the circuit courts, and shall be payable from funds appropriated for expenses of administration. Notwithstanding such provisions, the panel shall attempt to secure the voluntary appearance, testimony and cooperation of parties, witnesses and other persons appearing before the panel without coercion.

(d) The panel may appoint a hearings officer or officers, not subject to chapters 76 and 77, to hear any claims and render recommended findings. The hearings officer or officers shall have the same authority as the panel in conducting hearings or proceedings under this chapter. The recommended findings of the hearings officer or officers shall be subject to review and redetermination by the panel.

(e) Upon written acceptance by a claimant or an acceptance as provided in section -17, the panel shall disburse any compensation awarded by the legislature and undertake such other action as may be provided by law.

§ **-9 Panel hearing or review proceedings; fact-finding; evidence.** No persons other than the panel or hearings officer, the claimant, representatives of the concerned state agency, legal counsel, witnesses, and persons called by the panel to assist in its review, shall be present during any hearing or other proceedings conducted by the panel, except with the permission of the chairperson. For every claim filed, the department shall be notified and shall be entitled to be

present during any hearing or other proceeding conducted by the panel. The panel may, in its discretion, conduct an inquiry of a party, witness, or any other person without the presence of any or all parties.

All proceedings shall be informal. Except as otherwise provided in this chapter, chapters 91 and 92 shall not apply. For the purpose of this chapter, the panel shall prepare a record of each claim. The record shall include:

- (1) All correspondence, pleadings, motions, rulings;
- (2) Evidence received or considered, including oral or written testimony, exhibits, and a statement of any matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) Staff memoranda submitted to members of the panel in connection with their review of the claim;
- (6) Recommended or proposed findings of the hearings officer who presided at the hearing;
- (7) The panel findings and advisory opinion.

No matters outside the record shall be considered by the panel in reviewing and evaluating a claim.

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, or any matter that, in the opinion of the panel, may contribute to its function under this chapter, whether or not such statement, document, information or matter would be admissible in a court of law. Questioning of parties, and witnesses 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 other persons appearing before the panel. Discovery by the parties shall not be allowed.

§ -10 Findings and advisory opinion. (a) The panel shall prepare findings and an advisory opinion concerning the probable merits of a claim, probable award of compensation or recommended corrective action by the State.

(b) The findings and advisory opinion shall be signed by all members of the panel; provided that any member of the panel may file a written concurring or dissenting advisory opinion.

(c) The advisory opinion of the panel rendered on each claim shall be incorporated in the reports required by section -14 for submission prior to the closing of the 1993 and 1994 legislatures.

§ -11 Subsequent litigation; excluded evidence. No statement made in the course of any hearing or review proceedings of the panel shall be admissible in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any legal proceeding. No opinion, conclusion, finding, or recommendation of the panel on the issue of liability or on the issue of compensation or corrective action shall be admitted into evidence in any legal proceeding, nor shall any party to the panel hearing, or the counsel or other representative of such party, refer to or comment thereon in any opening statement, any argument, or at any other time, to any court or jury.

§ -12 Immunity of panel members from liability. No member of the panel shall be liable in damages for libel, slander, or other defamation of character of any party to a panel proceeding for any action taken or any opinion conclusion, finding, or recommendation made by a panel member while acting within the member's capacity as a member of the panel under this chapter.

§ -13 **Legal adviser.** The panel, in accordance with section 103-3, shall obtain its own legal counsel to provide legal services necessary to implement the purposes of this chapter.

§ -14 **Annual report.** The panel shall prepare a report to be transmitted to the governor and to the legislature, at least twenty days prior to the convening of the 1993 legislature in regular session, and a final report to be transmitted to the governor and to the legislature, at least twenty days prior to the convening of the 1994 legislature in regular session, which summarizes its activities in furtherance of this chapter, and shall include a summary of each claim brought before the panel, the panel's findings and advisory opinion regarding the merits of each claim, and an estimate of the probable compensation or recommended corrective action by the State, for action by the 1993 and 1994 legislatures in regular session.

§ -15 **Limitations upon award of compensation or corrective action.** No claim shall be made under this chapter for which a remedy was or is provided elsewhere under the laws of this State, which is or was the subject of pending or prior litigation, or which is predicated, in whole or in part, on an act or omission which occurred prior to August 21, 1959.

PART III. JUDICIAL RELIEF FOR RETROACTIVE CLAIMS BY INDIVIDUAL NATIVE HAWAIIANS

§ -16 **Waiver of immunity.** (a) The State waives its immunity from liability for actual damages suffered by an individual beneficiary arising out of or resulting from a breach of trust or fiduciary duty, which occurred between August 21, 1959 to June 30, 1988 and was caused by an act or omission of an employee of the State in the management and the disposition of trust resources.

(b) This waiver shall not apply to the following:

- (1) Any claim for which a remedy was or is provided elsewhere in or under the laws of the State;
- (2) Any claim which was or is the subject of prior or pending litigation;
- (3) Any claim predicated, in whole or in part, upon any act or omission which occurred prior to August 21, 1959.

§ -17 **Right to sue, individual claims.** (a) An aggrieved individual claimant shall have the right to bring an action, in accordance with this part, in the circuit courts of the State for recovery of actual damages suffered by the claimant arising out of or resulting from a breach of trust which occurred between August 21, 1959 to June 30, 1988; provided that no action shall be filed until after October 1, 1994.

(b) "Aggrieved individual claimant", as used in this section, means an individual claimant whose claim was reviewed by the panel under this chapter and who has filed, no later than October 1, 1994, a written notice with the panel that the claimant does not accept the action taken by the 1993 or 1994 legislatures in regular session upon such claim. Any claimant who fails to file a written notice rejecting the action of the legislature upon the claim shall be deemed to have accepted the action taken by the legislature.

§ -18 **Scope of relief.** In an action under this part the court may award actual damages to a successful claimant.

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§ -19 **Limitation on actions.** Every claim cognizable under this part shall forever be barred unless the action is commenced by September 30, 1996.

§ -20 **No implied liability or award.** In no case shall any liability be implied against the State, and no award shall be made against the State on any claim brought under this chapter except upon such legal evidence as would establish liability against an individual or corporation.

§ -21 **Attorney's fees and costs.** In any action brought under this chapter, the court may, as it deems just, award to a prevailing claimant and enter as part of its order or judgment, a reasonable sum for costs and expenses incurred, including reasonable attorney's fees."

SECTION 2. Section 103-3, Hawaii Revised Statutes, is amended to read as follows:

"§103-3 Employment of attorneys. No department of the State, other than the attorney general, shall make any expenditure of public funds for the employment or retention by contract or otherwise of any attorney for the purpose of representing the State or such department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply:

- (1) To the housing finance and development corporation or the public utilities commission;
 - (2) To any court or judicial or legislative officer of the State;
 - (3) To the legislative reference bureau;
 - (4) To such compilation commission as may be constituted from time to time;
 - (5) To the real estate commission in any action involving the real estate recovery fund, the contractors license board in any action involving the contractors recovery fund, and the trustees in any action involving the travel agency recovery fund;
 - (6) To the Hawaii criminal justice commission;
 - (7) To grand jury counsel;
 - (8) To the office of Hawaiian affairs;
 - (9) To the department of commerce and consumer affairs; provided that its attorney shall be responsible for the prosecution of consumer complaints;
 - (10) To the employees retirement system; [or]
 - (11) To the Hawaiian Home Lands Trust Individual Claims Review Panel; or
- [(11)] (12) In the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines representation or counsel, or approves a department's expenditures; provided that the governor thereupon waives the provision of this section.

For the purpose of this section the term "department of the State" means any department, board, commission, agency, bureau, or officer of the State.

Every attorney employed by any department on a full-time basis, except an attorney employed by the Hawaii criminal justice commission or as a grand jury counsel, [or] the department of commerce and consumer affairs in prosecution of consumer complaints, or the Hawaiian Home Lands Trust Individual Claims Review Panel, shall become a deputy attorney general."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$464,184, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$702,094, or so much thereof as may be necessary for fiscal year 1992-1993 for the administration of this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$55,000, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$55,000, or so much thereof as may be necessary for fiscal year 1992-1993, to hire a special assistant to the chairperson of the Hawaiian home commission.

The sum appropriated shall be expended by the department of Hawaiian home lands to hire a special assistant for the purposes of this Act.

SECTION 5. The provisions of this Act are not severable and if any provision of this Act, or application thereof to any person or circumstance is held to conflict with any federal or state law, rules or regulations, this Act in its entirety shall be invalidated.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon approval; provided that sections 3 and 4 shall take effect on July 1, 1991.

(Approved July 2, 1991.)

ACT 324

H.B. NO. 954

A Bill for an Act Relating to Integrated Solid Waste Management.

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

SECTION 1. The legislature finds that:

- (1) Source reduction, recycling, and bioconversion are preferable to the incineration and landfilling of municipal solid waste;
- (2) Hawaii should strive to minimize the amount of waste generated, since this will extend the life of the State's landfills;
- (3) Hawaii should also strive to prevent the unnecessary generation of waste, since recovering postconsumer materials that can be recycled or composted, for example, decreases the flow of solid waste to disposal facilities;
- (4) Improper municipal solid waste practices create public health hazards, environmental pollution, economic loss, and cause irreparable harm to the public health, safety, and welfare;
- (5) Parts of the State have inadequate and rapidly diminishing disposal capacity for municipal solid waste;
- (6) By purchasing products and materials made from postconsumer materials, public agencies can help stimulate markets for recycled goods;

- (7) The recycling of marketable materials by counties and state agencies, the development of public and private sector recycling and bio-conversion activities, and the development of in-state recycling and bioconversion industries on an orderly and incremental basis, will further demonstrate the State's long-term commitment to an effective and coherent solid waste management strategy;
- (8) Hawaii's existing recycling industries have been and are essential to the effective management of solid waste;
- (9) The encouragement of new local markets for recovered materials and the enhancement of existing markets will be critical to the long term success of recovery efforts; and
- (10) Statewide public education and widespread citizen participation in recycling postconsumer goods and cooperating in waste reduction programs are important to the success of the State's efforts to reduce the volume of material taken to disposal facilities.

The legislature further finds that the household hazardous waste collection and disposal projects conducted by the department of health in the past several years have proved to be tremendously successful. Although it has been the intent of the State to work with the counties to establish a permanent solution to the problem of household hazardous waste collection and disposal, these interim collection projects have been extremely popular with the general public. In addition to providing a mechanism to protect Hawaii's landfills from further contamination, these projects have served to elevate the public's awareness of the dangers of improperly storing and discarding wastes generated in the household.

The purposes of this Act are to:

- (1) Establish comprehensive integrated solid waste management plans to be developed by the counties and the State; and
- (2) Appropriate funds to conduct a statewide household hazardous waste collection project.

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

**“CHAPTER
INTEGRATED SOLID WASTE MANAGEMENT
PART I. GENERAL PROVISIONS**

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

“Agricultural solid waste” means the solid waste that results from the rearing of animals and the harvesting of crops and that is normally placed in landfills.

“Backyard composting” means the small-scale composting of organic materials, primarily yard wastes, at the site where these materials are generated.

“Bimetallic can” means any food or beverage container that is composed of steel with a tin coating.

“Bioconversion” means the processing of the organic fraction of the waste stream through biological or chemical means to perform composting or generate products including, but not limited to, fertilizers, feeds, methane, alcohols, tars, and other products. This term includes, but is not limited to, biogassification, acid hydrolysis, pyrolysis, and fermentation. This term does not include any form of incineration or methane gas extraction from a municipal waste landfill.

“Compost” means a relatively stable, decomposed, organic, humus-like

material, generated by a composting facility, that is suitable for landscaping or soil amendment purposes.

“Composting” means a process in which organic solid wastes are biologically decomposed under controlled conditions to produce a stable humus-like material. This term includes the processing of wood waste material for the generation of wood chip or other material that can be used as soil amendment, landfill cover, and land reclamation.

“Coordinator” means the state solid waste management coordinator established within the office of solid waste management in the department of health.

“Corrugated paper” means a paper product fabricated from two layers of kraft linerboard sandwiched around a corrugating medium.

“County coordinator” means the person within each county government whose primary responsibility is the planning and implementation of the county’s integrated solid waste management plans and objectives.

“Department” means the department of health.

“Director” means the director of health.

“Disposal” means the management of solid waste through incineration or landfilling at permitted solid waste facilities.

“Disposal fee” means a fee that may be charged on items that will eventually end up as solid waste with the intent of factoring into the price or use or disposal of the same the eventual cost of managing the goods as wastes.

“Enterprise zone” means an area selected by a county and approved by the governor to be eligible for the enterprise zone program established under chapter 209E.

“Feasibility assessment” means a study that analyzes a specific municipal solid waste collection, storage, processing, or disposal system to assess the likelihood that the system can be successfully implemented, including, but not limited to, an analysis of the prospective market, the projected costs and revenues of the system, the waste stream that the system will rely upon, and various options available to implement the system.

“Ferrous metal” means any iron or steel scrap that has an iron content sufficient for magnetic separation.

“Food waste” means all animal and vegetable solid wastes generated by food facilities and residences that result from the storage, preparation, cooking, or handling of food.

“Green waste” means leaves, garden residues, shrubbery and tree trimmings, grass clippings, and similar material.

“HDPE” means high density polyethylene plastic and containers manufactured from this material.

“Household hazardous waste” means those wastes resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed of, or otherwise managed.

“Incineration” means volume reduction by controlled burning of combustible solid waste.

“Integrated solid waste management” means the use of a variety of waste management practices and processing methods to safely and effectively manage solid waste with the least adverse impact on human health and the environment.

“Landfill” means a land site on which engineering principles are utilized to bury deposits of solid waste without creating a nuisance or hazard to public health or safety.

“Landfilling” means the permitted disposal of solid waste on land in a

series of compacted layers and covering the solid waste with soil or other materials.

“Manure” means excrement generated by animals, such as cows, horses, and chickens, held in captivity or used for agricultural production.

“Mixed paper” means discarded paper products that are composed of two or more types of paper, including newspaper, corrugated paper, office paper, computer paper, white paper, and coated paper stock.

“Office” means the office of solid waste management in the department of health.

“Permitted disposal capacity” means the quantity of solid waste, measured either in terms of weight or volume, or both, that can be processed or disposed of at an existing municipal waste disposal facility. This term includes only the weight or volume, or both, of the capacity for which the department has issued a permit. This term does not apply to any facility that the department determines, or has previously determined, has failed or continues to fail to comply with: (1) this chapter, (2) any rules adopted pursuant to this chapter, or (3) any permit conditions.

“PET” means polyethylene terephthalate plastic and containers manufactured from this material.

“Postconsumer material” means a material that has fulfilled the intent of its original manufacture.

“Processing” means any technology used for the purpose of reducing the volume or weight, or both, of solid wastes, or any technology used to convert part or all of solid wastes for reuse.

“Processing facilities” include, but are not limited to, transfer facilities, recycling facilities, and bioconversion facilities.

“Program” means the particular combination of waste management methods selected by each county and designed to achieve the objectives of the state and county integrated solid waste management plans.

“Recovered material” means material that has been diverted from disposal for the purpose of recycling or bioconversion. This term does not include those materials that are generated and normally reused on-site for manufacturing purposes.

“Recycled content” means the percentage of a good or product composed of postconsumer materials.

“Recycled oil” means any oil produced from used oil that achieves required standards of purity for use as a lubricant or fuel.

“Recycled paper product” means a paper product containing postconsumer material that conforms to the United States Environmental Protection Agency’s guidelines for recycled paper.

“Recycling” means the collection, separation, recovery, and sale or reuse of materials that would otherwise be disposed of as municipal solid waste.

“Sewage sludge” means residual solids and semisolids resulting from the treatment of wastewater. This term does not include wastewater effluent discharged from wastewater treatment processes.

“Solid waste or municipal solid waste” means: garbage, refuse, and other residential or commercial discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations; sludge from waste treatment plants and water supply treatment plants; and residues from air pollution control facilities and community activities. This term does not include solid or dissolved materials in domestic sewage or other substances in water sources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows, or other common water pollutants.

“Solid waste reduction facility” or “waste reduction facility” means all contiguous land, including buffer zones, structures, appurtenances, and improvements on the land used for solid waste handling. This term includes a facility used as a transfer station, landfill, incinerator, composting plant, bioconversion site, or recycling site utilized for the reduction, consolidation, conversion, processing, or disposal of solid waste.

“Solid waste management” means the entire process, or any part thereof, of storage, collection, transportation, transfer, processing, and disposal of solid wastes by any person engaging in these processes.

“Solid waste stream” means the total flow of solid waste from all waste generators or any segment thereof, that must be processed or disposed of.

“Source reduction” means the design, manufacture, and use of materials to:

- (1) Minimize the quantity or toxicity, or both, of the waste produced; and
- (2) Reduce the creation of waste either by redesigning products or by otherwise changing societal patterns of consumption, use, or waste generation.

“Special waste” means any solid waste which, because of its source or physical, chemical, or biological characteristics, requires special consideration for its proper processing or disposal, or both. This term includes, but is not limited to, asbestos, used oil, lead acid batteries, municipal waste combustion ash, sewage sludge that is not hazardous waste, agricultural and farm-generated wastes that are normally placed in landfills, medical wastes, tires, white goods, and derelict vehicles.

“State plan” means the integrated solid waste management plan developed by the department of health.

“Waste diversion” means to divert waste from the solid waste stream going into waste disposal facilities through recycling or bioconversion programs.

“Waste evaluation” means a review of an establishment’s disposal practices to assess how those practices can be improved to reduce waste or recover postconsumer materials.

“Waste reduction” means the reduction of solid waste by weight or volume, or both, through a variety of methods prior to disposal. This term includes source reduction, recycling, and bioconversion. This term does not include incineration and landfilling.

“White goods” means discarded, enamel-coated major appliances, such as washing machines, clothes dryers, hot water heaters, stoves, and refrigerators.

“Wood waste” means solid waste consisting of wood pieces or particles that are generated from: the manufacturing or production of wood products; the harvesting, processing, or storage of raw wood materials; and construction and demolition activities.

§ -2 Solid waste management priorities. (a) This chapter shall be known and may be cited as the “Hawaii Integrated Solid Waste Management Act.”

(b) In implementing this chapter, the department and each county shall consider the following solid waste management practices and processing methods in their order of priority:

- (1) Source reduction;
- (2) Recycling and bioconversion, including composting; and
- (3) Landfilling and incineration.

The respective roles of landfilling and incineration shall be left to each county's discretion.

(c) In implementing this chapter, the department and each county shall consider the minimization of litter and illegal dumping as a design factor in the development of integrated solid waste management programs.

§ -3 **Goals.** (a) It is the goal of the State to reduce the solid waste stream prior to disposal by:

- (1) Twenty-five per cent by January 1, 1995; and
- (2) Fifty per cent by January 1, 2000;

through source reduction, recycling, and bioconversion. Where feasible, the office shall establish other state goals for specific commodities, recognizing market considerations.

(b) It is the goal of the State to reduce by not less than twenty-five per cent the amount of office paper generated by all state and county agencies by January 1, 1995, through source reduction. The base year for calculating progress toward this goal shall be total office paper consumption by state and county agencies in 1990.

(c) Nothing in this chapter shall be construed to restrict a county from setting waste reduction goals higher than those of the State.

PART II. ADMINISTRATION

§ -11 **Administration.** The department shall be responsible for the administration of this chapter. The director may delegate to any person within the department the power and authority vested in this chapter as the director deems reasonable and proper for the effective administration of this chapter; provided that the director shall not delegate the power to adopt rules.

§ -12 **Office of solid waste management, establishment.** There is established within the department the office of solid waste management. The head of the office shall be known as the state solid waste management coordinator. The coordinator shall be appointed by the director without regard to chapters 76 and 77 and shall be compensated at a salary level set by the director. The coordinator shall be included in any benefit program generally applicable to the officers and employees of the State. The coordinator shall hire staff, as may be necessary, with regard to chapters 76 and 77.

§ -13 **Powers and duties of the department.** In the execution of the responsibilities provided under this chapter, the department shall:

- (1) Establish and administer goals and guidelines as provided for in this chapter;
- (2) Adopt rules pursuant to chapter 91 and administer the rules as provided for in this chapter;
- (3) Fulfill the office of solid waste management's responsibilities pursuant to this chapter until the establishment of the office;
- (4) Be designated as the state solid waste management agency for all purposes stated in the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901 et seq.) and any other federal law heretofore or hereafter enacted affecting solid waste; and
- (5) Perform other duties as specified in this chapter.

§ -14 **Powers and duties of the office of solid waste management.**

The office shall:

- (1) Promote the development of coordinated statewide solid waste management;
- (2) Identify and monitor environmental and public health issues relating to solid waste management;
- (3) Promote source reduction, recycling, and bioconversion, including home composting, through the provision of a comprehensive, innovative, and effective statewide public education and awareness program concerning the value of source reduction and recycling, and the way the public can participate in these areas;
- (4) Comply with the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901 et seq.) and any other federal law heretofore or hereafter enacted affecting solid waste;
- (5) Seek compliance with sections 226-18, 226-52, and 226-103;
- (6) Assess the feasibility of employing disposal fees, including fees at the point of introduction or sale of any product that would require eventual disposition as solid waste, as possible funding sources for waste management activities;
- (7) Coordinate with the department of land and natural resources to incorporate solid waste management and processing concerns in the department of land and natural resource's land use planning and development efforts;
- (8) Coordinate the bioconversion efforts of appropriate agency and county activities, including the provision of technical assistance and the evaluation of bioconversion programs;
- (9) Provide waste evaluation services and assistance in developing paper recycling and other materials programs to both the public and private sector, where feasible;
- (10) Promote the use of enterprise zones in each county to support source reduction, recycling, and bioconversion-type businesses;
- (11) Create and maintain a database to assess the composition of the State's waste stream. If feasible, this database shall contain the information necessary to generate the office's annual report;
- (12) Identify and apply for appropriate federal funds to support the programs and activities authorized by this chapter; and
- (13) Cooperate with appropriate federal, state, and county agencies in carrying out the office's responsibilities under this chapter.

§ -15 Annual report. (a) The coordinator shall prepare and submit an annual report to each county, the director, the governor, and the legislature, twenty days prior to the convening of each regular session of the legislature, describing the activities of the office. The annual report shall include the information required in this chapter, including, but not limited to:

- (1) A summary of the progress made toward meeting the state waste reduction goals, including the amounts of waste disposed of, diverted, and generated in the State, and the progress toward managing waste in consideration of the state solid waste management priorities;
- (2) Updates on the progress of county integrated solid waste management planning and the state plan;
- (3) Actions taken to implement procurement programs, including the amount of recycled goods and materials purchased by the State and counties;

- (4) Total paper consumption by state and county agencies and progress toward the office paper reduction goal established;
 - (5) Actions by government agencies to establish office paper and other materials recovery programs;
 - (6) A review of state progress in removing barriers to the development of recycling markets and in developing markets and supporting businesses that use recovered materials;
 - (7) A summary of activities in the provision and execution of the statewide public awareness and education program;
 - (8) A summary of actions taken to improve energy efficiency and to reduce reliance on imported fuels in compliance with sections 226-18 and 226-52; and
 - (9) A summary and schedule of the key solid waste management activities anticipated for the following year at state and county levels.
- (b) Upon request from the office, the counties shall provide information, to the best of their abilities, to fulfill the requirements outlined in this section.

PART III. INTEGRATED SOLID WASTE MANAGEMENT PLANNING

§ -21 Establishment of county integrated solid waste management plans. By January 1, 1993, each county shall submit to the office an integrated solid waste management plan that has been formally adopted by the county and that is consistent with the requirements of this chapter.

§ -22 Development of county integrated solid waste management plans. (a) Prior to preparing a plan, each county shall form an advisory committee appointed by the mayor. The county advisory committee may be composed of representatives from citizen organizations, industry, the private solid waste industry operating within the county, the private recycling or scrap material processing industry operating within the county, the county coordinator, and any other persons deemed appropriate by the mayor. The county advisory committee shall review the plan during its preparation, make suggestions, and propose any changes it believes are appropriate.

(b) Prior to formal adoption by the county, the county shall submit the proposed plan to the office for review and comment. The office shall provide its comments to the county within ninety days of receiving the proposed plan. Following the office's review, the county shall make the proposed plan available for public review and comment for a period of not less than sixty days. The county shall hold at least one public hearing on the proposed plan during this period.

(c) Following formal adoption of the plan by the county, the county shall submit the adopted plan to the office for review. The adopted plan shall be accompanied by a document that contains for each comment received from the State or the public, a response detailing how the comment has been addressed in the plan or, if it has not been addressed, the reason for not doing so.

§ -23 State review of county integrated solid waste management plans. (a) Prior to submitting to the office a plan that has been formally adopted by a county, the county and the office may negotiate plan components the county finds infeasible. The public shall be notified of all plan components that are determined to be infeasible.

(b) The office shall review the county-adopted plan and approve, conditionally approve, approve specific elements or components, or disapprove the plan. The office shall have sixty days to render a decision, unless the office gives

written notice to the county that additional time is necessary to complete the review.

(c) The office shall approve any county plan or revised plan that demonstrates to its satisfaction that:

- (1) The plan is reasonably complete and accurate, and consistent with this chapter and rules adopted under this chapter;
- (2) The plan provides for the maximum feasible development and implementation of source reduction, recycling, and bioconversion programs, and demonstrates a feasible schedule, funding source, and amount for doing so;
- (3) The plan provides for the disposal of solid waste that is not reduced, recycled, or altered through bioconversion, in a manner that is consistent with the requirements of this chapter; and
- (4) The plan accomplishes all of the above in a manner consistent with chapter 226.

(d) To expedite and facilitate the plan development, review, and adoption process, the office, at the request of a county, may participate directly in the county adoption process by attending public hearings and county council sessions.

(e) The department shall notify the public of the approval, conditional approval, approval of specific elements or components, or disapproval of the plan. The director may hold a public hearing on the plan if the director determines that a public hearing is in the public interest.

§ -24 Submission schedule for revised integrated solid waste management plans. (a) Each state-approved county plan shall be revised and submitted to the office on the following schedule:

- (1) The first revised plan shall be submitted to the office not later than four years after the effective date of this chapter; and
- (2) Subsequent revised plans shall be submitted to the office once every five years.

All revised plans shall be consistent with the requirements of this chapter.

(b) Not less than one hundred and twenty days prior to the submission of a revised plan to the office, the county shall submit a copy of the proposed revision to its county advisory committee for review and comment. All revisions determined by the county advisory committee or the office to be substantial revisions shall be subject to:

- (1) At least one county public hearing prior to final submission of the revised plan to the office for review;
- (2) Reconsideration and approval by the county advisory committee; and
- (3) Review by the office, where the office shall approve, conditionally approve, approve specific elements or components, or disapprove the plan.

In general, any significant changes in policy, program implementation, the identification of facilities necessary to accomplish plan goals, or funding mechanisms, shall be considered substantial revisions. Deadlines for the submittal of substantial revisions shall be pursuant to the schedule outlined in this section.

(c) If neither the county advisory committee nor the office deems any changes to be substantial, then those changes shall be incorporated immediately into the plan. If any member of the public contests a determination of "lack of substantial revision," that person may appeal the determination to the director. The decision of the director shall be final.

(d) The office may require a county to modify and submit to the office an entire plan or specific elements of a plan at a date earlier than the schedule outlined in this section if:

- (1) The county, in total, within the county and through access to capacity within another county, has fewer than five years of available permitted disposal capacity, and in the judgment of the office is not making sufficient progress toward developing or gaining access to new capacity; or
- (2) The county fails to demonstrate a commitment to meeting the State's waste reduction goals.

§ -25 Contents of county integrated solid waste management plans.

(a) Each county plan and subsequent revision shall include:

- (1) A program element; and
- (2) A facility capacity and siting element.

A county may include additional elements at its discretion.

(b) The program element shall include at a minimum:

- (1) A waste stream assessment component;
- (2) A source reduction component;
- (3) A recycling and bioconversion component;
- (4) An energy-balance component;
- (5) A special waste component;
- (6) A household hazardous waste component;
- (7) A public education and information component;
- (8) A landfill and incineration component;
- (9) A marketing and procurement of materials component;
- (10) A program implementation component; and
- (11) A program funding component.

(c) The facility capacity and siting element shall include at a minimum:

- (1) An existing capacity and future needs component;
- (2) A facility implementation component; and
- (3) An enterprise zone component.

§ -26 Contents of the program element. (a) The waste stream assessment component shall describe and explain the origin, composition, and weight or volume, or both, of solid waste generated within the county during the year in which the plan is being developed, or during the subsequent years when a revised plan is being developed.

The component shall include data that are reasonably representative of, and that reflect information that considers, seasonal and year-round patterns in waste generation. The data developed in this component of the initial county plan shall serve as the baseline for future measurement of the percentage of waste reduced through source reduction, recycling, and bioconversion programs. For each revised plan, the component shall provide a quantitative estimate of the amount of each type of solid waste that was reduced through recycling and bioconversion during the previous planning period. The revised plan shall also include an estimate of reduction that has resulted from source reduction efforts, to the extent that the reduction can be quantified.

(b) The source reduction component shall identify and evaluate specific measures for achieving source reduction, including, but not limited to:

- (1) Increased efficiency in the use of all materials;
- (2) Replacement of disposable materials and products with reusable materials and products; and

(3) Reduced packaging.

(c) The recycling and bioconversion component shall identify and assess:

- (1) The level of waste reduction the county is achieving through existing recycling and bioconversion efforts;
- (2) The type and amount of solid waste that it is technically and economically feasible to recycle or alter through bioconversion; and
- (3) Methods to increase and improve the recycling and bioconversion efforts, including opportunities for backyard composting.

For recycling, the counties shall assess the type and amount of solid waste that it is technically feasible to recycle, giving consideration at a minimum to clear glass, colored glass, aluminum, steel and bimetallic cans, high-grade office paper, newsprint, mixed paper, corrugated paper, HDPE, PET, and green waste.

For bioconversion, the counties shall assess the type and amount of solid waste that it is technically feasible to alter through bioconversion, giving consideration at a minimum to green waste, wood waste, animal manure, sewage sludge, and food wastes.

(d) The energy-balance component shall describe the programs by which the county will investigate or incorporate ways of increasing the energy efficiency of the solid waste management process, including the assessment of energy and fuel-production options such as composting, anaerobic digestion, acid hydrolysis, production of liquid fuels, incineration, or a combination thereof. The energy component shall identify and assess:

- (1) The amount of energy input, including, but not limited to, electrical power, gasoline, diesel fuel, coal, natural gas, propane, kerosene, and heating oil, required by the plan for the accomplishment of collection, recycling, composting, bioconversion, waste handling, disposal, and landfilling;
- (2) The amount of energy produced from the waste, including electricity, natural gas, hydrogen, and liquid fuels such as ethanol or methanol;
- (3) The net energy use or energy production attributable to the solid waste program. Where feasible, this assessment shall include energy used in the original manufacture of these goods. National averages of energy consumed may be incorporated in these estimates; and
- (4) Methods by which net energy use may be decreased or net energy or fuels production may be increased.

(e) The special waste component shall describe the existing waste handling and disposal practices for special wastes, including, but not limited to, asbestos, used oil, lead acid batteries, municipal waste combustion ash, sewage sludge that is not hazardous waste, agricultural and farm-generated wastes, medical wastes, tires, white goods, and derelict vehicles. The component shall identify current and proposed programs to ensure the proper handling, reuse, and long-term disposal of special wastes.

(f) The household hazardous waste component shall:

- (1) Assess the quantity and type of hazardous wastes generated by residences in the county;
- (2) Describe current collection, recycling, and exchange programs, as well as current methods of disposing of household hazardous waste; and
- (3) Develop programs for the collection of household hazardous wastes that protect the public and the environment from these substances. The household hazardous wastes collected by the counties shall be disposed of by a state program. A county may petition the director

to be exempt from this paragraph if the county demonstrates to the director's satisfaction the adequacy of its current methods of household hazardous waste collection, recycling, exchange, and disposal to protect public health and the environment.

(g) The public education and information component shall describe the programs that the county will use, in coordination with the efforts of the office, to:

- (1) Provide comprehensive and sustained public notice of the options for alternate source reduction, recycling, and bioconversion, and for the proper handling of household hazardous and special wastes; and
- (2) Distribute information and educational materials regarding general solid waste issues through the media, schools, and community organizations.

(h) The landfill and incineration component shall:

- (1) Assess the county's current landfill capacity and ways to extend that capacity;
- (2) Assess the availability of land for future landfills;
- (3) Estimate the amount of waste currently going into incineration facilities and the remaining available capacity;
- (4) Estimate the amount of ash generated at incineration facilities; and
- (5) Describe provisions for ash disposal.

(i) The marketing and procurement of materials component shall describe:

- (1) Existing county, state, or other markets for materials diverted from the solid waste stream;
- (2) Methods to increase access to markets, including the promotion of local uses for materials derived from solid waste; and
- (3) Methods to promote the procurement of recycled materials by county agencies.

(j) The program implementation component shall define:

- (1) Specific tasks and responsibilities;
- (2) Schedules for implementation;
- (3) Identification of proposed ordinances, contracts, and other guidelines; and
- (4) Methods for evaluating the effectiveness of the county plan.

(k) The program funding component shall:

- (1) Provide for each of the components, where applicable, the estimated cost to the county of program implementation; and
- (2) Demonstrate the county's economic self-sufficiency in managing solid waste pursuant to the implementation of the approved plan. This includes the identification of county funding sources that will be used to implement the plan, and other viable sources of funding that have been identified or are anticipated.

§ -27 **Contents of the facility capacity and siting element.** (a) The existing capacity and future needs component shall identify existing and future facilities needed by the county for solid waste management.

(b) The facility implementation component shall describe the specific tasks that are necessary to provide for the development or expansion of source reduction, recycling, bioconversion, and disposal facility capacity. The planning, design, funding, staffing, siting, construction, and operation of each proposed solid waste facility shall be addressed.

(c) The enterprise zone component shall describe the county's current and planned actions to establish enterprise zones.

§ -28 **Facility permitting.** Permitting shall be performed pursuant to chapter 342H.

§ -29 **Revisions to the state integrated solid waste management plan.** (a) The office shall be responsible for preparing revisions to the state integrated solid waste management plan. The first revision shall be completed within six months of the date that all four initial county plans have been approved by the office. The office shall complete each additional state revised plan within six months of the date that all four county revised plans have been approved by the office.

(b) For each state revised plan, the office shall convene a state integrated solid waste management task force. The office shall involve the task force in the review of the county plans and the development of the state revised plan.

(c) For each state revised plan, the office shall:

- (1) Revise and update the material contained in the previous plan or revised plan; and
- (2) With comment from the task force, address other issues of statewide concern regarding integrated solid waste management.

§ -30 **Records.** Each operator of a municipal solid waste landfill or incineration facility shall keep records of all deliveries of solid waste to the facility, including, but not limited to, the source of the waste, the kind of waste received, and the weight or volume, or both, of the waste. The records shall be made available to the department and the respective county for inspection, upon request. At the request of a county, the department may exempt a specific facility from this requirement, or may modify this requirement for a specific facility, if the department determines that the cost of compliance is likely to exceed the value of accurate and thorough data. If the department grants an exemption to a facility under this section, the public shall be notified through publication of a public notice in a newspaper of general circulation in the State.

§ -31 **Administration.** The process of county and state integrated solid waste management planning shall be expedited to the greatest degree possible. The department, within six months of the effective date of this chapter, shall issue guidelines for the development of county plans. The draft guidelines shall be circulated to the counties for review and comment not less than forty-five days before their issuance.

PART IV. GOVERNMENTAL COORDINATION

§ -41 **Goals for recycled product procurement.** It shall be the policy of all state and county public agencies to give preference to the purchase of products made from recycled materials, that are themselves recyclable, and that are designed for durability.

§ -42 **Agency responsibilities for recycled products procurement.** (a) The department of accounting and general services, with the assistance of the office, shall develop the recycled product procurement program. The office, in coordination with the department of accounting and general services, shall ensure that all state agencies and county agencies are provided with the information and technical assistance necessary to establish recycling procurement programs. The department of accounting and general services shall periodically review its specifications to determine whether discrimination against procured goods with

recycled-content exists and shall revise these specifications to eliminate any discrimination.

(b) Pursuant to section 103-24.5, the comptroller shall establish rules pursuant to chapter 91 governing procurement preference for recycled products.

(c) The department of accounting and general services and other state agencies, where necessitated by technical expertise, shall review and establish purchase specifications to aid in the procurement of recycled goods. Where appropriate, purchase specifications shall include, but not be limited to, paper, paper products, plastics, sewage sludge, compost, tires, batteries, oil, paving materials and base, subbase, and pervious backfill materials. Paving materials to be considered shall include, but are not limited to, asphalt, tires, crushed concrete for base, subbase and paving materials. The standards and specifications shall provide for the use of recycled materials and shall not reduce the quality standards for highway and road construction.

§ -43 **Reporting.** (a) Each state agency that conducts its own procurement activities shall annually submit information and data to the office regarding:

- (1) The agency's progress in developing procurement programs;
- (2) The total amount of paper purchased during the year; and
- (3) The amount of recycled goods purchased during the year compared to non-recycled counterparts.

If an agency is unable to supply this information, the agency shall describe what steps it is taking to obtain this information in the future.

(b) At the request of the office, each county shall provide a similar report.

§ -44 **Double-sided copying.** Double-sided copying shall be standard operating practice for all state and county agencies, offices, and facilities, as available and appropriate. To increase double-sided copying, each agency in coordination with the department of accounting and general services, each appropriate county entity, and the office, shall establish a schedule for the replacement of single-sided copying machines with double-sided copying machines for all high volume and other targeted machines that may be identified through the conduct of waste evaluations.

§ -45 **Establishment of an office paper and other materials recovery program.** By January 1, 1992, the department shall initiate an office paper and other materials recovery program for all appropriate offices within the department. By June 30, 1993, all state and county agencies shall establish an office paper and other materials recovery program.

§ -46 **Coordination of bioconversion programs.** Bioconversion programs shall include:

- (1) A variety of program sizes ranging from backyard composting by residents and commercial establishments to full-scale municipal programs; and
- (2) A range of technical approaches that adequately demonstrate the types of techniques most appropriate for Hawaii's environment and waste stream. This may include evaluating the feasibility of using compost or other bioconversion products for landfill cover.

§ -47 **State agency responsibilities in the promotion of bioconversion.** The general responsibilities of state agencies under this chapter include the following:

- (1) Departments that procure compost or that can substitute compost for other purchased products shall utilize locally produced compost whenever possible;
- (2) The college of tropical agriculture and human resources of the University of Hawaii, in consultation with the department of agriculture and the office, shall evaluate composting and bioconversion methods to determine the methods appropriate to Hawaii's environment and needs. The college shall provide educational outreach to homeowners and farmers on appropriate composting and bioconversion methods;
- (3) The department of business, economic development, and tourism shall assist, to the extent possible, in the assessment of bioconversion program alternatives;
- (4) The department of health shall evaluate the public health consequences of using compost for specific applications and bioconversion for the processing of municipal solid waste;
- (5) The department of land and natural resources shall consider the use of locally produced compost on state lands whenever possible; and
- (6) The department of transportation shall use compost in place of, or to supplement, other commercial fertilizers in the department's highway landscape maintenance program.

§ -48 **Recycling market development.** Databases on solid waste management alternatives and businesses involved in recycling and bioconversion shall be developed and maintained as follows:

- (1) Within one year of its establishment, the office shall develop a database on the full range of solid waste management alternatives. This database shall include, but not be limited to, information on technology description, effectiveness, level of use elsewhere, available vendors, and cost. This database shall be offered for the use of the public and private sectors; and
- (2) By January 1, 1993, the department of business, economic development, and tourism shall develop a database that identifies businesses involved in recycling and bioconversion. This database shall identify businesses that collect, transport, process, market, reuse, or purchase these goods."

SECTION 3. Chapter 201, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . RECYCLING

§201- Development of markets for recycled materials. The department, to the extent possible, and with the assistance of the office of solid waste management, shall coordinate state efforts to develop markets for recycled materials. The department shall integrate this activity with its other programs, specifically those programs relating to business development and energy. The department shall coordinate market activities with the counties and clarify their respective roles and responsibilities.

§201- Advisory committees. (a) The director of business, economic

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development, and tourism may form advisory committees to assist in the formulation of recommendations concerning the development of markets for recycled materials. The recommendations shall address the removal of impediments to, as well as the establishment of incentives for, the use of recycled materials by businesses or energy producers in order to expand markets for recyclable materials.

(b) At the discretion of the director, committee members may include, but need not be limited to:

- (1) The director of health;
- (2) The director of the office of state planning;
- (3) The chairperson of the board of land and natural resources;
- (4) The comptroller;
- (5) The chairperson of the public utilities commission;
- (6) The director of transportation;
- (7) The county integrated solid waste management coordinators;
- (8) One representative each from the not-for-profit recycling industry, the for-profit recycling industry, the solid waste collection industry, the recycling processing industry, the recycling brokerage and marketing industry, the shipping industry, and an environmental advocacy group; and
- (9) An elected official from each county;

or their designated representatives.

§201- Studies. The director of business, economic development, and tourism may conduct studies necessary to prepare recommendations on the development of markets for recycled materials.

§201- Report. The director of business, economic development, and tourism shall incorporate the activities of the past year and any recommendations for specific actions to develop markets for recycled materials in the department's annual report.

§201- Legislation and rules. The department, with the assistance of the office of solid waste management, shall coordinate the following activities, as necessary, to develop markets for recycled materials:

- (1) The development and introduction of proposed legislation; and
- (2) The development of rules by the appropriate state agencies.

It is the intent of the legislature that implementation of the department's recommendations be expedited."

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000, or so much thereof as may be necessary for fiscal year 1991-1992, to conduct a statewide household hazardous waste collection and disposal project.

SECTION 5. The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 1991.

(Approved July 2, 1991.)

ACT 325

H.B. NO. 1230

A Bill for an Act Relating to Hawaiian Home Lands.

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

SECTION 1. Since the passage of the Hawaiian Homes Commission Act of 1921, the shortage of available water has been one of the primary reasons for the failure of administrators to settle native Hawaiians on Hawaiian homesteads under Section 207 of the Hawaiian Homes Commission Act.

When the United States transferred responsibility for daily administration of the Hawaiian Homes Commission Act to the State of Hawaii in the Hawaii Admission Act, it impressed upon the State a solemn duty to faithfully administer the spirit of the Hawaiian Homes Commission Act (Article XII, Section 2, Hawaii State Constitution). Accordingly, it is the intent of the State of Hawaii to provide the essential resources, especially water, to the department of Hawaiian home lands necessary for native Hawaiian beneficiaries to utilize the lands set aside for them.

However, the history of the administration of the Hawaiian Homes Commission Act demonstrates that the inability to access water resources in an economic and efficient manner has been a major obstacle to the settlement of large tracts of homestead land. In many instances competing water users have been able to assert claims to water well before the department has been able to do so. In some instances, the failure of different state agencies to coordinate their activities has led to the commitment of government sources of water to private interests without regard for the water needs of current and future homesteaders.

This problem has been exacerbated by the potentially long delays in providing supporting infrastructure to Hawaiian homestead areas. During these periods of delay, other water users are seeking to commit water resources for other competing uses.

This threat still exists today. For example, current and future homesteaders face the potential loss of water resources from the Kualapuu groundwater aquifer and the surface water impounded at Puu Pulehu on the island of Hawaii to private interests. A recent amendment to section 221 (c) of the Hawaiian Homes Commission Act by the 1990 legislature provided only a partial resolution of this problem. The attorney general has interpreted that amendment to provide the department with only a "first call" to existing water resources, and not a reservation of water for current and future homestead development.

Accordingly, the legislature finds that further amendments to laws affecting the allocation of water must be enacted to assure that adequate amounts of water are reserved for the future use of Hawaiian homesteaders.

SECTION 2. Section 220, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§220. Development projects; appropriations by legislature; bonds issued by legislature[.]; mandatory reservation of water. (a) [The] Subject to subsection (d), the department is authorized directly to undertake and carry on general water and other development projects in respect to Hawaiian home lands and to undertake other activities having to do with the economic and social welfare of the homesteaders, including the authority to derive revenue from the sale, to others than homesteaders, of water and other products of such projects or activities, or from the enjoyment thereof by others than homesteaders, where such sale

of products or enjoyment of projects or activities by others does not interfere with the proper performance of the duties of the department; provided that roads through or over Hawaiian home lands, other than federal-aid highways and roads, shall be maintained by the county [or city and county] in which the particular road or roads to be maintained are located.

(b) The legislature is authorized to appropriate out of the treasury of the State such sums as it deems necessary to augment the funds of the department and to provide the department with funds sufficient to execute and carry on such projects and activities. The legislature is further authorized to issue bonds to the extent required to yield the amount of any sums so appropriated for the payment of which, if issued for revenue-producing improvements, the department shall provide, as set forth in section 213.

(c) To enable the construction of irrigation projects which will service Hawaiian home lands, either exclusively or in conjunction with other lands served by such projects, the department is authorized, with the approval of the governor, and subject to subsection (d), to:

- (1) Grant to the board of land and natural resources, or to any other agency of the government of the State or the United States undertaking the construction and operation of such irrigation projects, licenses for rights-of-way for pipelines, tunnels, ditches, flumes, and other water appurtenant to Hawaiian home lands;
- (2) Exchange available lands for public lands, as provided in section 204 of this Act, for sites for reservoirs and subsurface water development wells and shafts;
- (3) Request any such irrigation agency to organize irrigation projects for Hawaiian home lands and to transfer irrigation facilities constructed by the department to any such irrigation agency;
- (4) Agree to pay the tolls and assessments made against community pastures for irrigation water supplied to such pastures; and
- (5) Agree to pay the costs of construction of projects constructed for Hawaiian home lands at the request of the department, in the event the assessments paid by the homesteaders upon lands are not sufficient to pay such costs;

provided that licenses for rights-of-way for the purposes and in the manner specified in this section may be granted for a term of years longer than is required for amortization of the costs of the project or projects requiring use of such rights-of-way only if authority for such longer grant is approved by an act of the legislature of the State. Such payments shall be made from, and be a charge against the Hawaiian home operating fund.

(d) For projects pursuant to this section, sufficient water shall be reserved for current and foreseeable domestic, stock water, aquaculture, and irrigation activities on tracts leased to native Hawaiians pursuant to section 207(a)."

SECTION 3. Section 171-58, Hawaii Revised Statutes, is amended to read as follows:

"§171-58 Minerals and water rights. (a) Except as provided in this section the right to any mineral or surface or ground water shall not be included in any lease, agreement, or sale, this right being reserved to the State; provided that the board may make provisions in the lease, agreement, or sale, for the payment of just compensation to the surface owner for improvements taken as a condition precedent to the exercise by the State of any reserved rights to enter, sever, and remove minerals or to capture, divert, or impound water.

(b) Disposition of mineral rights shall be in accordance with the laws relating to the disposition of mineral rights enacted or hereafter enacted by the legislature.

(c) Disposition of water rights may be made by lease at public auction as provided in this chapter or by permit for temporary use on a month-to-month basis under those conditions which will best serve the interests of the State and subject to a maximum term of one year and other restrictions under the law; provided that any disposition by lease shall be subject to disapproval by the legislature [or] by two-thirds vote of either the senate or the house of representatives or by majority vote of both[,] in any regular or special session next following the date of disposition; provided further that after a certain land or water use has been authorized by the board subsequent to public hearings and conservation district use application and environmental impact statement approvals, water used in non-polluting ways, for nonconsumptive purposes because it is returned to the same stream or other body of water from which it was drawn, essentially not affecting the volume and quality of water or biota in the stream or other body of water, may also be leased by the board with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution.

(d) Any lease of water rights shall contain a covenant on the part of the lessee that the lessee shall provide from waters leased from the State under the lease or from any water sources privately owned by the lessee to any farmer or rancher engaged in irrigated pasture operations, crop farming, pen feeding operations, or raising of grain and forage crops, or for those public uses and purposes as may be determined by the board, at the same rental price paid under the lease, plus the proportionate actual costs, as determined by the board, to make these waters available, so much of the waters as are determined by the board to be surplus to the lessee's needs and for that minimum period as the board shall accordingly determine; provided that in lieu of payment for those waters as the State may take for public uses and purposes the board may elect to reduce the rental price under the lease of water rights in proportion to the value of the waters and the proportionate actual costs of making the waters available. Subject to the applicable provisions of section 171-37(3), the board, at any time during the term of the lease of water rights, may withdraw from waters leased from the State and from sources privately owned by the lessee so much water as it may deem necessary to (1) preserve human life and (2) preserve animal life, in that order of priority; and that from waters leased from the State the board, at any time during the term of the lease of water rights, may also withdraw so much water as it may deem necessary to preserve crops; provided that payment for the waters shall be made in the same manner as provided in this section.

(e) Any new lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan. The board shall prescribe the minimum content of a watershed management plan; provided that the watershed management plan shall require the prevention of the degradation of surface water and ground water quality to the extent that degradation can be avoided using reasonable management practices.

(f) Upon renewal, any lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not renew any lease of water rights without the foregoing covenant or a watershed management plan. The board shall prescribe the minimum content of a watershed management plan; provided that the watershed management plan shall require the

prevention of the degradation of surface water and ground water quality to the extent that degradation can be avoided using reasonable management practices.

(g) The department of land and natural resources shall notify the department of Hawaiian home lands of its intent to execute any new lease, or to renew any existing lease of water rights. After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian home lands as provided by section 221 of the Hawaiian Homes Commission Act."

SECTION 4. Section 174-16, Hawaii Revised Statutes, is amended to read as follows:

"§174-16 Consideration of petitions; notice and hearing. When more than one petition is filed covering portions of the same territory, the board of land and natural resources may consolidate the petitions. Having received the petitions, on the basis of such evidence as may be submitted to it by the petitioners and on the findings of investigations or surveys made by or for it, or by other governmental agencies, the board shall establish such projects as it deems necessary to carry out the purposes of this chapter. Before making a final determination to establish a project or projects, the board shall hold a hearing, notice of which shall be duly advertised in the same manner and form, as nearly as may be, as provided in section 174-17. The department shall assure that adequate water is reserved for future development and use on Hawaiian home lands that could be served by the proposed water project."

SECTION 5. Section 174-17, Hawaii Revised Statutes, is amended to read as follows:

"§174-17 Formation of a project on initiative of board; notice and hearing; protests. The board of land and natural resources may organize projects upon its own initiative. In such event, it shall fix a date for public hearing upon the proposed project, which date shall not be less than sixty days after the first publication of notice thereof in a newspaper of general circulation in the county in which the project is proposed. The notice shall be published once in each of four successive weeks, giving notice of the area to be included in and general details of the proposed project, stating the time and place of the public hearing. If the owners of fifty-five per cent of the acreage of lands proposed to be organized into a project shall at the hearing or prior thereto file written protest against the proposed project, the project shall not be made and proceedings shall not be renewed within twelve months from the date of closing the public hearing, unless each and every owner protesting withdraws each and every owner's protest; provided that any lessee of any lands included within the proposed project, who, by the express terms of the lessee's lease must pay the assessment contemplated hereunder shall be subrogated to all the rights of the owner to protest by filing at the hearing or prior thereto written protest against the proposed project, the written protest to be accompanied by a certified copy of the lease; provided further that any lessor may, at any time before the closing of the public hearing, make void the protest of the lessor's lessee on consideration of the filing with the board a duly acknowledged waiver of the provision in the lease which requires the lessee to pay the assessment, and a written undertaking of the lessor to pay the assessment to be made on account of the proposed project; and further provided that a project may be instituted without further advertisement for a smaller

acreage within the advertised acreage in the event the board determines the smaller project to be economically feasible, if written protests by the owners, or lessees subrogated to the right to protest, of fifty-five per cent of the smaller acreage shall not be filed. The department shall assure that adequate water is reserved for future development and use on Hawaiian home lands that could be served by the proposed water project."

SECTION 6. Section 174C-31, Hawaii Revised Statutes, is amended to read as follows:

"§174C-31 Hawaii water plan. (a) The Hawaii water plan shall consist of four parts: (1) a water resource protection plan which shall be prepared by the water resources commission; (2) water use and development plans for each county which shall be prepared by each separate county and adopted by ordinance, setting forth the allocation of water to land use in that county; (3) a state water project plan which shall be prepared by the agency which has jurisdiction over such projects in conjunction with other state agencies; and (4) a water quality plan which shall be prepared by the department of health.

(b) All water use and development plans shall be prepared in a manner consistent with the following conditions:

- (1) Each water use and development plan shall be consistent with the water resource protection and quality plan.
- (2) Each water use and development plan and the state water projects plan shall be consistent with the respective county land use plans and policies including general plan and zoning as determined by each respective county.
- (3) The water use and development plan for each county shall also be consistent with the state land use classification and policies.
- (4) The cost to develop the initial water use and development plan for each county shall be funded by the State in an amount not exceeding \$150,000 per county.
- (5) The cost of maintaining the water use and development plan shall be borne by the counties; state water capital improvement funds appropriated to the counties shall be deemed to satisfy Article VIII, section 5 of the State Constitution.
- (6) Each county in order to be eligible for state appropriations for county water projects must have developed an acceptable water use and development plan within the time frame established by this chapter.

(c) To prepare the water resources protection and quality plan, the commission shall:

- (1) Study and inventory the existing water resources of the State and the means and methods of conserving and augmenting such water resources;
- (2) Review existing and contemplated needs and uses of water including state and county land use plans and policies and study their effect on the environment, procreation of fish and wildlife, and water quality;
- (3) Study the quantity and quality of water needed for existing and contemplated uses, including irrigation, power development, geothermal power, and municipal uses;
- (4) Identify rivers or streams, or a portion of a river or stream, which appropriately may be placed within a wild and scenic rivers system, to be preserved and protected as part of the public trust. For the

purposes of this paragraph, the term "wild and scenic rivers" means rivers or streams, or a portion of a river or stream of high natural quality or that possess significant scenic value, including but not limited to, rivers or streams which are within the natural area reserves system. The commission shall report its findings to the legislature twenty days prior to the convening of each regular legislative session; and

- (5) Study such other related matters as drainage, reclamation, flood hazards, floodplain zoning, dam safety, and selection of reservoir sites, as they relate to the protection, conservation, quantity, and quality of water.

The water resource protection plan shall include, but not be limited to:

- (1) Nature and occurrence of water resources in the State;
- (2) Hydrologic units and their characteristics, including the quantity and quality of available resource, requirements for beneficial instream uses and environmental protection, desirable uses worthy of preservation by permit, and undesirable uses for which permits may be denied;
- (3) Existing and contemplated uses of water, as identified in the water use and development plans of the State and the counties, their impact on the resource, and their consistency with objectives and policies established in the water resource protection quality plan;
- (4) Programs to conserve, augment, and protect the water resource; and
- (5) Other elements necessary or desirable for inclusion in the plan.

Thereafter, the commission in coordination with the counties and the department of health shall formulate an integrated coordinated program for the protection, conservation, and management of the waters in each county based on the above studies. This program, with such amendments, supplements, and additions as may be necessary, shall be known as the water resource protection and quality plan.

Thereafter, each county shall prepare a water use and development plan and the appropriate state agency shall prepare the state water projects plan. Each county water use and development plan shall include but not be limited to:

- (1) Status of water and related land development including an inventory of existing water uses for domestic, municipal, and industrial users, agriculture, aquaculture, hydropower development, drainage, reuse, reclamation, recharge, and resulting problems and constraints;
 - (2) Future land uses and related water needs; and
 - (3) Regional plans for water developments including recommended and alternative plans, costs, adequacy of plans, and relationship to water resource protection and quality plan.
- (d) The Hawaii water plan shall be directed toward the achievement of the following objectives:
- (1) The attainment of maximum reasonable-beneficial use of water for such purposes as those referred to in subsection (a);
 - (2) The proper conservation and development of the waters of the State;
 - (3) The control of the waters of the State for such public purposes as navigation, drainage, sanitation, and flood control;
 - (4) The attainment of adequate water quality as expressed in the state water protection and quality plan; and
 - (5) The implementation of the water resources policies expressed in section 174C-2.
- (e) The Hawaii water plan shall divide each county into sections which

shall each conform as nearly as practicable to a hydrologic unit. The board shall describe and inventory:

- (1) All water resources and systems in each hydrologic unit;
 - (2) All presently exercised uses;
 - (3) The quantity of water not presently used within that hydrologic unit; and
 - (4) Potential threats to water resources, both current and future.
- (f) Within each hydrologic unit the commission shall establish the following:

ing:

- (1) An instream use and protection program for the surface watercourses in the area.
- (2) Sustainable yield. The sustainable yield shall be determined by the commission using the best information available and shall be reviewed periodically. Where appropriate the sustainable yield may be determined to reflect seasonal variation.

(g) The commission shall condition permits under part IV of this chapter in such a manner as to protect instream flows and maintain sustainable yields of groundwater established under this section.

(h) The commission shall give careful consideration to the requirements of public recreation, the protection of the environment, and the procreation of fish and wildlife. The commission may prohibit or restrict other future uses on certain designated streams which may be inconsistent with these objectives.

(i) The commission may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the commission may deny a permit under the provisions of part IV.

(j) The commission may also designate certain uses in connection with a particular source of supply which, because of the nature of the activity or amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in any action pursuant to sections 174C-50(h) and 174C-54.

(k) The commission may add to the Hawaii water plan any other information, directions, or objectives it feels necessary or desirable for the guidance of the counties in the administration and enforcement of this chapter.

(l) In formulating or revising the plans, each county and the commission shall consult with and carefully evaluate the recommendations of concerned federal, state, and county agencies.

(m) The commission shall not adopt, approve, or modify any portion of the Hawaii water plan which affects a county or any portion thereof without first holding a public hearing on the matter on the island on which the water resources are located. At least ninety days in advance of such hearing, the commission shall notify the affected county and shall give notice of such hearing by publication within the affected region and statewide.

(n) In formulating or revising each county's water use and development plan, the state water project plan, the water resource protection plan and the water quality plan, each county and the commission shall incorporate the current and foreseeable development and use needs of the department of Hawaiian home lands for water as provided in Section 221 of the Hawaiian Homes Commission Act.

Each county shall update and modify its water use and development plans as necessary to maintain consistency with its zoning and land use policies.”

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SECTION 7. Section 174C-49, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§174C-49]]~~ **Conditions for a permit.** (a) To obtain a permit pursuant to this part, the applicant shall establish that the proposed use of water:

- (1) Can be accommodated with the available water source;
- (2) Is a reasonable-beneficial use as defined in section 174C-3;
- (3) Will not interfere with any existing legal use of water;
- (4) Is consistent with the public interest;
- (5) Is consistent with state and county general plans and land use designations; [and]
- (6) Is consistent with county land use plans and policies[.]; and
- (7) Will not interfere with the rights of the department of Hawaiian home lands as provided in section 221 of the Hawaiian Homes Commission Act.

(b) Within sixty days after receipt of a notice of a permit application, the county shall inform the commission if the proposed use is inconsistent with county land use plans and policies.

(c) The common law of the State to the contrary notwithstanding, the commission shall allow the holder of a use permit to transport and use surface or ground water beyond overlying land or outside the watershed from which it is taken if the commission determines that such transport and use are consistent with the public interest and the general plans and land use policies of the State and counties.

(d) The commission, by rule, may reserve water in such locations and quantities and for such seasons of the year as in its judgment may be necessary. Such reservations shall be subject to periodic review and revision in the light of changed conditions; provided that all presently existing legal uses of water shall be protected.

(e) All permits issued by the commission shall be subject to the rights of the department of Hawaiian home lands as provided in section 221 of the Hawaiian Homes Commission Act, whether or not the condition is explicitly stated in the permit.”

SECTION 8. Section 174C-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by [chapter 175,] chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.”

SECTION 9. The provisions of this Act are declared to be severable, and if any section, 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 Act or the application thereof shall not be affected.

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

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

(Approved July 2, 1991.)

ACT 326

H.B. NO. 1697

A Bill for an Act Relating to Natural Area Partnerships.

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

SECTION 1. Chapter 195, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§195- Natural area partnership program. (a) There is established in the department, a natural area partnership program to provide state funds on a two-for-one basis with private funds for the management of private lands that are dedicated to conservation. Payments shall be made from the natural area reserve fund with funds specifically appropriated for this purpose.

(b) In order to qualify under this program, the applicant shall be a landowner or a cooperating entity of private lands of natural area reserve quality and agree to the following conditions:

- (1) Dedicate the private lands in perpetuity through a transfer of fee title or a conservation easement to the State or a cooperating entity;
- (2) Have the private lands managed by the cooperating entity according to management plans approved by the board that meet the standards established by the department for the natural area reserves system. The management plans shall include provisions to allow public hunting wherever feasible; provided that hunting activities shall be in compliance with applicable laws; and provided further, that game animals shall not be introduced to any partnership area and hunting shall be conducted as part of the conservation purposes of this program. In-kind services such as heavy equipment and existing sources of labor may be utilized as a portion of the private contribution in implementing the management plan;
- (3) Agree to have a penalty payback provision apply in the event a landowner or cooperating entity ceases to implement the approved management plan unless the board approves modifications to the plan or state funding lapses;
- (4) Along with the cooperating entity, submit an annual report to the board detailing the year's management accomplishments, areas needing technical advice, proposed modifications to the plan, and objectives and budget for the coming year. To facilitate the review, the department shall have the right to make inspections of the private lands after prior landowner notification. The board may approve alteration of the management plan to adapt to current conditions. Amendments to the management plan shall be available for public review; and
- (5) Any other conditions the department shall require by rules adopted pursuant to chapter 91.

§195- Reports. The department shall submit annually a comprehensive status report on the natural area reserves system and the natural area partnership program to include, but not be limited to:

- (1) Description of activities and accomplishments;
- (2) Compliance with chapter 42 requirements;
- (3) Analysis of the problems and issues encountered in meeting or failing to meet the objectives as set forth in the management plans;
- (4) Status of public hunting opportunities;
- (5) Financial condition of the fund, including receipts and expenditures for the fund for the previous fiscal year; and
- (6) Plans and management objectives for the next fiscal year.

The report shall be submitted to the governor and the legislature no later than twenty days prior to the convening of each regular legislative session.”

SECTION 2. Section 195-2, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Board” means the board of land and natural resources.

“Heritage program” means a comprehensive natural resource inventory data base for public information that includes the location of rare plants, animals, and natural communities (ecosystems) in the State.

“Landowner” means any person or entity having the fee simple interest in land in the State.”

SECTION 3. Section 195-4, Hawaii Revised Statutes, is amended to read as follows:

“§195-4 Powers and duties of the department. (a) To preserve, manage, and protect the reserves system, the department is authorized, in addition to any other powers, to:

- (1) Designate and bring under its control and management, as part of the reserves system, any [and various] areas as follows:
 - (A) State [of Hawaii] owned land under the jurisdiction of the department may be set aside as a natural area reserve by resolution of the department, subject to the approval of the governor by executive order setting the land aside for [such purposes.] that purpose;
 - (B) New natural area reserves may be established:
 - (i) By gift, devise, grant, reimbursement to cooperators, exchange, or purchase of land or any interest therein, including, but not limited to, conservation easements;
 - (ii) By eminent domain pursuant to chapter 101; or
 - (iii) By the setting aside of [State of Hawaii] state owned land for [such purposes] that purpose by the governor, as provided [by] in section 171-11[.];
- (2) Cooperate or contract with any federal, state, or county governmental agency, quasi-governmental agency, private organization, or individual in carrying out the purpose of this chapter[.];
- (3) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition or management, or both, of natural area reserves[.];
- (4) Implement, after consultation with the commission and based on the

most comprehensive up-to-date compilation of scientific data, the acquisition, management, protection, and use of natural area reserves[.]; and

- (5) Prepare and take the necessary steps to implement the management plan set forth in section 195-11.

(b) The department, with at least twenty days notice, shall conduct one or more public hearings before having the governor revoke or modify an executive order that sets aside lands for the reserves system, or prior to the designation of the following types of lands into the reserves system:

- (1) State lands under the jurisdiction of the department;
- (2) State lands that are removed from other uses or modified by the governor through an executive order that sets aside land for the natural area reserves system;
- (3) Lands acquired by eminent domain pursuant to chapter 101; and
- (4) State lands proposed by the governor for inclusion into the reserves system, as provided in section 171-11.

The notice shall be published in a newspaper of general circulation in the county where the proposed natural area reserve is located and also in a newspaper of general circulation in the State. The notice shall contain, but not be limited to, the time and place of the hearing, the location of the land, and the proposed changes.”

SECTION 4. Section 195-9, Hawaii Revised Statutes, is amended to read as follows:

“§195-9 Natural area reserve fund; heritage program; established; reports]. (a) There is hereby established in the state treasury a special fund known as the natural area reserve fund to implement the purposes of this chapter, including the identification, establishment, and management of natural area reserves [and], the acquisition of private lands for new natural area reserves, [and for] the operation of the heritage program [. As used in this section the “heritage program”, means a program with a comprehensive natural resource inventory data base for public information which shall include the location of rare plants, animals and natural communities (ecosystems) in the State.], and the provision of matching funds for the natural area partnership program. The fund shall be administered by the department [of land and natural resources].

(b) The fund shall consist of moneys received from any public or private sources. The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury[;], 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. Investment earnings credited to the assets of the fund shall become a part of the assets of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried forward in the fund for the next fiscal year.

[(c) The department shall submit annually a detailed report to the governor and legislature setting forth the financial condition of the fund, including receipts and expenditures for the fund for the previous fiscal year.]”

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 1991-1992, and the same sum, or so much thereof as may be necessary for fiscal year 1992-1993, to be deposited into the natural area reserve fund for

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payment under the natural area partnership program. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 6. The appropriation in section 5 of this Act shall be expended as provided in this Act, except that the provisions of sections 42-4 to 42-6(a), Hawaii Revised Statutes, are waived when making the expenditures for fiscal year 1991-1992.

SECTION 7. 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 8. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 1991.

(Approved July 2, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 327

H.B. NO. 1699

A Bill for an Act Relating to Forest Stewardship.

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

SECTION 1. The purpose of this Act is to establish the forest stewardship program to assist private landowners in managing, protecting, and restoring important watersheds, timber resources, fish and wildlife habitats, isolated populations of rare and endangered plants, native vegetation, and other lands that are not recognized as potential natural area reserves.

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

“CHAPTER FOREST STEWARDSHIP

§ -1 **Findings and purpose.** The legislature finds that:

- (1) Much of the forest land in Hawaii is privately owned;
- (2) The capacity to protect important watersheds and native Hawaiian plants and animals and to produce renewable forest resources is significantly dependent on these privately owned forest and formerly forested lands;
- (3) The factors essential to the quality of life in Hawaii, including our water and air quality, mild climate, and habitat available for plants and animals unique to these islands, can be maintained and improved through good stewardship of private forest lands;

- (4) To accomplish these purposes, the present system of state and federal financial and technical assistance programs needs to be expanded to promote the long-term management of additional privately owned forest and formerly forested lands throughout the state; and
- (5) A forest stewardship program should be established to supplement the natural area reserves system's programs under chapter 195 by encouraging private landowners of privately owned forest and formerly forested lands that cannot qualify as potential natural area reserves to make long-term commitments to protect, maintain, and restore important watersheds, timber resources, fish and wildlife habitats, isolated populations of rare and endangered plants, native vegetation, and other lands that provide significant public benefits.

The purpose of this chapter is to establish a program to financially assist landowners in managing, protecting, and restoring important natural resources in Hawaii's forested and formerly forested lands.

§ -2 Definitions. As used in this chapter:

"Board" means the board of land and natural resources.

"Department" means the department of land and natural resources.

"Fund" means the forest stewardship fund as established by section -4.

"Landowner" means any person having an interest in or holding any encumbrance upon land in the State, including any person having a lease interest in the real property with an unexpired term of ten or more years.

"Native vegetation" means a diverse vegetation consisting mostly of plants endemic or indigenous to Hawaii.

"Potential natural area reserve" means land or water areas within the protective subzone of the conservation district established pursuant to section 183-41, intact native natural communities identified by the heritage program under chapter 195, and other lands or waters meeting criteria established by the natural area reserves system commission.

"Program" means the forest stewardship program established in section -3.

§ -3 Establishment of the forest stewardship program. (a) There is established a forest stewardship program to be administered by the board to assist private landowners in managing, protecting, and restoring important watersheds, native vegetation, timber resources, fish and wildlife habitats, isolated populations of rare and endangered plants, and other lands that are not recognized as potential natural area reserves.

(b) The program shall reimburse landowners for a portion of the landowners' total costs in developing and implementing approved forest stewardship management plans, as set forth in this chapter.

§ -4 Forest stewardship fund. (a) There is established a special fund within the state treasury known as the forest stewardship fund from which payments shall be made by the board pursuant to agreements entered into with qualified landowners to further the purposes of this chapter.

(b) The fund shall consist of moneys received from any public or private sources. The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury; provided 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.

Investment earnings credited to the fund shall become a part of the assets of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried forward in the fund for the next fiscal year.

§ -5 **Forest stewardship management plans; approved activities.** (a) To participate in the forest stewardship program, the applicant landowner shall prepare and submit to the board a forest stewardship management plan that shall:

- (1) Identify and describe activities to be undertaken by the landowner to protect soil, water, aesthetic quality, recreation, timber, water, fish, wildlife, and native plant resources on the land in a manner that is compatible with the objectives of the program, is consistent with this chapter, and qualifies under the board's list of approved activities;
- (2) Be signed by all parties having an interest in or holding any encumbrance upon the property, and shall state that the parties agree to comply with the plan upon its approval; and
- (3) Be approved by the board and available for public review.

(b) The board and other cooperating natural resource management agencies shall develop a list of approved management activities and practices that shall be eligible for cost-share assistance under the program in the following areas:

- (1) Enhanced management and maintenance of vegetation on vital watershed lands;
- (2) Sustainable growth and management of forests for timber and other forest products on lands from which all or most of the native vegetation had been removed prior to January 1, 1991;
- (3) Protection, restoration, and enhancement of native plants and animals;
- (4) Management, maintenance, and restoration of forests for shelterbelts, windbreaks, aesthetic quality, and other conservation purposes on lands from which all or most of the native vegetation had been removed prior to January 1, 1991;
- (5) Agroforestry management on lands from which all or most of the native vegetation had been removed prior to January 1, 1991;
- (6) Management and maintenance of native fish and wildlife habitats;
- (7) Management of outdoor recreational opportunities; and
- (8) Other activities approved by the board, which are consistent with this chapter.

(c) The board shall encourage the use of private agencies, consultants, organizations, and firms to the extent feasible for the preparation of individual forest stewardship management plans and implementation of approved activities.

§ -6 **Qualifications and conditions.** (a) Payments shall only be made with funds specifically appropriated for that purpose and shall not exceed fifty per cent of the total cost of the landowner in developing and implementing an approved management plan. Total payments to any one landowner shall be determined by the board, and the reasonable value of material, goods, and services contributed toward the plan by the landowner shall be included in determining the amount of the landowner's cost. The landowner shall be required to spend private funds before reimbursements are made. In-kind services such as heavy equipment and existing resources of labor may be utilized as a portion of the landowner's contribution in implementing the management plan, that is consistent with this chapter.

(b) The board shall determine the appropriate reimbursement rate for making cost-share payments and the schedule of the payments after determining consistency with this chapter and giving appropriate consideration to:

- (1) Protecting and enhancing key watershed areas in the public interest;
 - (2) Developing or adapting new forestry and conservation techniques for Hawaii;
 - (3) Providing rural employment and economic diversification opportunities; and
 - (4) Preserving or restoring especially valuable natural resources, including native plants, animals, and ecosystems.
- (c) To receive funds under the forest stewardship program, an applicant

shall:

- (1) Be a landowner of private forest that is not managed under existing federal, state, or private sector financial and technical assistance programs and that is not recognized as a potential natural area reserve. Private forest lands managed under existing federal, state, or private sector financial and technical assistance programs may be eligible for assistance under this program if the landowner agrees to comply with the requirements of the program or if forest management activities are expanded or enhanced to meet the requirements of this chapter;
- (2) Prepare and submit a forest stewardship management plan as set forth in section -5; and
- (3) Enter into an agreement with the board to do the following:
 - (A) Undertake and maintain the approved activities under the management plan for not fewer than ten years, unless the board approves modifications in the plan;
 - (B) Complete all approved activities under the management plan within the timetable agreed upon by the board and the landowner consistent with the intent of this chapter;
 - (C) Submit an annual progress report to be reviewed by the board for each year in which the landowner receives support under the program. This report shall detail accomplishments, areas requiring technical advice, and any proposed modifications of the plan; and
 - (D) Other conditions deemed necessary by the board to implement the purposes of this chapter.

(d) The board shall review the annual progress report and shall determine whether the landowner has met the objectives of the plan. To facilitate the review, the department shall have the right to make inspections of the forest land after prior landowner notification. The board may approve alteration of the plan to adapt to current conditions. Amendments to the plan shall be available for public review.

(e) The board shall submit annually a detailed report to the governor and legislature setting forth management objectives that have been completed, an analysis of problems and issues encountered in meeting or failing to meet objectives as set forth in the management plans, the financial condition of the fund, and management objectives for the next year.

§ -7 Penalty payback provisions. The board shall establish and implement a penalty payback provision to be applied in the event that a landowner terminates any approved practice required under the forest stewardship management plan, as agreed to by the board and the landowner.

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§ -8 **Rules.** The department shall adopt rules pursuant to chapter 91 to carry out the purposes of this chapter."

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 1991-1992, and \$50,000, or so much thereof as may be necessary for fiscal year 1992-1993, to be deposited into the forest stewardship fund. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 4. The appropriation in section 3 of this Act shall be expended as provided in this Act, except that the provisions of sections 42-4 to 42-6(a), Hawaii Revised Statutes, are waived when making the expenditures for fiscal year 1991-1992.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved July 2, 1991.)

ACT 328

S.B. NO. 818

A Bill for an Act Relating to Family Leave.

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
FAMILY LEAVE**

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

"Child" means an individual who is a biological, step, adopted, or foster son or daughter of an employee.

"Director" means the director of labor and industrial relations.

"Employee" means a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter.

"Employer" means any individual or organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

"Employment" or "employed" means service, including service in inter-state commerce, performed for wages under any contract of hire, written or oral, express or implied, with an employer.

"Employment benefits" means all benefits (other than salary or wages) provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave,

educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

“Health care provider” means a physician as defined under section 386-1.

“Parent” means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, or a grandparent-in-law.

“Serious health condition” means an acute, traumatic, or life-threatening illness, injury, or impairment, which involves treatment or supervision by a health care provider.

§ -2 **Inapplicability.** The rights provided under this chapter shall not apply to employees of an employer with fewer than one hundred employees.

§ -3 **Family leave requirement.** (a) An employee shall be entitled to a total of four weeks of family leave during any calendar year upon the birth of a child of the employee or the adoption of a child, or to care for the employee’s child, spouse, or parent with a serious health condition.

(b) During each calendar year, the leave may be taken intermittently.

(c) Leave shall not be cumulative.

(d) If unpaid leave under this subsection conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act, an employer may require the employee to make up the leave within the same pay period.

(e) Nothing in this chapter shall entitle an employee to more than a total of four weeks of leave in any twelve-month period.

§ -4 **Unpaid leave permitted; relationship to paid leave.** Pursuant to section -3, an employee shall be entitled to four weeks of family leave. The family leave shall consist of unpaid or paid leave or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional period of leave added to attain the four-week total may be unpaid. Further, an employee or employer may elect to substitute any of the employee’s accrued paid leaves such as sick, vacation, personal, or family leave for any part of the four-week period.

§ -5 **Notice.** In any case in which the necessity for family leave is foreseeable, the employee shall provide the employer with prior notice of the expected birth or adoption or serious health condition in a manner that is reasonable and practicable.

§ -6 **Certification.** An employer may require that a claim for family leave be supported by certification of the birth of the child issued by a health care provider, the family court, or certification of the placement of the child for adoption with the employee issued by a recognized adoption agency, the attorney handling the adoption, or by the individual officially designated by the birth parent to select and approve the adoptive family.

§ -7 **Employment and benefits protection.** (a) Upon return from family leave, the employee shall be entitled to be restored by the employer to the position of employment held by the employee when the leave commenced, or restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. If, however, during a leave, the employer

experiences a layoff or workforce reduction and the employee would have lost a position had the employee not been on family leave, the employee is not entitled to reinstatement in the former or equivalent position. In such circumstances, the employee retains all rights, including seniority rights, pursuant to the good faith operation of a bona fide layoff and recall system.

(b) The taking of family leave shall not result in the loss of any employment benefit accrued before the date on which the leave commenced, except for any paid leave that may have been expended in conjunction with the family leave.

(c) Nothing in this chapter shall be construed to entitle or deny any employee to the accrual of any seniority or employment benefits during any period of leave, or any right, employment benefit, or position to which the employee would have been entitled had the employee not taken the leave.

§ -8 **Prohibited acts.** (a) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this chapter.

(b) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

(c) It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

- (1) Filed any charge, or instituted or caused to be instituted any proceeding, under or related to this chapter;
- (2) Given or is about to give any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or
- (3) Testified or is about to testify in any inquiry or proceeding relating to any right provided under this chapter.

§ -9 **Enforcement and administration.** (a) The director shall have jurisdiction over those prohibited acts made unlawful by this chapter. Any individual claiming to be aggrieved may file with the director a verified complaint in writing that shall state the name and address of the employer alleged to have committed the unlawful act complained of, set forth the particulars thereof, and contain other information as may be required by the director. The attorney general, or the director upon the director's initiative, may, in like manner, make and file a complaint.

(b) A complaint may be filed on behalf of a class by the attorney general or the director, and a complaint so filed may be investigated, conciliated, heard, and litigated on a class action basis.

(c) The director shall assist employers in the training and placement of temporary help to perform the work of those employees on family leave.

(d) The director may also hire, subject to chapters 76 and 77, assistants and clerical, stenographic, and other help as may be necessary to administer and enforce this chapter.

§ -10 **Applicability.** (a) Section -3 shall set a minimum standard that is not intended to replace family leave policies that exist as of the effective date of this Act and that provide for equal or greater employment benefits than those benefits afforded under this chapter.

(b) Nothing in this chapter shall be construed to modify, eliminate, or otherwise abrogate any existing family leave policies, employment benefits, or protections that employees may have pursuant to any employment contracts or

collective bargaining agreements, to the extent that the contracts and agreements provide greater protections than those afforded under this chapter.

(c) To the extent the provisions of this chapter contradict or otherwise conflict with any contract rights or collective bargaining agreements in existence as of the date of this Act, the provisions that provide greater benefits to the employees shall control.”

SECTION 2. Chapter 79, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§79- Family leave. All officers and employees who have been employed for not fewer than six consecutive months by the State or its political subdivisions shall be entitled to family leave of four weeks as provided under chapter .”

SECTION 3. The legislative reference bureau shall undertake a study of family leave and report its findings to the legislature twenty days prior to the convening of the regular session of 1993. The study shall include at least the following:

- (1) The fiscal impact of family leave as provided by this Act and any other provisions that may be proposed, and the concept of granting income tax credits for employers who would implement the family leave portions of this Act;
- (2) The experience of public sector employers and any other employers already granting family leave;
- (3) The respective responsibilities that would result from this Act for the director of labor and industrial relations and the director of taxation; and
- (4) Guidelines for determining when a health condition is acute, traumatic, or life-threatening.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on January 1, 1992; provided that the Act shall not apply to employees of private sector employers as defined in this Act until January 1, 1994.

(Approved July 2, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 329

S.B. NO. 1330

A Bill for an Act Relating to Holidays.

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

SECTION 1. There is established a commission to be known as the Martin Luther King, Jr., commission, which shall consist of thirteen members to

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be appointed by the governor in the manner provided by section 26-34. Nine members shall be appointed from among the following categories, provided that at least one member shall be appointed from each category:

- (1) Ethnic groups;
- (2) Religious groups;
- (3) Labor;
- (4) Business;
- (5) Education;
- (6) Government; and
- (7) Community service.

In addition, the governor shall appoint one member from each of the four counties.

The term of all appointments shall be four years. The governor shall appoint the chairperson of the commission from among the members.

The members of the commission shall serve without compensation but shall be entitled to reimbursement for expenses, including travel expenses, necessary for the performance of their duties.

The commission shall coordinate all commission sponsored arrangements for the annual celebration generally observed throughout Hawaii on the third Monday of January to commemorate Martin Luther King, Jr. The commission may assist in coordinating events not sponsored by the commission.

The commission is placed within the department of personnel services for administrative purposes.

SECTION 2. There is created in the treasury of the State a special fund to be known as the Martin Luther King, Jr., celebration fund, into which all moneys received by the commission shall be deposited and from which the expenses of the commission to carry out the purposes of this section shall be paid. The commission may accept donations of money and personal property. Any moneys appropriated by the legislature to the Martin Luther King, Jr., celebration fund which are not expended or encumbered by June 30 of the fiscal year shall lapse as of that date. Disbursement of moneys from the fund shall be by state warrants issued in accordance with applicable laws and rules and based on vouchers signed by the chairperson of the commission.

At the end of each fiscal year the commission shall submit to the governor and legislature a report of all its activities, including an accounting of all moneys received and disbursed in that fiscal year.

SECTION 3. The commission shall submit a report to the legislature at least twenty days prior to the convening of the 1995 regular session evaluating the need for a permanent commission to plan observances for the observation of Martin Luther King, Jr.'s birthday.

SECTION 4. This Act shall take effect on July 1, 1991, and shall be repealed on June 30, 1995.

(Approved July 2, 1991.)

ACT 330

H.B. NO. 1090

A Bill for an Act Relating to Curfew for Minors.

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

SECTION 1. The legislature finds that society has recently been plagued by an upsurge in the rate of violent crimes, including murder. An alarming proportion of these violent crimes have been committed by minors. The increased involvement of minors in youth gangs, and the tendency of these gangs to become involved in violent crimes are reasons for concern. Compounding this concern is the fact that many violent incidents involving minors occur during the curfew hours established for minors. However, the legislature believes that minors should not be immediately branded criminals but should be allowed an opportunity to be rehabilitated. The purpose of this Act is to give the family court authority to investigate and, if appropriate, order counseling or community service for minors who violate the curfew law.

SECTION 2. Chapter 577, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§577- Sentencing for the violation of curfew. In addition to any other penalties established by law, rule, or ordinance in the State, any child found in violation of section 577-16 and their parents or guardians may be required to participate in such counseling, as the court deems to be appropriate in each case.”

SECTION 3. New statutory material is underscored.¹

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

(Approved July 8, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 331

H.B. NO. 1121

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 two new sections to be appropriately designated and to read as follows:

“§87- Determination of long-term care benefits plan; contract with carrier or third-party administrator. (a) The board of trustees shall determine the benefits of a long-term care benefits plan for employee-beneficiaries, their spouses, and qualified-beneficiaries. The plan shall comply with the provisions of article 10A, part V, of chapter 431, upon initial plan implementation only.

(b) Notwithstanding any other law to the contrary, such benefits shall be available only to employee-beneficiaries, their spouses, and qualified-beneficiaries who enroll between the ages of twenty and eighty-five. Eligible persons must

comply with the plan's age, enrollment, medical underwriting, and contribution requirements.

(c) The board may contract with a carrier to provide fully-insured benefits or a third-party administrator to administer self-insured benefits.

§87- Contributions by an employee-beneficiary or qualified-beneficiary for long-term care benefits plan. (a) During the period the long-term care benefits plan is in effect, the employee-beneficiary shall authorize, if otherwise allowed by law, the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If, however, an employee-beneficiary's monthly contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution directly to the board's designated carrier or third-party administrator by the first day of each month.

(b) Qualified-beneficiaries shall pay monthly contributions directly to the board's designated carrier or third-party administrator by the first day of each month."

SECTION 2. Section 87-1, Hawaii Revised Statutes, is amended to read as follows:

"§87-1 Definitions. As used in this chapter:

- (1) "Board" means the board of trustees as described in section 87-11;
- (2) "Carrier" means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of health or long-term care services under group insurance [contract] contracts or medical, hospital, or dental services agreements;
- (3) "Contributions" means money payments made to the fund by the State or the several counties or an employee-beneficiary[:] or qualified-beneficiary;
- (4) "Dependent-beneficiary" means an employee-beneficiary's spouse and any unmarried child, including an adopted child, stepchild, foster child, or recognized natural child who lives with the employee-beneficiary, deemed eligible by the board to receive health or dental services of a health benefits plan;
- (5) "Employee" means an employee or officer of the state or county government or the legislature,
 - (A) Including:
 - (i) An elective officer or a person who has served as a member of the legislature for at least [a total of] ten years;
 - (ii) A per diem employee;
 - (iii) An officer or employee under an authorized leave of absence;
 - (iv) An employee of the Hawaii national guard although paid from federal funds;
 - (v) A retired member of the [employees] employees' retirement system, the county pension system, or the police, firefighters, or bandsmen pension system of the State or county;
 - (vi) A salaried and full-time member of a board, commission, or agency appointed by the governor [of the State] or the

- mayor of a county; and
- (vii) A person employed by contract for a period not exceeding one year, where the director of either personnel services or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures[.],
- (B) But excluding:
- (i) A designated beneficiary of a retired member of the [employees] employees' retirement system, the county pension system, or the police, firefighters, or bandsmen pension [system] systems of the State or county;
- (ii) Except as allowed under (5)(A)(vii) [above], a person employed temporarily on a fee or contract basis; and
- (iii) A person employed for [fewer] less than three months and whose employment is less than one-half of a full-time equivalent position.
- (6) "Employee-beneficiary" means an employee, the beneficiary of an employee who is killed in the performance of the employee's duty, an employee who retired prior to the establishment of the fund, or the beneficiary of a retired member of the [employees] employees' retirement system, a county pension system, or a police, firefighters, [and] or bandsmen pension system of the State or county, upon the death of the retired member and, which beneficiary, if a child, does not marry, or if a surviving spouse, does not remarry; provided that for the purposes of this paragraph, "family member" means the deceased retired member's or employee's spouse and unmarried child under the age of nineteen years (including a legally adopted child and a stepchild or recognized natural child who lives with the deceased retired member or employee in a regular parent-child relationship), or unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity which existed prior to the unmarried child's reaching the age of nineteen years; and provided further that the employee, the employee's beneficiary, or the beneficiary of the deceased retired member is deemed eligible by the board to receive health or dental services of a health benefits plan[.]; or a long-term care benefits plan;
- (7) "Fund" means the trust fund [as] described in section 87-2;
- (8) "Health benefits plan" means (A) a group insurance contract or medical, hospital, surgical, prescribed drugs, vision, or dental service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of medical, hospital, surgical, prescribed drugs, vision, or dental services[, or long-term care 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] self-insured basis;
- (9) "Long-term care benefits plan" means (A) a group insurance contract or service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of long-term care benefits as determined by the board, or (B) a similar schedule of benefits established by the board and provided through the fund on a self-insured basis;

- (9) (10) "Periodic charge" means the periodic payment by the board to a carrier for any health benefits, or long-term care benefits plan; [and]
- (11) "Qualified-beneficiary" means, for purposes of the long-term care benefits plan, a former employee or an employee who is not eligible for benefits due to a reduction in work hours including the employee's spouse or a divorced spouse of an employee or retiree provided the person was enrolled in the plan prior to loss of benefits; and
- (10) (12) "Trustee" means a trustee of the board of trustees as described in section 87-11."

SECTION 3. Section 87-3, Hawaii Revised Statutes is amended to read as follows:

"§87-3 Purpose of the fund. (a) The fund shall be used for the purpose of providing employee-beneficiaries and dependent-beneficiaries with a health benefits plan[,] and a long-term care benefits plan; provided that the fund may be used for other expenses necessary to effectuate [the purpose] these purposes; and provided further that any rate credit or reimbursement from any carrier or self-insured plan or any earning or interest derived therefrom shall be used in addition to such purposes to:

- (1) Finance the employee's and state and county contributions for [the dental benefits] the respective benefit plan [for children under the age of nineteen, as described in section 87-4;] from which such moneys are derived; and
- (2) Finance the employee's portion of the monthly contribution of a health benefits plan for a retired employee, as described in section 87-1(5)(A)(v), or upon the retired employee's death, the retired employee's beneficiary as described in section 87-1(6).]
- (2) Improve the benefits of the respective plan from which such moneys are derived.

(b) To the extent that contributions are provided for group life insurance benefits in [section] sections 87-4 and 87-4.5, the fund shall also be used for the purpose of providing group life insurance benefits to employees.

(c) To the extent that contributions are received from employee-beneficiaries and qualified-beneficiaries for long-term care insurance benefits under section [87-22,] 87-, the fund shall also be used for the purpose of providing long-term care insurance benefits to eligible participants.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under section 125 of the Internal Revenue Code of 1986, as amended, and under part II of chapter 78."

SECTION 4. Section 87-6, Hawaii Revised Statutes, is amended to read as follows:

"§87-6 Contributions by an employee-beneficiary[.] for health benefits plans. (a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the State's and county's contribution to the fund [and including the monthly charge of the long-term care insurance plan if selected by the employee-beneficiary].

Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under section 125 of the Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(b) During the period the health benefits plan [and, if applicable, the long-term care plan] selected by an employee-beneficiary [are] is in effect, the employee-beneficiary shall authorize, if otherwise allowed [under present laws,] by law, [that] the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If, however, an employee-beneficiary's contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution (1) directly to the fund by the [tenth] first day of each month, in the case of an employee-beneficiary who normally receives the employee-beneficiary's compensation from the comptroller of the State, or (2) in the case of all other employee-beneficiaries, to the respective finance officer from whom the employee-beneficiary normally receives compensation for transmittal to the fund by the [tenth] first day of each month.

(c) Notwithstanding any other law to the contrary, the beneficiary of an employee who is killed in the performance of duty, an employee-beneficiary who retired after June 30, 1984[,] due to a disability as defined in sections 88-77, 88-79, and 88-285, an employee-beneficiary who retired before July 1, 1984, an employee-beneficiary who retired after June 30, 1984[,] and who had ten years or more of credited service, excluding sick leave, or upon death their beneficiary, including employees who retired prior to the establishing of the fund and their beneficiaries, or the beneficiary of any employee-beneficiary, as described in section 87-1(6) shall not be required to make any contribution to the fund. The monthly contribution of the persons identified in this subsection shall be financed by the State through the department of budget and finance and the several counties through their respective departments of finance for each of their respective employee-beneficiaries.

(d) Subsection (a) notwithstanding, an employee-beneficiary's monthly contribution to the fund, amounting to the difference between the monthly cost of the health benefits plan selected by the employee-beneficiary and the State's or appropriate county's contribution to the fund, shall be deemed to include the amount which would have been the employee-beneficiary's contribution if the employee-beneficiary had not elected to participate in the cafeteria plan."

SECTION 5. Section 87-22, Hawaii Revised Statutes, is amended to read as follows:

"§87-22 Determine health benefits plan; contract with carriers. (a)

The board of trustees shall determine the health benefits 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, vision treatment and care, medical, and dental indemnity benefits[, and long-term care benefits].

(b) 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) Plans to offer dental benefits through a statewide indemnity plan, a statewide service benefit plan, dental maintenance organization plans, or combinations thereof.
- (5) Plans to offer prescription drug benefits through a statewide indemnity plan, a statewide service benefit plan, [dental] health maintenance organization plans, or combinations thereof.
- (6) Plans to offer vision care benefits through a statewide indemnity plan, a statewide service benefit plan, health maintenance organization plans, or combinations thereof.
- (7) A not for profit plan to offer reasonably priced long-term care benefits at affordable premium rates through either a group long-term care plan, a franchise long-term care plan, individual long-term care plan, including home care services or a combination thereof. Salient features of the plan shall include:
 - (A) The plan shall be a self-funded, not for profit plan developed or contracted by the board;
 - (B) The plan shall meet the minimum requirements established by the insurance commissioner for long-term care insurance;
 - (C) The plan shall be voluntary and shall be funded by the contributions made by enrollees;
 - (D) The spouses of employee-beneficiaries shall be allowed to enroll in the long-term care insurance plan during the enrollment period open to employee-beneficiaries;
 - (E) During the first three months of the initial enrollment period for the plan, all retirees who are receiving benefits under chapter 88 as of July 1, 1989, shall be automatically eligible to enroll in the plan for a flat annual premium rate to be developed by the board, which shall be uniformly applicable to all such retirees regardless of age;
 - (F) The plan shall provide that eligibility to receive benefits under it shall require prior certification of need by the board or its designated representative;
 - (G) The plan shall provide for an annual review of its operations and adequacy of the premium structure. Since the plan is established as a not-for-profit plan, excess revenues over operating costs shall be returned to enrollees for the covered period by either a premium adjustment or improvement of benefits. Likewise, a deficit that cannot be covered by a reserve to be established by the board may require an adjustment in the premium for the following fiscal period; and
 - (H) The plan shall provide that pending actual operating expenditure requirements, the board shall invest the funds available in safe, liquid investments to provide continuing growth of the funds for the operation.
- (8) (7) A noninsured schedule of benefits similar to any of the schedule

of benefits set forth in the health [benefit] benefits plans authorized in paragraphs (1) to [(7)] (6).

[For purposes of this section, “long-term care insurance” means any insurance policy or rider advertised, marketed, offered, or specialty designed to provide coverage for not less than twelve consecutive months for each covered person on a expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plan, health maintenance organizations or any similar organization. Long-term care insurance shall not include any insurance policy, which is offered primarily to provide basic Medicare supplemental coverage, basic hospital expense coverage, basic medical surgical expense coverage, hospital confinement indemnify coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.]”

SECTION 6. Section 87-24, Hawaii Revised Statutes, is amended to read as follows:

“§87-24 Selection of a carrier [of indemnity plan.] or third-party administrator for a health benefits, group life insurance, or long-term care benefits plan. Before selecting a carrier [of an indemnity type health benefits] or third-party administrator for any benefit plan, the board of trustees shall:

- (1) Prepare specifications [of a health benefits plan];
- (2) Submit specifications for sealed [bids] proposals by interested [carriers;] applicants;
- (3) Evaluate [bids of respective carriers;] proposals; and
- (4) Give prime consideration to the [carrier] applicant offering the lowest net cost and high quality of services.”

SECTION 7. Section 87-25, Hawaii Revised Statutes, is amended to read as follows:

“§87-25 Determine eligibility of employee [or], dependent[.], or person. The board of trustees shall establish and adopt eligibility requirements to determine which employee [and], dependent, or person may qualify as an employee-beneficiary [or], dependent-beneficiary, or qualified-beneficiary, respectively, provided that a retired member of the employees’ retirement system, a county pension system, or a police, firefighters, and bandsmen pension system of the State or county, or the retired member’s dependent shall be eligible to qualify as an employee-beneficiary or dependent-beneficiary, whether or not the retired member was actively employed by the State or county at the time of the retired member’s retirement and whether or not the employee retired before or after the establishing of the public employees health fund. Employees who retired prior to the establishing of the health fund shall be treated as if they were members of the system during their period of employment with the State or county and receive the same benefits as other members. Only an employee-beneficiary or dependent or person satisfying the eligibility requirements may qualify as an employee-beneficiary [or], dependent-beneficiary[.], or qualified-beneficiary.”

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SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ _____, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$ _____, or so much thereof as may be necessary for fiscal year 1992-1993, to carry out the purposes of this Act. The sums appropriated shall be expended by the Hawaii public employees health fund for the purposes of this Act.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 1991.

(Approved July 8, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 332

H.B. NO. 1748

A Bill for an Act Making an Appropriation for Public Education.

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

SECTION 1. Act 366, Session Laws of Hawaii 1989, established the policies of the school/community-based management (SCBM) system. SCBM provides for restructuring of the public schools, allowing for more educational decision-making at the school level, and thereby increasing the involvement of those directly affected by the decisions. By giving schools more autonomy and flexibility, allowing for more parental and community involvement in school decisions, and empowering the school community for shared decision-making, student achievement will be enhanced.

Due to the complex nature of Hawaii's centralized school system, implementation of SCBM will require coordination among various agencies and organizations. In order for SCBM to be effective in Hawaii's public schools, critical decisions must be made on a wide variety of issues.

One of the areas requiring examination is the governance system of Hawaii's public schools. Specifically, the issue of educational governance involves questions relating to: (1) the lines and scope of decision-making authority among the board of education, department of education, the legislature, the governor, other government agencies, the collective bargaining process, districts, schools, and other parties; and (2) the need to restructure and reorganize the system in order to further advance the implementation of the concept of SCBM and school decentralization.

The purpose of this Act is to appropriate funds to:

- (1) Plan and conduct public forums that provide opportunities for discussion and debate on governance of public education in Hawaii; and
- (2) Establish and provide assistance to a blue ribbon task force to examine the roles of the governor, the legislature, the board of education, district school advisory councils, and any other agencies, departments, or organizations dealing with the educational system.

SECTION 2. There is established within the department of education for

administrative purposes only, a task force to examine the issue of governance in Hawaii's public school system. The task force shall consist of fifteen members appointed in the following fashion:

- (1) The speaker of the house and the senate president shall jointly appoint five members as follows:
 - (A) The speaker of the house, or a designee;
 - (B) The senate president, or a designee;
 - (C) A representative of the general community or the business community;
 - (D) A parent with a child in the public education system; and
 - (E) A professional educator;
 - (2) The governor shall appoint five members as follows:
 - (A) The governor or the governor's designee;
 - (B) A member of the school advisory council;
 - (C) A representative of the general community or the business community;
 - (D) A parent with a child in the public education system; and
 - (E) A professional educator;
- and
- (3) The board of education shall appoint five members as follows:
 - (A) A member of the board of education or a designee;
 - (B) A public school student;
 - (C) A representative of the general community or the business community;
 - (D) A parent with a child in the public education system; and
 - (E) A professional educator.

To the extent possible, the appointing agents shall seek to provide the broadest possible base of representation in their appointments. At least one member of the task force shall be a resident of each of the counties. The members of the task force shall not receive compensation for their services, but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act. All appointments to the task force shall be made by July 15, 1991.

SECTION 3. The task force shall conduct public information-gathering meetings across the State to solicit input and promote debate and discussion on the issue of governance of the public school system. In addition to conducting forums and meetings on governance, the task force shall also examine the roles and relationships of the department of education, board of education, department of accounting and general services, department of budget and finance, district school advisory councils, school community councils, the legislature, governor's office, and any other agencies, departments, or organizations dealing with the educational system.

The task force shall develop mechanisms and procedures for ensuring public discussion on this issue at the grassroots level. The task force shall coordinate with public school parent groups in planning and conducting the public forums.

The department of education shall provide assistance to the task force upon request.

The task force may receive and expend donations of money in order to implement the purposes of this Act. Any donations of money received by the task force shall be deposited into a separate trust account established by the department of education, at a local federally insured bank or a local trust company.

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Upon dissolution of the task force, all unexpended funds shall be deposited into the department of education's budget.

The task force shall submit a report of its findings and recommendations to the legislature at least twenty days prior to the convening of the 1992 regular session. The task force shall cease to operate on June 30, 1992.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1991-1992, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of education.

SECTION 5. This Act shall take effect upon its approval, except that section 4 shall take effect on July 1, 1991.

(Approved July 8, 1991.)

ACT 333

S.B. NO. 1340

A Bill for an Act Relating to Long Term Care.

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

SECTION 1. For all who hope to live a long life, the eventuality of long-term care is a real possibility. For many, it is a frightening possibility fraught with questions. Among various long-term care concerns, the dilemma of how to cover the high costs of such care is gaining preeminence in both the federal and state governments because it has ramifications for the well-being of families young and old, government itself, and society in general. Not unexpectedly, the solution to the financing dilemma must be built from assumptions which recognize the future and the new realities which are upon us. In short, the solution to the financing dilemma must be based upon new paradigms which acknowledge the unalterable shape of things to come. No longer a youthful society, America is grayning and the needs of its elders must be met with dignity, a sense of fairness, foresight, and compassion.

In Hawaii, the human dimensions of the unaffordability of long-term care and the escalating care needs of a mushrooming elderly population suggest that things cannot continue as they are. The cost of long-term care is expected to grow almost exponentially throughout the twenty-first century. It is expected that cash outlays for elder nursing home care by Hawaii families will grow by more than 1,100 per cent between 1991 and 2020. Hawaii families eventually will pay about \$212,300,000 for nursing home care. Average Hawaii family cash payments for elder nursing home care will increase more than 300 per cent to more than \$18,000 annually by 2020. This is an average expense across all Hawaii elderly families, including those who make no such payments. Thus, families who actually pay will spend considerably more.

Hawaii families also will be forced to convert non-housing assets such as savings and other financial accumulations toward the payment of nursing home care. Between 1991 and 2020, Hawaii family asset expenditures for nursing home care will grow more than 1,000 per cent to about \$212,300,000. The average value Hawaii family asset payments will increase nearly 400 per cent to a staggering \$59,000 annually by 2020. Average annual nursing home charges are now almost twice the average disposable income for Hawaii elderly families. By 2020,

the average annual nursing home charge will be more than \$94,000.

Between 1991 and 2020, the State's portion of expenditures for the Medicaid program for elderly nursing home care will grow by more than 1,300 per cent to \$544,800,000. This will represent only about one third of the total nursing home bill for Hawaii. Hawaii families will pay more than an equal amount out-of-pocket in cash and assets. This is assuming that the federal portion of expenditure for the Medicaid program is not slashed. The number of nursing home claims paid by the State for Medicaid for Hawaii elders will grow nearly 200 per cent and reach almost 12,000 claims by 2020. Average annual Hawaii State Medicaid nursing home benefit payments will increase nearly 400 per cent to about \$41,500 per claim by 2020.

Between 1991 and 2020, the total long-term care bill, including the costs of nursing home and paid home care, for Hawaii will grow by more than 1,000 per cent to a staggering \$2,000,000,000. Unless a financing strategy is adopted, most of that burden will be borne by Hawaii families and by the State to fund, in the case of the latter, through the Medicaid program.

In Hawaii, the elderly population sixty-five years of age and older will grow in absolute and relative terms from 124,797 or 19.2 per cent to 246,369 or 25.6 per cent. The eighty-plus population, which comprises the segment of elders most at risk, will triple in number and double in proportion from 23,299 or 3.6 per cent to 60,676 or 6.3 per cent over the same period.

Between 2016 and 2020, the absolute and relative numbers of disabled elders will rise to 55,027 or 30.9 per cent of those persons 65 plus up from 28,231 or 25.8 per cent between 1991-1995. Persons who are severely disabled with deficiencies in at least two or more activities of daily living will double during the same periods from 10,809 (7.9 per cent) to 20,247 (8.7 per cent).

The long-term care challenge is inescapable. For many, the preferable response to the problem of long-term care costs is a federal program, such as the one outlined by the United States bipartisan commission on comprehensive health care, more commonly known as the Pepper Commission. For others, the preferable alternative has been a reliance upon a private sector mechanism; most notably, the relatively new long-term care insurance products which have been developing over the last ten years. However, because neither source of protection is particularly viable at the present time, it is critical that the State adopt a strategy for making affordable, equitable, protective, and reliable long-term care available as soon as feasible.

This Act responds to the needs outlined in this section by establishing a temporary long-term care financing advisory board.

SECTION 2. (a) There is established, within the executive office on aging in the office of the governor for administrative purposes, the long-term care financing advisory board consisting of ten members to be appointed as follows:

- (1) The director of the executive office on aging, ex officio;
- (2) The director of finance, ex officio;
- (3) The director of health, ex officio;
- (4) The director of human services, ex officio;
- (5) Five members, appointed by the governor, who shall have backgrounds in insurance management, financial portfolio management, or health care management, or persons of similar experience; and
- (6) One consumer member, appointed by the governor, who shall be a senior citizen.

The advisory board shall cease to exist two years after its formation.

- (b) The purpose of the advisory board shall be to advise the executive

office on aging on the establishment of a comprehensive long-term care financing program for Hawaii residents. Specifically, the advisory board shall consider the feasibility of creating a public fund to be administered by a public body. The recommendations shall include:

- (1) Guidelines for participation in the program by Hawaii residents;
- (2) A proposed schedule of required contribution rates subject to legislative approval, which, when combined with other available funding sources, are actuarially sufficient to fund program benefits promulgated under this Act;
- (3) Benefit vesting guidelines for participating Hawaii residents;
- (4) Guidelines for earning permanent benefits by participating Hawaii residents;
- (5) Guidelines for the retroactive crediting of benefits to participating Hawaii residents;
- (6) Guidelines for automatic program participation of a spouse;
- (7) Specific institutional and noninstitutional long-term care services covered, limited, and excluded by the program;
- (8) Terms and conditions for the receipt of program benefits, to include eligibility requirements;
- (9) Maximum program benefit payment amounts for institutional long-term care and for noninstitutional long-term care as a percentage of actual charges up to a maximum stipulated dollar amount;
- (10) Guidelines for automatic adjustment of program benefit payment amounts to account for inflation; and
- (11) Guidelines for the return, in whole or in part, of paid in contributions to the estate of participating Hawaii residents who claim little or no program benefits during their lives.

SECTION 3. For the purposes of this Act, "long-term care" refers to an array of services needed by individuals who have lost some capacity for independence because of chronic illness or condition. "Long-term care" includes assistance with basic activities and routines of daily living such as bathing, dressing, meal preparation, and eating. It may also include skilled and therapeutic care for the treatment and management of chronic conditions. Services can be in a variety of settings—the individual's home, the community, or an institution. "Long-term care" does not refer to services normally provided in the acute care unit of a hospital or to services normally paid for by basic medicare supplemental coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement coverage, major medical expense coverage, or specified disease or specified accident coverage.

SECTION 4. The members of the advisory board shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

SECTION 5. The advisory board shall submit a preliminary copy of its report with recommendations to the governor, the president of the senate, and the speaker of the house of representatives before November 1, 1991, and a final report before July 1, 1993.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 8, 1991.)

ACT 334

S.B. NO. 1381

A Bill for an Act Relating to the Creation of a Commission for Performance Standards.

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

SECTION 1. The legislature finds that one of the unresolved issues in Hawaii's educational system is accountability. It is difficult to determine the success or failure of the system in meeting the central goal of education: students' ability to lead full and productive lives. To insure that students in Hawaii's public school system are able to master basic skills and essential competencies necessary to succeed in life, standards of achievement must be established. Further, competency or performance-based measures must be developed that would provide a meaningful measurement of how well a student can perform in tasks necessary to meet the standards of achievement set.

SECTION 2. There is established a commission for performance standards. The commission shall be placed within the department of education for administrative purposes, in accordance with section 26-35, Hawaii Revised Statutes. The commission shall set the performance standards of achievement expected of students in public schools and the means to assess educational achievement.

SECTION 3. The commission shall consist of eleven voting members. The superintendent of education, the chairperson of the board of education, and the president of the University of Hawaii, or their respective designated representatives shall serve as ex officio, voting members. The remaining eight members shall be appointed by the governor from a list of prospective appointees recommended by the board of education. The members shall represent a cross-section of the community.

The terms of all commission members shall terminate on June 30, 1993. The commission shall select a chairperson and vice-chairperson from among its members.

SECTION 4. The commission shall submit an interim report on performance standards and the means to assess educational achievement to the governor, the legislature, and the board of education by June 30, 1992. A final report shall be submitted to the governor, the legislature, and the board of education, twenty days prior to the convening of the regular session of 1993.

SECTION 5. For the purposes of this Act, "performance standards" means the levels of performance expected of students on assessments of educational achievement.

The means used to assess educational achievement may include multiple measures. These measures may include direct and indirect measures such as writing samples, portfolios, open-ended and essay questions, demonstrations, experiments, individual or group projects, or multiple-choice tests.

In conducting its work, the commission shall perform the following tasks:

- (1) Gather relevant data from a broad range of individuals and groups;
- (2) Conduct public forums to obtain broad-based community input on student performance standards;
- (3) Establish student performance standards based upon national goals

for education, Hawaii goals for education, and the Hawaii department of education's foundation program objectives, student performance expectations, and essential competencies;

- (4) Recommend assessment methods appropriate for each recommended student performance standard;
- (5) Obtain baseline data reflecting current levels of achievement in the selected performance standards; and
- (6) Establish a schedule for development and implementation of these performance standards, assessment methods, and baseline data.

SECTION 6. The commission shall consider performance standards that balance direct and indirect measures, inform instruction, and are valid, reliable, and cost-effective.

SECTION 7. The commission shall be assisted by a technical advisory panel composed of persons knowledgeable in matters pertaining to student assessment. The panel shall be appointed by the commission.

SECTION 8. The commission may engage employees necessary to perform its duties, including administrative personnel and a director, not to exceed five positions. Employees of the commission shall be exempt from chapters 76 and 77, Hawaii Revised Statutes, and excluded from collective bargaining under chapter 89, Hawaii Revised Statutes. The director shall support the activities of the commission and facilitate efforts to achieve the objectives of this Act. The responsibilities of the director shall include, but not be limited to, acting as liaison between the commission and various organizations, coordinating meetings, writing reports, keeping records, researching information, communicating with local and national experts and organizations, supervising clerical support, and other related duties.

SECTION 9. Members of the commission, except ex officio members, shall be allowed:

- (1) Compensation at the rate of \$100 per day for each day's actual attendance at meetings;
- (2) Transportation fares between islands and abroad; and
- (3) Personal expenses at the rates specified by section 78-15, Hawaii Revised Statutes, while attending commission meetings or while on official business as authorized by the chairperson, when such commission meetings or official business requires a member to leave the island upon which the member resides.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$230,600, or so much thereof as may be necessary for fiscal year 1991-1992, and the same sum, or so much thereof as may be necessary for fiscal year 1992-1993, to carry out the purposes of this Act. The sums appropriated shall be expended by the department of education.

SECTION 11. This Act shall take effect upon its approval, except that section 10 shall take effect on July 1, 1991.

(Approved July 8, 1991.)

A Bill for an Act Relating to Grants, Subsidies, and Purchases of Service.

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
GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE
PART I. GENERAL PROVISIONS**

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

“Advisory council” or “council” means the council established pursuant to section -4.

“Agency” means the judiciary, any department, officer, board, foundation, commission, or other establishment of the state government, including the University of Hawaii.

“Agency advisory committee” or “committee” means the committee established pursuant to section -5.

“Budget” means an estimate of proposed expenditures.

“Chief executive” means the chief justice in the case of the judiciary or the governor in the case of the State.

“Director” means the administrative director of the courts in the case of the judiciary or the director of finance in the case of the State.

“Grant” means an award of public funds to a recipient, on a one-time basis, based on merit or need, to stimulate and support activities of the recipient for a specified public purpose.

“Nepotism” means appointing persons to positions on the basis of their blood or marital relationship to the appointing authority, rather than on merit or ability.

“Perquisite” means a privilege furnished or a service rendered by an organization to an employee, officer, director, or member of that organization to reduce the individual’s personal expenses.

“Provider” means any organization contracted by the State to provide services under a purchase of service agreement.

“Purchase of service” means an appropriation of public funds for the provision of services by an organization to specific members of the general public on behalf of an agency to fulfill a public purpose. Payments for these services shall be substantially equal in value to the services provided; provided that the purchase of services of a court-appointed attorney for an indigent, the professional services of individuals in private business or professions, and services subject to the competitive bidding requirements of chapter 103 shall be excluded.

“Recipient” means any organization receiving a grant or subsidy.

“Request for proposals” means an advertised request by an agency for proposals from organizations as to how the organization proposes to provide the service described in the request for proposals and at what cost.

“Request” means a submission by an organization asking for a grant or subsidy.

“Subsidy” means an appropriation of public funds made to alter the price or the cost of a particular good or service of the recipient to enable the recipient

to provide services or goods to the general public or specified members of the general public at a lower price than would otherwise be charged by the recipient.

§ **-2 Qualifying standards for organizations.** Any organization requesting a grant or subsidy, or submitting a proposal for a purchase of service agreement shall meet all of the following standards at the time of application:

- (1) Be a profit organization incorporated under the laws of the State or a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax;
- (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 that describe the manner in which business is conducted and policies that relate 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 or proposal is being made; provided that the director may grant an exception where the requesting or proposing organization 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.

§ **-3 Conditions for grants, subsidies, and purchase of service agreements.** Organizations to which a grant, subsidy, or a purchase of service agreement has been awarded, shall agree to comply with the following conditions before receiving the grant, subsidy, or purchase of service agreement:

- (1) Employ or have under contract persons qualified to engage in the activity to be funded in whole or in part by the State or the judiciary, as the case may be; provided that for nonprofit organizations, no two or more members of a family or kin of the first or second degree shall be employed or under contract by the organization unless specifically permitted in writing by the director of the expending agency for the appropriation; provided further that no salary or benefit increases by the organization shall be funded with public funds unless the increases are agreed to by the director of the expending agency in the contract with the organization;
- (2) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
- (3) Agree not to use public funds for purposes of entertainment or perquisites;
- (4) Comply with any other requirement as the director may prescribe to ensure adherence by the provider or recipient with federal, state, and county laws; and
- (5) Allow the expending agency, the director, the committees of the legislative bodies and their staffs, and the legislative auditor full access to records, reports, files, and other related documents in order that the program, management, and fiscal practices of the providers or recipients may be monitored and evaluated to assure the proper and effective expenditure of public funds.

§ **-4 Advisory council; establishment; appointment, number, and**

term of members; duties; reports. (a) There is established within the department of budget and finance for administrative purposes an advisory council which shall review, and make recommendations on, matters relating to grants, subsidies, and purchases of service to the governor, the chief justice, the president of the senate, and the speaker of the house of representatives.

(b) The advisory council shall be comprised of thirteen members as follows:

- (1) Two members from each county, except the county of Kalawao; and
- (2) Five members, with each representing one of the following program areas: health, human services, employment, education, and culture and the arts.

(c) The council members shall be appointed by the governor from a list of not less than thirty nominees provided by the president of the senate and the speaker of the house of representatives.

(d) In appointing the members from each county, the governor shall select persons who represent different business and civic organizations, community groups, grant recipients, subsidy recipients, and purchase of service providers who have an interest or expertise in the design and delivery of the following types of programs: health, human services, culture and the arts, employment, and education. The members of the council shall serve without compensation but shall be reimbursed for expenses, including intrastate travel expenses, necessary for the performance of their duties.

(e) The members shall be appointed by the governor for four years, except that the terms of the members first appointed shall be for two or four years as designated by the governor at the time of appointment. The governor shall designate a member to be the chairperson of the council. Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall apply insofar as it relates to the number of terms and consecutive number of years a member may serve on the council.

(f) The duties of the advisory council shall be to:

- (1) Conduct comprehensive assessments of the State's resources and needs;
- (2) Serve as the community liaison to the governor, chief justice, president of the senate, speaker of the house of representatives, state agencies, grant recipients, subsidy recipients, and purchase of service providers;
- (3) Submit recommendations to the appropriate state agencies on the advisability of funding grants, subsidies, and purchase of service agreements for inclusion in the executive or judiciary budget;
- (4) Submit recommendations to the appropriate standing committees of the legislature on the advisability of funding grants and subsidies, not included in the executive or judiciary budget; and
- (5) Provide recourse for purchase of service provider grievances, by investigating, expediting, and making recommendation on complaints that involve funding, policy, or procedural decisions made by the agency. The final recommendation shall be completed and submitted to the agency director within thirty (30) days of receipt of a written complaint from a provider. The agency director shall receive the advisory council's recommendation and render a final ruling within ten days of receipt thereof.

(g) The council shall submit reports on its findings and recommendations to the governor, the chief justice, the president of the senate, and the speaker of the house of representatives before July 1, and before January 1, of each year. The reports by the council shall include but not be limited to:

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- (1) An assessment of the council's impact on identifying state resources and needs;
- (2) The composition and duties of the council;
- (3) Recommendations regarding funding allocations as expressed as a percentage of total funding for grants, subsidies, and purchase of service agreements in the program areas of health, human services, culture and the arts, employment, and education; and
- (4) Any other information the council may determine to be helpful to the executive, judicial, and legislative branches.

§ **-5 Agency advisory committee.** Each agency shall be required to convene a committee to determine needs in the agency's area of responsibility. The committee shall be made up of not less than five members representing purchase of service providers from each county and state agency officials with an interest or expertise in the design and delivery of services in the agency's area of responsibility. The committee shall:

- (1) Conduct comprehensive assessments of the agency's resources and estimated needs of target groups;
- (2) Submit recommendations to the agency on the form and contents of, funding amounts for, and evaluation criteria applicable to, requests for purchase of service agreements;
- (3) Submit recommendations to the agency as to whether or not requests for purchase of service agreements should be funded;
- (4) Do all other things deemed necessary and appropriate to assist the agency in making the most cost-effective decision in relation to the services being purchased; and
- (5) Provide the recommendations to the advisory council or legislature when requested.

Members of the agency advisory committees shall serve without compensation but shall be reimbursed for expenses, including intrastate travel expenses, necessary for the performance of their duties.

§ **-6 Appeals.** (a) Each agency shall establish, by rules adopted pursuant to chapter 91, an appeals process to reconsider any recommendations for funding made by the agency. The agency shall establish qualifying criteria that providers shall satisfy in order to be eligible to make an appeal. In adopting the rules, the agency shall consult with both the advisory council and agency advisory committee.

(b) The agency advisory committee shall assist in the fact-finding and review process to facilitate the appeal process and shall submit its recommendation to the agency director for deliberation and ruling.

§ **-7 Allotment.** (a) Appropriations for grants, subsidies, and purchases of service shall be subject to the allotment system generally applicable to all appropriations made by the legislature.

(b) Allotments shall be by "cost categories" and "cost elements" as defined in section 37-62.

§ **-8 Contracts.** (a) An appropriation for a grant, subsidy, or purchase of service shall not be released unless a contract is entered into between the appropriate agency and the recipient or provider. The agency shall determine, in consultation with and subject to the review and approval of the attorney general in the case of the State and the administrative director of the courts in the case of

the judiciary, the specific contract form to be used for each grant, subsidy, or purchase of service agreement and shall execute each contract not later than sixty days from the effective date of the appropriation or as soon as practicable thereafter.

(b) Each contract shall expressly state that the recipient or provider is an independent contractor and provide that the recipient or provider shall indemnify and hold harmless the State, the appropriate contracting agency, and the appropriate officers, employees, and agents from and against all claims, damages, and costs arising out of or in connection with the acts or omissions of the recipient or provider.

(c) All contracts shall be reviewed by the administrative director of the courts in the case of the judiciary and the attorney general in the case of the State for conformance with the public purpose and legislative intent.

§ -9 **Continued eligibility.** Any recipient or provider who withholds or omits any material facts or deliberately misrepresents any facts to an agency shall be in violation of this chapter. Any recipient or provider which has been found by an agency to have violated this chapter or the terms of its contract shall be prohibited from requesting a grant or subsidy or submitting a proposal for a purchase of service agreement for a period of five years.

§ -10 **Standards of political subdivisions.** Each county shall establish standards for the grant of public money or property pursuant to Section 4 of Article VII of the Constitution of the State of Hawaii.

§ -11 **Applicability and interpretation.** (a) This chapter shall be construed to be consistent with existing statutory law; provided that, in the case of a conflict, provisions contained in this chapter shall prevail.

(b) The qualifying standards and conditions related to the receipt of funds contained in this chapter shall not apply to funds that are transferred from one governmental agency to another governmental agency, including county agencies; provided that, if the receiving agency in turn contracts with a recipient or provider, then the qualifying standards and conditions and other provisions of this chapter shall apply to the recipient or provider and the contract. The receiving agency shall ensure compliance by the recipient or provider.

(c) This chapter shall be liberally construed to not hinder or impede the application, receipt, and use of federal-aid funds that may become available to the State or the judiciary. If federal-aid funds not already anticipated to be received and included in appropriations become available, each agency administering programs that could qualify for the available federal-aid funds, pursuant to chapter 29, may apply for, receive, and expend the federal-aid funds in accordance with the terms and conditions specified in the applicable federal statutes, regulations, or financial assistance award documents.

§ -12 **Interim measure for successive contracts.** Notwithstanding any provision of law to the contrary, the duration of any purchase of service agreement contract governed by this chapter may be extended for a specified period not to exceed ninety days if the following conditions are satisfied at the time of extension:

- (1) The contract is in effect;
- (2) The provider is not in default or breach of the contract;
- (3) Funds have been appropriated for a successive contract with the provider;

- (4) The terms and conditions with respect to the performance of the provider under the successive contract will be substantially the same as those of the contract;
- (5) The agency has provided the provider a letter offering to extend the contract at least sixty days prior to the end of the contract year, without other modification of its terms, except as to the amount of compensation and duration; and
- (6) The provider gives the agency a written acceptance of the extension.

(b) When a contract is extended pursuant to this section, the extension shall be paid out of the appropriation for the successive contract.

(c) For the purpose of applying the limitations in this chapter as to the duration of contracts, the period of the extension shall be counted as part of the duration of the successive contract.

§ -13 **Annual reports.** The chief executive, prior to each legislative session, shall submit a report on all purchase of service agreements funded under this chapter for the immediately preceding fiscal year. The report shall include a description of each program service for which a purchase of service agreement was entered into, the name of the purchase of service provider, and the funding amount. The chief executive shall also submit a list of all purchase of service providers who were denied funds.

§ -14 **Rules.** The director shall adopt rules pursuant to chapter 91 as may be necessary to meet the requirements of this chapter.

PART II. PURCHASES OF SERVICE

§ -21 **Review of purchase of services budget.** (a) Every agency anticipating the need to enter into purchase of services agreements shall determine the need and shall submit to the director a recommended budget setting forth, among other things, each service to be provided, the amounts determined by the agency to be required to be expended for purchases of service, the priority of need within and between programs, and an analysis of the cost-effectiveness of each service. This recommendation shall include an analysis of the objectives to be achieved for each program, the alternatives by which to achieve the objectives, and the respective costs, benefits, and effectiveness of the alternatives.

(b) The chief executive and the director shall review the recommended purchase of services budgets, revise the same as necessary, determine for each agency a level of funding for each program for purchases of service, and submit to the legislature funding recommendations for purchases of service. The chief executive shall include in the executive or judiciary budget submitted to the legislature all amounts for purchases of service recommended for funding. Such requests shall be included in the appropriate program budget and shall be identified by agency activity and source of funding in a supplemental budget submittal.

(c) Every recommendation for funding of purchase of service that the chief executive submits to the legislature for appropriation shall state:

- (1) The public purpose to be served;
- (2) The objective intended to be achieved;
- (3) The activities and services to be performed;
- (4) The target groups to be affected;
- (5) The means of financing;
- (6) Measures by which the effectiveness of the services purchased are to be evaluated;

- (7) The analyses and justifications for the recommended purchase of service agreements;
- (8) The amounts requested;
- (9) An assessment to determine costs of not providing the service; and
- (10) The intended uses of the funds, according to "cost categories" and "cost elements" as defined in section 37-62.

§ -22 **Appropriations for purchase of service agreements.** (a) A purchase of service agreement may be authorized for a period not to exceed two years, except as provided in section -12.

(b) Funds for purchases of services shall be appropriated to agencies in a lump sum without naming the specific provider, except that, in the case of a service which the agency certifies can be provided by only specific providers as specified by federal law, may name the specific providers.

§ -23 **Required review of requests.** (a) Each agency shall review each request to determine the efficiency and the effectiveness of the proposal in achieving the objectives of the program. The review shall include an analysis of the request in terms of the objectives to be achieved, the alternatives by which to achieve the objectives, and the respective costs, benefits, and effectiveness of the alternatives. When personnel service costs are requested to be funded in whole or in part, the review shall determine the reasonableness of personnel classification and compensation plans. The agency shall invite the organization to discuss the request with the agency and to comment on the analysis of the agency.

(b) The agency shall prepare a statement of its findings and recommendations for each request and shall send a copy of the statement to the requesting organization according to a timetable as specified by the director.

§ -24 **Requests for proposals.** (a) Agencies receiving appropriations for purchases of service shall advertise for proposals in a newspaper of general circulation in each county of the State. Agreements for purchases of service shall be awarded on the basis of cost-effectiveness, quality of services, or other criteria as may be determined by the director. An agency shall not be required to advertise requests for proposals upon submission of its certification in the form prescribed by the director that the providers are specified by federal law.

(b) An agency may select a provider without further advertisement as provided by subsection (a) or select an alternate method of service delivery if:

- (1) No proposals are received in response to the advertisement for proposals as provided by subsection (a); or
- (2) After a purchase of service contract has been awarded, the provider becomes ineligible to be a provider under sections -2 or -3 or becomes unwilling, unable, or unqualified to satisfactorily provide the desired services.

§ -25 **Monitoring and evaluation; purchase of service agreement.** (a) Every purchase of service agreement shall be monitored by the agency to ensure compliance with this chapter and the public purpose and legislative intent of the purchase of service.

(b) Each agency shall be required to establish an employee team, consisting of not less than two members, which shall formulate and implement an agency-approved monitoring plan consisting of the following components:

- (1) A comprehensive monitoring and evaluation manual that outlines the objectives, procedures, and specifications of the monitoring process;

- (2) A requirement of quarterly progress reports to be completed by each provider on standardized forms specified by the agency;
- (3) An annual on-site visit to each program funded by a purchase of service agreement;
- (4) An annual written report, to be completed within thirty days of the annual on-site visit, describing progress, compliance, and required corrective action. Providers shall receive a copy of the report and may respond in writing within thirty days of receipt thereof; and
- (5) A clear procedure for follow-up on recommendations and criticisms.

(c) Every purchase of service agreement shall be evaluated annually to determine whether the agreement has attained the intended results in the manner contemplated. Each agency shall establish criteria for program evaluation procedures by soliciting direct input from purchase of service providers and the department of budget and finance. Funding for the evaluation process shall be the agency's responsibility and shall not be paid from funds budgeted for a purchase of service provider's operations.

(d) Each agency shall assimilate both the monitoring and evaluation manual volume III and systems forms volume IV as provided to the State by SMS Research and Arthur Anderson & Co. into its monitoring and evaluation systems. The procedures and forms as described in these two volumes shall be the minimum monitoring and evaluation standards that shall be used by all agencies in the executive branch. Each agency may adopt additional requirements to the system as deemed necessary by the agency's director.

PART III. GRANTS AND SUBSIDIES

§ -31 **Applications for grants and subsidies.** Agencies may receive from organizations for review requests for funding of grants and subsidies no later than September 1 of any year, and recommendations for funding based on such requests shall be submitted to the next regular session of the legislature.

§ -32 **Review of subsidy and grant requests.** (a) Every agency receiving requests for grants or subsidies shall review each request to determine the public purpose to be served and shall submit to the director written findings and recommendations which shall set forth a description of the public purpose, the identity of the proposed recipient, the resultant benefits, and the amounts recommended for grants and for subsidies.

(b) The chief executive and the director shall review the subsidy and grant recommendations, revise the same as necessary and submit recommendations for grants and subsidies to the legislature. The chief executive shall include in the executive or judiciary budget submitted to the legislature all grants and subsidies recommended for funding.

(c) Every recommendation for a grant or subsidy that the chief executive submits to the legislature for appropriation shall state:

- (1) The identity of the proposed recipient and that the proposed recipient meets the qualifying standards of section -2;
- (2) The public purpose to be served;
- (3) The activities to be supported or the goods or services to be subsidized;
- (4) The target groups to be affected;
- (5) The means of financing;
- (6) The analyses and justifications for the recommended grants and subsidies; and

- (7) The intended uses of the funds, according to the “cost categories” and “cost elements” as defined in section 37-62.

§ -33 **Appropriations for grants or subsidies.** (a) Requests for grants or subsidies that are not recommended for funding in the budget submitted by the chief executive to the legislature may be submitted by the requesting organization in writing to the appropriate standing committee of the legislature. The legislature may make appropriations for grants or subsidies not included in the budget submitted by the chief executive but only after reviewing the requests for funding and determining that they comply with the qualifying standards and conditions and after determining that the funding serves a specified public purpose. Such determinations shall be included in the bill containing the appropriations and shall name the recipient.

(b) A subsidy may be authorized for a period not to exceed two consecutive fiscal years, and shall not be renewed unless the request for renewal is reviewed in accordance with section -32 and the legislature determines that there is a continuing need and public purpose to be served by the subsidy.

§ -34 **Monitoring and evaluation; grant or subsidy.** (a) Every grant or subsidy shall be monitored by the appropriate agency to ensure compliance with this chapter and the public purpose and legislative intent of the grant or subsidy.

(b) Every grant or subsidy shall be evaluated annually to determine whether the grant or subsidy attained the intended results in the manner contemplated.

The director shall develop procedures and adopt rules pursuant to chapter 91 to assist agencies in monitoring and evaluating a grant or subsidy.”

SECTION 2. Section 6E-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department may expend moneys from the fund to provide financial assistance to public agencies and private agencies in accordance with chapter [42] _____ involved in historic preservation activities other than those covered by section 6E-9.”

SECTION 3. Section 6E-40, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§6E-40~~]]~~ **Bernice Pauahi Bishop Museum.** The official designation of the Bernice Pauahi Bishop Museum shall be the State of Hawaii Museum of Natural and Cultural History. The qualifying standards and conditions related to the receipt of funds contained in chapter [42] _____ shall not apply to funds received by the State of Hawaii Museum of Natural and Cultural History; provided that if the museum in turn contracts with a recipient or provider, then the qualifying standards, conditions, and other provisions of chapter [42] _____ shall apply to the recipient or provider and the contract.”

SECTION 4. Section 210D-13, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§210D-13~~]]~~ **Exemption from chapter [42.] _____.** The provisions of chapter [42] _____ shall not apply to the grants made pursuant to this chapter,

but all grants made under this chapter shall be made only in accordance with the standards and conditions specified in section 210D-11.”

SECTION 5. Section 211F-7, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Investments by the corporation to persons shall be made on the basis of solicitation and a competitive technical review process, subject to the availability of funds allocated to the corporation for making investments. Investments by the corporation shall not be subject to chapter [42.] _____. Any organization applying for an investment shall meet the following standards:

- (1) Have bylaws or policies that describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations;
- (2) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments;
- (3) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap; and
- (4) Comply with other requirements as the board may prescribe.”

SECTION 6. Section 261-6, Hawaii Revised Statutes, is amended:

1. By amending subsection (a) to read as follows:

“(a) Beginning in fiscal year 1988-1989 and in accordance with chapter [42.] _____, the sum of \$190,600 annually or so much thereof as may be necessary shall be granted from the general 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 and has demonstrated its capability to respond to emergencies within the State.”

2. By amending subsection (g) to read as follows:

“(g) The Hawaii wing, civil air patrol shall comply with chapter [42.] _____ in its application for grants and subsidies; execute an annual contract with the department of transportation by the third day of July; and submit to the department of transportation an annual expenditure plan to ensure the disbursement of funds by the tenth day of July, October, January, and April of each fiscal year.”

SECTION 7. Section 321-352, Hawaii Revised Statutes, is amended to read as follows:

“**[§321-352]** **Early intervention services for infants and toddlers with special needs.** The department may develop a statewide, coordinated, multi-disciplinary program which contains a continuum of services to meet the needs of infants and toddlers with special needs. The department shall be the lead agency for the coordination of federal and state funding for those programs. Pursuant to chapter [42.] _____, the department may purchase services appropriate to carry out activities under this part.”

SECTION 8. Section 328K-12, Hawaii Revised Statutes, is amended by amending the definition of “employer” to read:

““Employer” means any state or county agency, or any private corporation, firm, or association which receives state funds under chapter [42.] ____.”

SECTION 9. Section 333F-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) Programs of the department may include, but shall not be limited to:
- (1) Early identification and evaluation of persons with developmental disabilities or mental retardation;
 - (2) Development, planning, and implementation in coordination with other federal, state, and county agencies, of service programs for persons with developmental disabilities or mental retardation;
 - (3) Development and provision of service programs in the public or private sectors through chapter [42.] ____, for persons with developmental disabilities or mental retardation;
 - (4) Establishment of a continuum of comprehensive services and residential alternatives in the community [so as] to allow persons with developmental disabilities or mental retardation to live in the least restrictive, individually appropriate environment;
 - (5) Development and implementation of a program for single entry access by persons with developmental disabilities or mental retardation to services provided under this chapter as well as referral to and coordination with services provided in the private sector or under other federal, state, or county acts, including case management, and development of an individualized service plan by an interdisciplinary team;
 - (6) Collaborative and cooperative services with public health and other groups for programs of prevention of developmental disabilities or mental retardation;
 - (7) Informational and educational services to the general public and to lay and professional groups;
 - (8) Consultative services to the judicial branch of government, [to] educational institutions, and [to] health and welfare agencies whether such agencies are public or private;
 - (9) Provision of community residential alternatives for persons with developmental disabilities or mental retardation, including group homes and homes meeting ICF/MR standards;
 - (10) Provision of other programs, services, or facilities necessary to provide a continuum of care for persons with developmental disabilities or mental retardation; and
 - (11) Development and maintenance of respite services in the community for persons with developmental disabilities or mental retardation.”

SECTION 10. Section 333F-21, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§333F-21]]~~ **Provision of services; family and caregiver support.** The director may provide such services as may be necessary to maintain and enhance care giving in community-based homes for persons with developmental disabilities. For the purposes of this section, “family and caregiver support”

means a flexible and varied network of support which does not supplant community resources, and which is capable of providing for the individual families caring for persons with developmental disabilities. Such services may include:

- (1) In-home and out-of-home respite services for families and care providers;
- (2) The purchase of adaptive equipment such as bath chairs and special positioning chairs not covered by health insurance or other resources;
- (3) Counseling services for families of care providers concerning stresses and feelings about caring for persons with developmental disabilities;
- (4) Special supply purchases such as diapers and special clothing required by persons with developmental disabilities;
- (5) Homemaker and chore services;
- (6) Transportation services not available through existing resources in the community;
- (7) Specialized therapy services for persons with developmental disabilities not available through insurance, medicaid, or other resources;
- (8) Case management to help families and care providers coordinate and access services available to persons with developmental disabilities; and
- (9) Provision, without regard to chapter [42] _____, of modifications to dwelling units to enable persons with developmental disabilities with sensory limitation or mobility problems to reside in community homes which require adaptive and safety alterations such as the installation of ramps and porch lifts, bars and hand rails, widening of doorways, removal of other architectural barriers and the enlargement of bath facilities to allow the movement of and ensure the safety of the person with developmental disabilities; provided that there shall be an agreement between the care provider and the department to ensure continued care in the home where the modification is provided; and provided further that modification costs shall be limited to the amount of funds appropriated for the program for any individual client."

SECTION 11. Section 346-274, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§346-274]]~~ **Contracts.** The department may contract with a public agency or private nonprofit organization to administer all or portions of this part in accordance with federal regulations and in accordance with chapter [42.] ____."

SECTION 12. Section 352D-6, Hawaii Revised Statutes, is amended to read as follows:

"**§352D-6 Organizational structure.** The office of youth services shall be composed of such divisions and sections as are deemed necessary by the director to provide:

- (1) Diagnostic evaluation, treatment, and rehabilitation services for all youths referred to services provided by the office or placed in the office's custody by the family court;
- (2) Supervision and counseling services for youth in shelter or correctional facilities under the office's jurisdiction, including community-

- based facilities;
- (3) Educational, vocational-educational, and other programs to effectively occupy the time of the youth placed in a facility under the office's jurisdiction which promote the development of self-esteem and useful skills to prepare youths in becoming productive members of the community;
 - (4) Continuous program planning, development, and coordination of youth services, including the coordination with other government and private social service agencies that work with youths to ensure that a full-range of programs is available and that [such] these programs are consistent with the policy of this chapter and are not unnecessarily duplicative or conflicting;
 - (5) Prevention services to include a comprehensive intake/assessment and information/referral system throughout the [State] state which shall access services to youth and their families;
 - (6) A case management system based on the individual needs of youth which shall provide for in-depth client assessment, appropriate service planning, and client advocacy;
 - (7) Provide for the implementation of chapter 352, youth correctional facilities, and other needed correctional services;
 - (8) Facilitate the development of and, when appropriate, provide for training programs for persons offering services to youth at risk;
 - (9) Provide for technical assistance and consultation to providers and potential providers;
 - (10) Seek, apply for, and encourage the use of all federal funds for youth services and facilitate the coordination of federal, state, and local policies concerning services for youth;
 - (11) Prepare and submit an annual report to the governor and the legislature. This report shall include, but not be limited to, a review of the status of youth services within the State, recommendations for priorities for the development and coordination of youth services; and
 - (12) Monitor, evaluate, and audit all grants, subsidies, and purchase of services under chapter [42] _____ which relate to the office of youth services."

SECTION 13. Section 353D-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department may contract with a private nonprofit agency pursuant to chapter [42] _____ to implement this chapter."

SECTION 14. Section 431N-4, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§431N-4]]~~ **Transfer of funds.** The department of health shall have the authority to utilize funds appropriated under this chapter to directly purchase services in accordance with chapter [42] _____ when it is determined that such a purchase is more effective and cost efficient in meeting the goals of this chapter. The department of health shall also have the authority to transfer funds appropriated under this chapter to the department of human services. The department of human services may receive and apply such funds for the purpose of maximizing medical care services to gap group individuals under the medicaid program contained in the medicaid state plan. The departments of health and human services

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shall develop and implement an inter-agency working agreement necessary to carry out the purpose of this section.”

SECTION 15. Chapter 42, Hawaii Revised Statutes, is repealed.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 17. This Act shall take effect on July 1, 1992; provided that appropriations for grants, subsidies, and purchases of service made prior to the effective date of this Act and in accordance with the provisions of chapter 42, Hawaii Revised Statutes, as it existed prior to its repeal shall not be subject to the provisions of this Act and shall be expended in accordance with the provisions of chapter 42, Hawaii Revised Statutes, as it existed prior to its repeal.

(Became law on July 11, 1991, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**Session Laws Of Hawaii
Passed By The
Sixteenth State Legislature
Special Session
1991**

ACT 1

S.B. NO. S1-91

A Bill for an Act Relating to Administrative License Revocation.

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

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to part VII to be appropriately designated and to read as follows:

“§286- Revocation of privilege to drive motor vehicle or moped upon refusal to submit to breath or blood test. 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 person shall be subject to the procedures and sanctions under part XIV.”

SECTION 2. Section 286-171, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The statewide traffic records system shall include all traffic records of the violation bureaus of the district courts, the circuit courts, the police departments, the county treasurers, the department of health, and the department of education[,] and all dispositions pertaining to administrative license revocation proceedings conducted by the administrative director of the courts.”

SECTION 3. Section 286-251, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “blood alcohol concentration” to read:

““Blood alcohol concentration” means either grams of alcohol per one hundred milliliters or cubic centimeters of blood or grams of alcohol per two hundred ten liters of breath.”

2. By amending the definition of “temporary permit” to read:

““Temporary permit” means [a temporary permit, issued by an arresting

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officer concurrently with a notice of administrative revocation, under which an arrestee may continue] that portion of the notice of administrative revocation which, when completed by the arresting officer, permits the arrestee to drive for thirty days or until such time as the director may establish under this part."

SECTION 4. Section 286-252, Hawaii Revised Statutes, is amended to read as follows:

"**[[§286-252]] Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

- (1) Establishes that the arrestee's driving privilege in this State shall be terminated thirty days after the date of arrest[; and] or such later date as is established by the director under section 286-259 if the director administratively revokes the arrestee's license;
- (2) Establishes the date on which administrative revocation proceedings against the arrestee were initiated[.]; and
- (3) Serves as a temporary permit to drive as provided in section 286-255."

SECTION 5. Section 286-253, Hawaii Revised Statutes, is amended to read as follows:

"**[[§286-253]] Criminal prosecution.** (a) Criminal prosecution under section 291-4 may be commenced concurrently with administrative revocation proceedings under this part; provided that [if, after an administrative hearing, the director does not determine by a preponderance of the evidence that the arrestee drove, operated, or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor, any charge then pending under section 291-4 arising from the same occurrence shall be dismissed without prejudice; provided further that a charge that has been dismissed may be reinstated if the director's determination is reversed on judicial review and no further review is available. If the director finds for the arrestee and no charge under section 291-4 is then pending, prosecution for an offense under section 291-4 arising from the same occurrence may not thereafter be commenced unless the director's determination is reversed on judicial review and no further review is available.

(b) If criminal charges are filed under section 291-4, administrative proceedings may continue and the record of the administrative proceedings, including sworn statements and other evidence or information relating to the administrative cause for action, shall be made available to the prosecuting attorney.] documentary and testimonial evidence provided by the arrestee during the administrative proceedings shall not be admissible against the arrestee in any proceeding under section 291-4 arising out of the same occurrence.

[[c]] (b) When a person's license is revoked under this part and the person also is convicted of an offense under section 291-4 [on the basis of actions] arising out of the same occurrence, the total period of revocation or suspension imposed in the two proceedings shall not exceed the longer period of revocation or suspension imposed in either proceeding. If the person is convicted under section 291-4 prior to completion of administrative proceedings, the person shall surrender the temporary permit issued under this part at the time of entry of a plea of guilty or no contest, entry of a verdict of guilty, or of sentencing, whichever occurs first."

SECTION 6. Section 286-254, Hawaii Revised Statutes, is amended to

read as follows:

“~~[[§286-254]]~~ **Notice of administrative revocation; contents.** (a) The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation:

- (1) The statutory authority for administrative revocation;
- (2) An explanation of the distinction between administrative revocation and a suspension or revocation imposed under section 291-4; and
- (3) That criminal charges filed pursuant to section 291-4 may be prosecuted concurrently with the administrative action[; and
- (4) That if criminal charges are filed, information, evidence, and sworn statements obtained during the administrative proceedings shall be available to the prosecutor].

(b) The notice, when completed by the arresting officer and issued to the arrestee, shall contain at a minimum the following information relating to the arrest:

- (1) Information identifying the arrestee;
- (2) The specific violation for which the person was arrested;
- (3) The date issued and the date the administrative revocation is scheduled to go into effect;
- (4) That the arrestee was [advised] informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol content of the blood and whether or not the arrestee consented to be tested;
- (5) The expiration date of the temporary permit; and
- (6) That the arrest will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

- (1) That the review is automatic;
- (2) That the arrestee [has three days from the notice to demonstrate in writing that the administrative revocation should be reversed;] may, within three days of the arrest, submit written information demonstrating why the arrestee's license should not be administratively revoked;
- (3) The address or location where the arrestee may submit the [evidence;] information;
- (4) That the arrestee is not entitled to be present or represented at the review; and
- (5) That the review decision shall be mailed to the arrestee no later than eight days after the date of the arrest.

(d) The notice shall state that if the [administrative revocation is reversed at] arrestee's license is not administratively revoked after the review, the arrestee's license shall be returned along with a certified statement that the administrative revocation proceedings have been terminated [without prejudice, but that the prosecution may request a redetermination of the decision by another review officer].

(e) The notice shall state that if the [administrative revocation is sustained by] arrestee's license is administratively revoked after the review, a decision shall be mailed to the arrestee containing, at a minimum, the following information:

- (1) The reasons why the [administrative revocation was sustained;] arrestee's license was administratively revoked;
- (2) That the arrestee [is scheduled for] may request the director, within five days of the date the decision is mailed, to schedule an administrative hearing[;] to review the administrative revocation;

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- (3) That if the arrestee requests an administrative hearing within five days, the hearing shall be scheduled to commence no later than twenty-five days after the date of arrest;
- [(3)] (4) The [date, time, and place of the] procedure to request an administrative hearing;
- (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
- (6) That the arrestee may regain the right to a hearing by requesting the director, within sixty days after the arrest, to schedule a hearing;
- (7) That the director shall schedule the hearing to commence no later than thirty days after the request is made but that the temporary permit shall not, in any event, be extended if the arrestee fails to request an administrative hearing within the initial five day period provided for that purpose;
- [(4)] (8) That failure to attend the hearing shall [result in administrative revocation effective as indicated; and] cause the administrative revocation to take effect for the period and under the conditions indicated; and
- [(5)] (9) The duration of the administrative revocation and other conditions which may be imposed, including alcohol counseling, alcohol treatment, and installation of an ignition interlock system.
- (f) The notice shall provide, at a minimum, the following information relating to administrative hearings:
- (1) That the arrestee shall have five days from the date the review decision was mailed to [agree or refuse to attend the hearing;] request that an administrative hearing be scheduled;
- (2) That [acceptance of the] a request for an administrative hearing shall entitle the arrestee to review and copy all [relevant] documents[,] considered at the review, including the arrest report and the sworn statements [considered at the review], prior to the hearing;
- (3) That the arrestee may be represented by an attorney, submit evidence, give testimony, and present [defense witnesses,] and cross-examine [prosecution] witnesses; and
- (4) That a written decision shall be mailed no later than five days after completion of the hearing.
- (g) The notice shall state that if the administrative revocation is reversed [at] after the hearing, the arrestee's license shall be returned along with a certified statement that the administrative revocation proceedings have been terminated [subject to the judicial review provided under section 286-260].
- (h) The notice shall state that if the administrative revocation is sustained at the hearing, a decision shall be mailed to the arrestee containing, at a minimum, the following information:
- (1) The effective date of the administrative revocation;
- (2) The duration of the administrative revocation;
- (3) Other conditions which may be imposed by law; and
- (4) The right to obtain judicial review.
- (i) The notice shall state that [refusal to appear at a hearing, failure to accept a hearing within the time period allowed by law, or] failure to attend a scheduled hearing, shall [result in] cause the administrative revocation [effective on the date provided on the notice for the appropriate period provided by law.] to take effect as provided in the administrative review decision."

SECTION 7. Section 286-255, Hawaii Revised Statutes, is amended to read as follows:

“**[§286-255] Arrest; procedures.** Whenever a person is arrested for a violation of section 291-4, on a determination by the arresting officer[.] that:

- (1) [That there] There was reasonable suspicion to stop the motor vehicle, or that the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6[.]; and
- (2) [That there] There was probable cause to believe that the arrestee was driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor[.];

the arresting officer shall immediately take possession of any license held by the person and request the arrestee to take a test for concentration of alcohol in the blood. The arresting officer shall inform the person that the person has the option to take a breath test, a blood test, or both. The arresting officer shall also inform the person of the sanctions under this part, including the sanction for refusing to take a breath or a blood test. The arresting officer shall then complete and issue to the arrestee a notice of administrative revocation and [a temporary permit, retaining one copy of each for the arrest report.] shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless at the time of arrest the arrestee was unlicensed, the arrestee's license was revoked or suspended, or the arrestee had no license in the arrestee's possession.”

SECTION 8. Section 286-256, Hawaii Revised Statutes, is amended to read as follows:

“**[§286-256] Immediate restoration of license.** If a test conducted in accordance with part VII [of chapter 286] and section 321-161 and the rules adopted thereunder shows that the arrestee's blood alcohol concentration was less than .10, the director or the arresting agency shall immediately return the arrestee's license along with a certified statement that administrative revocation proceedings have been terminated with prejudice.”

SECTION 9. Section 286-257, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a person is arrested for a violation of section 291-4 and submits to a test which establishes that the arrestee's blood alcohol concentration was .10 or more, the following shall be immediately forwarded to the director:

- (1) A copy of the arrest report and the sworn statement of the arresting officer stating facts which establish that:
 - (A) There was reasonable suspicion to stop the motor vehicle or the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6;
 - (B) There was probable cause to believe that the arrestee had been driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;
 - (C) The arrestee was informed of the sanctions of this part, that criminal charges may be filed, and the [probable] consequences of refusing to be tested for concentration of alcohol in

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- the blood; and
- (D) The arrestee agreed to be tested;
- (2) The sworn statement of the person responsible for maintenance [and calibration] of the testing equipment stating facts which establish that[:] pursuant to section 321-161 and rules adopted thereunder:
- (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
 - (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining [and calibrating] the testing equipment; and
 - (C) The testing equipment used had been properly maintained [and calibrated] and was in good working condition when the test was conducted;
- (3) The sworn statement of the person who conducted the test stating facts which establish that[:] pursuant to section 321-161 and rules adopted thereunder:
- (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned [correctly] in accordance with operating procedures and indicated that the person's blood alcohol concentration was at, or above, the prohibited level; and
 - (D) The person whose breath or blood was tested was the person arrested;
- (4) A copy of the notice of administrative revocation issued to the arrestee;
- [(5) A copy of the temporary permit issued to the arrestee;
- (6)] (5) Any driver's license taken into possession by the arresting officer; and
- [(7)] (6) A listing of any prior alcohol enforcement contacts involving the arrestee."

SECTION 10. Section 286-258, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§286-258]]~~ **Administrative review; procedures.** (a) [A] The director shall automatically review the issuance of a notice of administrative revocation, [shall be automatically reviewed by the director] and a written decision [sustaining or reversing] administratively revoking the license or rescinding the notice of administrative revocation shall be mailed to the arrestee no later than eight days after the date [of] the notice[.] was issued.

(b) The arrestee shall have the opportunity to demonstrate in writing [that the administrative revocation should be reversed,] why the arrestee's license should not be administratively revoked and shall submit [all such documentation] any written information within three days of the notice, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

(c) In conducting the administrative review, the director shall consider:

- (1) Any sworn or unsworn statement or other evidence provided by the arrestee;
- (2) The breath or blood test results, if any; and

- (3) The sworn statements of the law enforcement officials, and other evidence or information required by section 286-257. [If the director determines by a preponderance of the evidence that the arrestee drove, operated, or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor, or while having a blood alcohol concentration of 0.10 or more, and that the arresting officer had]

(d) The director shall administratively revoke the arrestee's driver's license if the director determines that:

- (1) There existed reasonable suspicion to stop the motor vehicle or the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6 [and that there was];
- (2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor[, the director shall sustain the notice of administrative revocation.]; and
- (3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having a blood alcohol concentration of 0.10 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

[(d)] (e) If [a preponderance of] the evidence does not support administrative revocation, the director shall rescind the notice [subject to review of the director's decision at an administrative hearing, if requested by the State.] of administrative revocation and return the arrestee's license along with a certified statement that administrative revocation proceedings have been terminated.

[(e)] (f) If the director [sustains the notice of administrative revocation, an administrative hearing shall be scheduled to commence no later than twenty-five days subsequent to the notice. The] administratively revokes the arrestee's driver's license, the director shall mail to the arrestee [and the appropriate county prosecutor] a written decision stating the reasons for [sustaining the notice of] the administrative revocation [and indicating the date, time, and place of the hearing]. The decision shall also indicate that the arrestee has five days from the date the decision is mailed to [agree or refuse to appear at the hearing, and] request an administrative hearing to review the director's decision. The decision shall also explain the procedure by which to request an administrative hearing, and shall be accompanied by a form, postage prepaid, which the arrestee may fill out and mail in order to request an administrative hearing. The decision shall also inform the arrestee of the right to review and copy all [relevant] documents[,] considered at the review, including the arrest report and the sworn statements of the law enforcement officials, prior to the hearing. Further, the decision shall state that the arrestee [has the right to] may be represented by counsel at the hearing, submit evidence, give testimony, and present [witnesses,] and cross-examine [prosecution] witnesses, including the arresting officer.

[(f)] (g) [Refusal to attend the hearing or failure] Failure of the arrestee to [respond to the hearing notice] request a hearing within the time provided in [subsection (e)] section 286-259(a) shall cause the administrative revocation to [go into] take effect [as scheduled] for the [appropriate] period and under the conditions provided [by law.] in the administrative review decision issued by the director under this section. The arrestee may regain the right to [appear at the scheduled hearing only upon a showing made within an additional five-day period of good cause for failing to respond as required by law.] a hearing by request-

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ing the director, within sixty days of the arrest, to schedule a hearing. The hearing shall be scheduled to commence no later than thirty days after the request is made. In no event shall the temporary permit be extended [due to the failure of] if the arrestee [to respond to the hearing notice] fails to request a hearing within the [time] initial five day period provided[.] for that purpose. The administrative review decision issued by the director under this section shall clearly explain the consequences of failure to request an administrative hearing and the procedure by which the arrestee may regain the right to a hearing."

SECTION 11. Section 286-259, Hawaii Revised Statutes, is amended to read as follows:

"[~~§286-259~~] Administrative hearing. (a) [The party aggrieved by the director's decision at administrative review] If the director administratively revokes the arrestee's license after administrative review, the arrestee may request an administrative hearing to review the decision[. A request made by the arrestee shall be made as provided in section 286-258. A request made by the prosecution shall be made] within five days of the date the administrative review decision is mailed. The hearing shall be scheduled to commence no later than twenty-five days from the date the notice of administrative revocation[.] was issued. The director may continue the hearing only as provided in subsection [(k).] (j).

(b) The hearing shall be held at a place designated by the director, as close to the location of the arrest as practical.

(c) The arrestee may be represented by counsel [and the prosecuting attorney of the county in which the arrest occurred may appear on behalf of the State].

(d) The director shall conduct the hearing and have authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive and determine the relevance of evidence;
- (4) Issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) Regulate the course and conduct of the hearing; and
- (6) Make a final ruling.

(e) The [issues before the director shall be whether:] director shall affirm the administrative revocation only if the director determines that:

- (1) [The arresting officer had] There existed reasonable suspicion to stop the motor vehicle or the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6;
- (2) [The arresting officer had] There existed probable cause to believe that the arrestee [had been driving, operating,] drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and
- (3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having a blood alcohol concentration of .10 or more[.] or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

(f) The arrestee's prior alcohol enforcement contacts shall be entered into evidence.

[(g) It shall be the burden of the prosecution to prove the issues before the director by a preponderance of the evidence.

(h) (g) The sworn statements provided in section 286-257 shall be admitted into evidence. Upon notice to the director no later than five days prior to the hearing that the arrestee wishes to [cross-examine] examine a law enforcement official who made a sworn statement, the director shall issue a subpoena for the official to appear at the hearing. If the official cannot appear, the official may at the discretion of the director testify by telephone.

[(i) (h) The hearing shall be recorded in a manner to be determined by the director.

[(j) (i) The director's decision shall be rendered in writing and mailed to the arrestee no later than five days after the hearing. If the decision is to reverse the [notice of] administrative revocation, the director shall return the arrestee's license along with a certified statement that administrative revocation proceedings have been terminated [subject to the judicial review provided under section 286-260]. If the decision sustains the [notice of] administrative revocation, the director shall mail to the arrestee a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section 286-261.

[(k) (j) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director [or the prosecution], the director shall extend the validity of the temporary permit for a period not to exceed the period of the continuance. If a continuance is granted at the request of the arrestee, the director shall not extend the validity of the temporary permit. For purposes of this section a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced other than for recesses during the day or at the end of the day or week.

[(l) (k) If the arrestee fails to appear at the hearing, administrative revocation shall [be imposed for the appropriate period as provided by law.] take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section 286-258."

SECTION 12. Section 286-260, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) [Within thirty days after the director's hearing decision is made, the party aggrieved by the decision may file a petition for judicial review.] If the director sustains the administrative revocation after administrative hearing, the arrestee may file a petition for judicial review within thirty days after the administrative hearing decision is mailed. The petition shall be filed with the clerk of the district court in the district in which the offense occurred[, together with proof of service by the petitioner on the respondent,] and shall be accompanied by the required filing fee for civil actions. The filing of the petition shall not operate as a stay of the administrative revocation[.] nor shall the court stay the administrative revocation pending the outcome of the judicial review. [No responsive pleading shall be required, and no court fees shall be charged for the respondent's appearance.] The petition shall be appropriately captioned. The petition shall state with specificity the grounds upon which the petitioner seeks [rescission] reversal of the administrative [decision.] revocation.

(b) The court shall schedule the judicial review as quickly as practicable, and the review shall be on the record of the administrative hearing without taking of additional testimony or evidence. If the petitioner fails to appear without just

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cause, the court shall [find for the respondent.] affirm the administrative revocation.”

SECTION 13. Section 286-261, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Unless an administrative revocation is [rescinded or continued, it] reversed or the temporary permit is extended by the director, administrative revocation shall become effective on the day specified in the notice. [No] Except as provided in section 286-264, no license shall be restored under any circumstances and no conditional permit shall be issued during the administrative revocation period.”

2. By amending subsection (c) to read:

“(c) The [periods of administrative revocation provided in subsections (b)(1), (2), and (3) are minimum and shall not preclude the discretion of the director to impose a longer period; provided that the] license of an arrestee who refuses to be tested [and who is found to have been driving under the influence of intoxicating liquor] after being informed of the sanctions of this part shall be revoked under [subsections] subsection (b)(1), (2), [and] or (3) for a [minimum] period of [six months,] one year, two years, and four years, respectively.”

3. By amending subsection (f) to read:

“(f) Alcohol enforcement contacts which occurred prior to [July 1, 1990] August 1, 1991 shall be counted in determining the administrative revocation period.”

SECTION 14. Section 286-264, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If an arrestee subject to administrative revocation under this part submitted to a breath or blood test and has no prior alcohol enforcement contacts, the director may, at the request of the arrestee at the administrative hearing, issue a conditional permit allowing the arrestee to drive after a minimum period of absolute license [suspension] revocation of thirty days if one or more of the following conditions are met:

- (1) The arrestee is gainfully employed in a position that requires driving and will be discharged if the arrestee’s driving privileges are administratively revoked; or
- (2) The arrestee has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 286-261.”

SECTION 15. Section 286-265, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~286-265] **Eligibility for relicensing.** To be eligible for relicensing after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director or by the court;
- (2) Obtain a certified statement from the director indicating eligibility for relicensing;
- (3) Present the certified statement to the appropriate licensing official; and
- [(4) Pay all applicable fees; and
- (5)] (4) Successfully complete each requirement for obtaining [licensure] a new license in this State[.] including payment of all applicable fees."

SECTION 16. Section 287-3, Hawaii Revised Statutes, is amended to read as follows:

"§287-3 Furnishing of operating records. The traffic violations bureau of the district courts shall upon request furnish any person a certified abstract of the bureau's record, if any, of any person relating to all alleged moving violations, as well as any convictions resulting therefrom, arising from the operation of a motor vehicle[.] and any administrative license revocation pursuant to chapter 286, part XIV. The traffic violations bureau may collect a fee, to be a realization of the general fund, of not in excess of \$2 for any such certificate."

SECTION 17. Section 287-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever a driver's license has been suspended or revoked pursuant to [section 286-155,] part XIV of chapter 286, 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 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 \$1,000 and there are reasonable grounds for the administrator to believe that the defendant is at fault; and
- (3) Failure to have an effective no-fault insurance policy."

SECTION 18. Act 188, Session Laws of Hawaii 1990, is amended by

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amending section 16 to read as follows:

“SECTION 16. This Act shall take effect on [July 1, 1991;] August 1, 1991; provided that sections 13 and 14 shall take effect on July 1, 1990.”

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 20. This Act, upon its approval, shall take effect on August 1, 1991; provided that section 18 shall take effect on June 30, 1991; provided further that the amendments to the Hawaii Revised Statutes made by sections 3 through 15 of this Act shall supersede any conflicting amendments to the Hawaii Revised Statutes made by section 3 of Act 188, Session Laws of Hawaii 1990.

(Approved June 29, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.

**COMMITTEE REPORTS
ON MEASURES ENACTED**

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