

**SESSION LAWS**  
**OF**  
**HAWAII**  
**PASSED BY THE**  
**NINETEENTH STATE LEGISLATURE**  
**STATE OF HAWAII**

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**REGULAR SESSION**  
**1997**

Convened on Wednesday, January 15, 1997  
and  
Adjourned sine die on Thursday, May 1, 1997

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State of Hawaii  
Honolulu, Hawaii

## PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 1997. The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

As authorized by Section 23G-16.5, Hawaii Revised Statutes, statutory material that is being repealed is bracketed, and new material is indicated by underscoring. However, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

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

Wendell K. Kimura  
Revisor of Statutes

Honolulu, Hawaii  
July 1, 1997



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Daniel K. Akaka

House of Representatives:  
Neil Abercrombie  
Patsy T. Mink

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Lieutenant Governor ..... Mazie K. Hirono

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REGULAR SESSION 1997**

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Vice President ..... Andrew Levin  
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<sup>1</sup>Appointed to seat vacated by Richard M. Matsuura.

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 Vice Speaker ..... Paul T. Oshiro  
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Fiftieth District—(Oahu)  
David Pendleton (R)

Fifty-First District—(Oahu)  
Kenny Goodenow (D)

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Nineteenth State Legislature  
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1997**

**ACT 1**

H.B. NO. 230

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 \$5,005,794, 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, 1998, including the 1997 regular session, Nineteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1997 and 1998 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,254,882, 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, 1998, including the 1997 regular session, Nineteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1997 and 1998 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 1997 and 1998 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 1997 and 1998 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 21, 1998, the Senate and the House of Representatives shall each have their accounts audited and a full report of the respective audits shall be presented to the Senate and to the House of Representatives convening on January 21, 1998.

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 provisions

## ACT 1

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 \$130 a day as 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 \$2,845,796, or so much thereof as may be necessary, to the office of the legislative auditor for the following expenses:

- (1) The sum of \$2,034,850, for defraying the expenses of the office of the legislative auditor during fiscal year 1997-1998;
- (2) The sum of \$660,946, for defraying the expenses of the office of the state ethics commission during fiscal year 1997-1998; and
- (3) The sum of \$150,000, during fiscal year 1997-1998 for:
  - (A) Performing special studies;
  - (B) Improving capabilities for planning, programming, and budgeting;
  - (C) 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;
  - (D) Legislative studies and contractual services for those studies; and
  - (E) 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 \$2,229,716 or so much thereof as may be necessary, to the legislative reference bureau, for defraying the expenses of the legislative reference bureau during fiscal year 1997-1998, 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 \$731,842, or so much thereof as may be necessary, to the office of the ombudsman for defraying the expenses of the office during fiscal year 1997-1998.

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 "SHADOW"):

- (1) \$600,000 to the Senate; and
- (2) \$600,000 to the House of Representatives.

This appropriation shall be used to pay for hardware, software, consultant, installation, material, supply, and other related costs associated with the legislative information system that have been or will be incurred. This appropriation shall take effect upon the approval of this Act and shall not lapse until June 30, 1998.

SECTION 10. As of the close of business on June 30, 1998, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 11. Each section of this Act is declared to be severable from the remainder of this Act.

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

(Approved January 31, 1997.)

## ACT 2

H.B. NO. 455

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting or Repealing Obsolete or Unnecessary Provisions.

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

SECTION 1. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The duties of the commission under this subpart are:
- (1) To develop and adopt reporting forms required by this subpart;
  - (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
  - (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
  - (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
  - (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify such persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to such persons. The commission shall publish in the newspaper the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart shall result in a penalty of \$50. Failure to respond after a newspaper notification shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;
  - (6) To hold public hearings;
  - (7) To investigate and hold hearings for receiving evidence of any violations;
  - (8) To adopt a code of fair campaign practices as a part of its rules;
  - (9) To establish rules pursuant to chapter 91;
  - (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;



ACT 2

- (11) To administer and monitor the distribution of public funds under this subpart;
- (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- (13) To employ or contract, without regard to chapters 76 and 77 and section [103D-209(b),] 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- (14) To do random audits, field investigations, as necessary;
- (15) To file for injunctive relief when indicated; and
- (16) To censure any candidate who fails to comply with the code of fair campaign practices.”

SECTION 2. Section 76-5, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§76-5 [Service to judiciary and counties by the State.] Furnishing of services and facilities.”**

SECTION 3. Section 155-14, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) All interest and fees collected by the department shall be deposited in the agricultural loan reserve fund to the extent needed to carry on the operations of the department including payments for consultative services that would strengthen the agriculture loan program; any moneys surplus to these needs shall be transferred to the [[agricultural[]] loan revolving fund at the discretion of the department. All payments received on account of principal shall be credited to the [[agricultural[]] loan revolving fund.

(c) A proper reserve shall be maintained in the [[agricultural[]] loan revolving fund to guarantee payment of loans under section 155-5.”

SECTION 4. Section 201-94, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the department, for administrative purposes, an advisory council to be known as the Hawaii tourism marketing council, which shall review and make recommendations on matters relating to state tourism marketing and promotion programs and activities. The council shall be composed of nine voting members and four ex officio nonvoting members. The voting members shall be appointed in accordance with section 26-34, except as otherwise provided by law. The president of the [Hawaii Visitors Bureau,] Hawaii Visitors and Convention Bureau, the president of the Hawaii hotel association, the president of the Hawaii resort developers’ conference, and the director, or their respective designated representatives, shall serve as ex officio, nonvoting members.”

SECTION 5. Section 201-95, Hawaii Revised Statutes, is amended to read as follows:

**“§201-95 Contract with the [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau and other organizations; report. (a) Any law to the contrary notwithstanding, the office may contract with the [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau or any other visitor industry organization to**

perform tourism promotion, marketing, and development; provided that, whenever possible, the term of these contracts shall be for at least two years and, to the extent practicable, the office shall negotiate and execute all contracts under this subsection as early as possible following the beginning of each fiscal biennium.

(b) The office shall review annually the expenditure of public funds by the [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau or any other visitor industry organization and shall make recommendations necessary to ensure the effective use of the funds for the development of tourism. The office shall also prepare annually a report of expenditures, including descriptions and evaluations of programs funded, together with any recommendations the deputy director may make and shall submit the report to the legislature as part of the annual report required under section 201-98.”

SECTION 6. Section 203-1, Hawaii Revised Statutes, is amended to read as follows:

“**§203-1 Duties and conditions.** Any law to the contrary notwithstanding, the department of business, economic development, and tourism may contract with the [Hawaii Visitors Bureau.] Hawaii Visitors and Convention Bureau. The department may add any additional provisions in the contract which it may deem necessary for effective tourist promotion and development.”

SECTION 7. Section 203-2, Hawaii Revised Statutes, is amended to read as follows:

“**§203-2 Terms and conditions of contract.** The contract entered into with the [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau shall contain the following terms and conditions:

- (1) The [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau shall receive any complaints relating to tourist activities from any person who files complaints with the [Hawaii Visitors Bureau.] Hawaii Visitors and Convention Bureau, report monthly to the department of business, economic development, and tourism, and make these complaints available for the inspection of all interested parties;
- (2) No employee or officer of the department of business, economic development, and tourism shall serve as a member of the [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau executive board; and
- (3) The [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau shall submit an annual report to the legislature and the department of business, economic development, and tourism of its activities which compares anticipated results with funds expended and includes, but shall not be limited to:
  - (A) Goals and objectives in accordance with identified needs;
  - (B) Description and status of promotional projects and programs including those which may exceed the duration of the contract;
  - (C) Target markets;
  - (D) Analyses of programs and project effectiveness including their anticipated and actual results; and
  - (E) Program and project funding and costs.”

SECTION 8. Section 203-3, Hawaii Revised Statutes, is amended to read as follows:

## ACT 2

**“§203-3 County advisory committees.** There shall be established in each county including the city and county of Honolulu, an advisory committee to the department of business, economic development, and tourism. Each committee shall consist of five members who shall be appointed by the mayor of each county with the approval of the city or county council. The county advisory committees, in order to effectuate tourist promotion and development in their respective counties, shall:

- (1) Advise the department as to what provisions in addition to those specified in this chapter should be contained in the contract between the department and the [Hawaii Visitors Bureau;] Hawaii Visitors and Convention Bureau; and
- (2) Advise the department as to other matters relating to tourism promotion and development.”

SECTION 9. Section 203-4, Hawaii Revised Statutes, is amended to read as follows:

**“§203-4 Disclosure of gifts and in-kind contributions.** The [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau shall disclose to the department in a quarterly report the value of all gifts and in-kind contributions received by the [Hawaii Visitors Bureau;] Hawaii Visitors and Convention Bureau; provided, however, that the [Hawaii Visitors Bureau] Hawaii Visitors and Convention Bureau shall not be required to disclose the names of the persons making the gifts and in-kind contributions. The director of business, economic development, and tourism shall adopt procedures and set parameters to implement the reporting requirements of the [Hawaii Visitors Bureau.] Hawaii Visitors and Convention Bureau.”

SECTION 10. Section 203-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All marketing programs, including those of destination marketing organizations receiving state funding and state department initiated plans, prior to finalization, shall be transmitted to the office of tourism for coordination with the office’s tourism marketing plan, in accordance with subsection (a). 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 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,] Hawaii Visitors and Convention Bureau, shall be subject to this subsection.”

SECTION 11. Section 431:10C-117(a), Hawaii Revised Statutes, is reenacted to read as follows:

- “(a) (1) Any person subject to this article in the capacity of the operator, owner, or registrant of a motor vehicle in this State, or registered in this State, who violates any applicable provision of this article, shall be subject to citation for the violation by any county police department in a form and manner approved by the violations bureau of the district court of the first circuit.
- (2) Notwithstanding any provision of the Hawaii Penal Code:
- (A) Each violation shall be deemed a separate offense and shall be subject to a fine of not less than \$100 nor more than \$5,000 which shall not be suspended except as provided in subparagraph (B);

- (B) If the person is convicted of not having had a no-fault policy in effect at the time the citation was issued, the fine shall be \$500 for the first offense and a minimum of \$1,500 for each subsequent offense that occurs within a five-year period from any prior conviction; provided that the judge:
- (i) Shall have the discretion to suspend the fine for the first offense; provided further that upon the defendant's request, the judge may grant community service in lieu of the fine, of not less than seventy-five hours and not more than one hundred hours for the first offense, and not less than two hundred hours nor more than two hundred seventy-five hours for the second offense; and
  - (ii) May grant community service in lieu of the fine for subsequent offenses at the judge's discretion.
- (3) In addition to the fine in paragraph (2), for the first conviction within a five-year period for the offense of driving without no-fault policy, the court shall either:
- (A) Suspend the driver's license of the driver or of the registered owner for three months, provided that they shall not be required to obtain proof of financial responsibility pursuant to section 287-20, or
  - (B) Require the driver or the registered owner to keep a nonrefundable no-fault insurance policy in force for six months.
- In addition to the fine in paragraph (2), if the violation is a subsequent offense of driving without a valid no-fault policy, within a five-year period of any prior conviction, the driver's licenses of the driver or the registered owner shall be suspended for one year and the driver or the registered owner shall be required to maintain proof of financial responsibility pursuant to section 287-20.
- (4) Any person cited under this section shall have an opportunity to present a good faith defense, including but not limited to lack of knowledge or proof of insurance. The general penalty provision of this section shall not apply to:
- (A) Any operator of a motor vehicle owned by another person if the operator's own insurance covers such driving; or
  - (B) Any operator of a motor vehicle owned by that person's employer during the normal scope of that person's employment; or
  - (C) Any operator of a borrowed motor vehicle if the operator holds a reasonable belief that the subject vehicle is insured.
- (5) In the case of multiple convictions for driving without a valid no-fault policy within a five-year period from any prior conviction, the court, in addition to any other penalty, shall impose the following penalties:
- (A) Imprisonment of not more than thirty days;
  - (B) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
  - (C) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle, or any other cost involved pursuant to section 431:10C-301; or
  - (D) Any combination of those penalties."

SECTION 12. Section 607-25, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

## ACT 2

“(c) For purposes of this section, the permits or approvals required by law shall include compliance with the requirements for permits or approvals established by chapters 6E, 46, 54, 171, 174C, 180C, 183, 183C, 184, 195, 195D, 205, 205A, 266, 342B, 342D, 342F, 342H, 342J, 342L, and 343 and ordinances or rules adopted pursuant thereto under chapter 91.”

SECTION 13. Act 9, Session Laws of Hawaii 1996, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Section [421:9-400,] 412:9-400, Hawaii Revised Statutes, is amended to read as follows:”

SECTION 14. Act 13, Session Laws of Hawaii 1996, is amended by amending section 22 to read as follows:

“SECTION 22. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of [1995,] 1996, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.”

SECTION 15. Act 20, Session Laws of Hawaii 1996, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Section 287-20, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:”

SECTION 16. Act 87, Session Laws of Hawaii 1996, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. [Section] Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:”

SECTION 17. Act 173, Session Laws of Hawaii 1996, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect upon its approval; provided that Section [1] 2 shall take effect on July 1, 1999; Section [2] 3 shall be repealed on June 30, 1999; and Section 6 shall take effect on July 1, 1996.”

SECTION 18. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 1997, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 20. This Act shall take effect upon its approval; provided that:

- (1) Section 11 shall take effect retroactive to April 22, 1996;
- (2) Section 13 shall take effect retroactive to April 12, 1996;
- (3) Sections 14 and 15 shall take effect retroactive to April 22, 1996;
- (4) Section 16 shall take effect retroactive to June 6, 1996; and
- (5) Section 17 shall take effect retroactive to June 17, 1996.

(Approved March 17, 1997.)

## ACT 3

S.B. NO. 1433

A Bill for an Act Making an Appropriation for Tourism Marketing.

*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 section 9, article VII, of the constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, as amended by Act 287, Session Laws of Hawaii 1996, appropriated general funds to the state tourism office (BED 113) for fiscal year 1996-1997. The department of business, economic development, and tourism is extremely concerned with the emerging downward trend in the Japanese visitor market. The weakening yen and faltering confidence due to the stagnant Japanese economy appear to be the major causes. In addition, little or no growth in arrivals from the mainland is predicted. The department is therefore requesting a \$10 million dollar emergency appropriation for tourism marketing.

SECTION 3. 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 1996-1997, for tourism marketing covering Japan and the United States.

SECTION 4. The sum appropriated shall be expended by the department of business, economic development, and tourism, through a contract with the Hawaii Visitors Bureau, d.b.a. Hawaii Visitors and Convention Bureau for the purposes of this Act; provided that no funds shall be expended by the department until the governor removes restrictions on any unexpended amounts appropriated to the state tourism office (BED 113) for fiscal year 1996-1997, and allows its expenditure.

SECTION 5. Any unencumbered balance of the appropriation made by this Act as of the close of business on June 30, 1997, shall lapse into the general fund.

SECTION 6. The Hawaii Visitors and Convention Bureau shall report to the legislature on its tourism marketing plans for Japan and the United States no later than thirty days after the release of funds appropriated by this Act.

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

(Approved March 19, 1997.)

## ACT 4

S.B. NO. 1493

A Bill for an Act Relating to Limited Liability Companies.

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

SECTION 1. Section 428-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

ACT 5

“(a) One or more persons may organize a limited liability company, consisting of [two] one or more members, by delivering articles of organization to the office of the director for filing.”

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

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

(Approved March 31, 1997.)

ACT 5

H.B. NO. 173

A Bill for an Act Relating to Liquor.

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

SECTION 1. Section 281-17.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any such liquor license fees or any moneys collected or received by any liquor commission under this chapter may only be used for costs and expenses directly relating to operational and administrative costs actually incurred by the liquor commission collecting or receiving such liquor license fees[.] or moneys. Such fees or moneys shall not be used for any costs or expenses other than those directly relating to its operation and administration.”

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

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved April 3, 1997.)

ACT 6

H.B. NO. 1635

A Bill for an Act Relating to Criminal History Record Checks.

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

SECTION 1. Section 353C-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§353C-5**~~]]~~ **Criminal history record checks.** The department shall develop standards to assure the reputable and responsible characters of staff members of its correctional facilities which shall include but not be limited to criminal history record checks. For the purposes of this section, “staff member” means any employee of the department of public safety who is directly involved with the treatment and care of persons committed to a facility or who possesses police powers including the power of arrest, and “prospective staff member” means any applicant for a job in the department of public safety that is directly involved with the

treatment and care of persons committed to a facility or that requires the exercise of police powers including the power to arrest in the performance of its duties.

Every staff member and prospective staff member shall submit a statement under penalty of [perjury] unsworn falsification to authorities indicating whether the staff member or prospective staff member was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The staff member shall be fingerprinted for the purpose of complying with the criminal history record check. The prospective staff member shall be fingerprinted and the criminal history record check shall be completed prior to beginning employment.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all staff and prospective staff members of the department of public safety. The Hawaii criminal justice data center may assess prospective staff members a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The department may deny employment to a prospective staff member who was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the department finds from the prospective staff member's criminal history record that the prospective staff member poses a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large.

Staff members shall not be subject to termination based on findings in their criminal records except for those whose conviction of a crime occurred after May 8, 1989, or under circumstances in which a staff member is<sup>1</sup> fugitive from justice. The convictions of staff members subject to termination must be for crimes other than a minor traffic violation involving a fine of fifty dollars or less, and the staff member must pose a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large."

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 7, 1997.)

**Note**

1. Prior to amendment "a" appeared here.

**ACT 7**

H.B. NO. 1891

A Bill for an Act Relating to Contractors License Renewal.

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

SECTION 1. Section 444-15, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The biennial renewal fee or inactive license fee, and the recovery fund, education fund, and compliance resolution fund fees shall be paid to the board on or before [April 30] September 30 of each even-numbered year. These fees shall be as



## ACT 8

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

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

SECTION 2. Any license issued by the contractors license board that is scheduled to expire on April 30, 1998, shall be deemed automatically extended until September 30, 1998.

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 7, 1997.)

## ACT 8

H.B. NO. 1897

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

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

SECTION 1. Section 464-3, Hawaii Revised Statutes, is amended to read as follows:

**"§464-3 Persons exempt from licensure.** [The following shall be exempted from this chapter:

(1)] Persons practicing professional engineering, architecture, land surveying, or landscape architecture solely as officers or employees of the United States];

(2) Persons practicing professional engineering, architecture, land surveying or landscape architecture solely as officers or employees of the State or any political subdivision thereof on May 2, 1923, and thereafter only until the expiration of the terms of office or employment of such persons.] shall be exempted from the provisions of this chapter."

SECTION 2. Section 464-7, Hawaii Revised Statutes, is amended to read as follows:

**"§464-7 Powers and duties of board; secretary; records.** In addition to any other powers and duties authorized by law, the board may compel the attendance of witnesses upon subpoena, administer oaths, take testimony, and do all other things necessary and proper to carry out this chapter in all matters within its jurisdiction. It shall adopt and have an official seal and adopt, subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, rules for the performance of its duties and the carrying on of its business and the enforcement of this chapter, including, but not limited to, rules which define the branches of engineering in which licensure shall be offered, clarify the qualifications needed for licensure, and set forth practice requirements. It shall have a chairperson,

a vice-chairperson, and a secretary, and a quorum shall consist of not less than six members.

The board shall keep a record of its proceedings and all applicants for licensure as engineers, architects, surveyors, or landscape architects, the date of application, name, [age,] educational and other qualifications, [place of business and residence,] address, whether or not an examination was required, and whether or not the applicant was licensed and a certificate issued to the applicant and the date of the action. The records shall be prima facie evidence of all matters therein contained.”

SECTION 3. Section 464-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every license expires on April 30 of each even-numbered year following its issuance and becomes invalid after that date unless renewed. [The secretary of the board, at] At least one month in advance of the date of expiration of the license, [shall mail] a notice shall be mailed to every person licensed under this section[,] informing them of the date of expiration and the amount required for the renewal. Licenses [which] that have expired for failure to pay renewal fees on or before the date required in this subsection may be restored within two years of the expiration date upon payment of a fee for each renewal. Any person who fails to restore the person’s license within two years of the date of its expiration shall reapply for licensure.”

SECTION 4. Section 464-12, Hawaii Revised Statutes, is amended to read as follows:

“**§464-12 Corporations and partnerships.** A corporation or copartnership may engage in the practice of professional engineering, architecture, surveying, or landscape architecture in the State[, provided] if the person or persons connected with the corporation or copartnership directly in charge of the professional work is duly licensed [hereunder, and provided further that the name or names of such person or persons has or have been filed with the board by the corporation or copartnership].”

SECTION 5. Section 464-8.5, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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

(Approved April 7, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 9**

H.B. NO. 1886

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:

## ACT 9

“(a) Any person:

- (1) Eighteen years of age or over;
- (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;
- (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
- (4) Having been officially certified in the administration of intra-oral infiltration local anesthesia and block 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 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 the applicant's certification in the administration of intra-oral infiltration local anesthesia and[, at] block anesthesia. 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 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. Section 447-1, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the applicant[, in the opinion of the board,] successfully passes the examination, the applicant shall be registered and receive a certificate of ability to practice as a dental hygienist in the State. Every registered dental hygienist, before entering practice, shall pay the board a registration fee. On or before December 31 of each odd-numbered year, every registered dental hygienist desiring to begin or continue to practice in the State shall pay to the board a fee for the biennial registration thereof. The failure, neglect, or refusal of any duly licensed dental hygienist to pay the biennial registration fee shall constitute a forfeiture of the license, but the license may be restored upon written application therefor and payment to the board of a restoration fee.”

SECTION 3. Section 447-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Clinical dental hygiene may be practiced by a licensed dental hygienist. The practice of clinical dental hygiene is defined as the removal of hard and soft deposits and stains from the portion of the crown and root surfaces to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, the application of preventive chemical agents to the coronal surfaces of teeth, which chemical agents have been approved by the board of dental examiners, and the use of mouth washes as are approved by the board, but shall not include the performing of any repair work or the preparation thereof, or any other operation on the teeth or tissues of the mouth; provided that nothing herein shall prohibit a dental hygienist from using or applying topically any chemical agent which has been approved in writing by the department of health for any of the purposes set forth in part V of chapter 321, and other

procedures delegated by the dentist in accordance with the rules of the board of dental examiners.

In addition, a licensed dental hygienist may administer intra-oral local anesthesia and block anesthesia under the direct supervision of a dentist upon providing documentary proof satisfactory to the board of certification in the administration of [this procedure.] these procedures.”

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 7, 1997.)

## ACT 10

S.B. NO. 1548

A Bill for an Act Making an Emergency Appropriation for the State Medical Assistance Program.

*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 section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 287, Session Laws of Hawaii 1996, appropriated a sum of money to the department of human services to provide funds for the medical assistance program under the med-QUEST division for the fiscal period beginning July 1, 1996, and ending June 30, 1997.

A critical funding emergency exists. The medical assistance program, also known as the medicaid program, will expend all appropriated funds before the end of the current fiscal year and the department will be unable to meet its fiscal obligation to provide health care services to medicaid recipients. The increase in eligible recipients and the increase in health care costs in Hawaii are the primary contributing factors to this financial situation. The extent of the increase in costs was not anticipated and reflects an unusually high escalation over the previous year.

To prevent the reduction or discontinuance of direct medical services for medicaid and Hawaii QUEST recipients, additional funds are urgently needed.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$54,745,844 or so much thereof as may be necessary for fiscal year 1996-1997 to be used for health care payments for medical assistance recipients; provided that \$750,000 of that sum shall be used to provide wraparound payments to Hawaii qualified health centers.

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 upon its approval.

(Approved April 9, 1997.)

A Bill for an Act Relating to Transportation.

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

SECTION 1. Section 279E-3, Hawaii Revised Statutes, is amended to read as follows:

“**§279E-3 Metropolitan Planning Organization membership.** The MPO shall consist of a policy committee and appropriate staff. The MPO policy committee shall consist of thirteen members. These members shall include: [five]

- (1) Five members of the legislative body of the appropriate county; [three]
- (2) Three members of the state senate[, one]:
  - (A) One of whom shall be chairperson of the senate committee with primary responsibility for transportation issues[.]. In the event there is more than one chairperson of the senate committee with primary responsibility for transportation issues, the senate president shall identify the chairperson who shall serve on the MPO policy committee and who shall not be required to be a resident of the appropriate county; [and the other two] and
  - (B) Two of whom shall be residents of the appropriate county and shall be appointed by the senate president; [and three]
- (3) Three members of the state house of representatives[, one]:
  - (A) One of whom shall be the chairperson of the committee of the house of representatives with primary responsibility for transportation issues[, and the other two]; and
  - (B) Two of whom shall be residents of the appropriate county and shall be appointed by the speaker of the house; [and<sup>1</sup> one]
- (4) One member who shall be the director of transportation [appointed by the governor]; and [one]
- (5) One member who shall be the director of the appropriate county department assigned primary responsibility for transportation planning [appointed by the mayor of the appropriate county].

Each member of the MPO policy committee who is a member of the state legislature or the legislative body of the county shall serve for the same term as the term of office for which the member is elected. There shall be no remuneration for this service.

Vacancies in the MPO policy committee [which] that occur shall be filled in the same manner in which the original member was appointed.”

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 14, 1997.)

**Note**

1. So in original.

## ACT 12

H.B. NO. 260

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:3-211, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed.<sup>1</sup>

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

(Approved April 14, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 13

H.B. NO. 369

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:3-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to the requirements in subsection (a), to qualify for and hold a certificate of authority, foreign and alien insurers must:

- (1) Have appointed a general agent who is qualified according to the standards set forth in article 9; provided that this paragraph shall not apply to foreign and alien reinsurers licensed to transact business in Hawaii that assume any portion of the risk of another insurer; and
- (2) Have continuously, actively, and successfully transacted the business of insurance for at least five years immediately prior thereto[.]; provided that in the case of a reorganization (including a merger, corporate acquisition, or formation of a subsidiary) of a capital stock or mutual insurer, the five-year period shall be computed from the date of the organization of the original or parent insurer or insurers if substantially the same management continues.”

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 14, 1997.)

A Bill for an Act Relating to the Hawaii Property Insurance Association.

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

SECTION 1. Section 431:21-109, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:21-109]]~~ **Insurance coverages available under plan.** (a) 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.

(b) At the written request of any person who is, or is attempting to become, a mortgagor on real property that qualifies for coverage under the plan of operation, the association shall provide coverage for an amount not less than the amount of the mortgage obligation, but no greater than the value of the property being insured; provided that it does not exceed the limits of the plan. The policy shall name the intended mortgagee as the beneficiary for the amount equal to the outstanding balance on the mortgage.

(c) In the application of subsection (b), the amount covered under the policy shall comply with article 10E.”

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 14, 1997.)

A Bill for an Act Relating to Captive Insurance Companies.

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

SECTION 1. Section 431:19-106, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An association captive insurance company, including a risk retention captive insurance company, may be [incorporated]:

- (1) [As] Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; [or]
- (2) [As] Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organization of its association[.]; or
- (3) Organized as a reciprocal insurer, for other than credit life and credit disability insurance and group term life insurance, without capital stock, whose affairs shall be coordinated through an attorney-in-fact as provided in the power of attorney or other agreement given to the attorney-in-fact by the subscribers.”

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 14, 1997.)

## ACT 16

H.B. NO. 1190

A Bill for an Act Relating to Captive Insurance Companies.

*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 19 to be appropriately designated and to read as follows:

**“§431:19- Applicability of other laws to captive insurance companies writing credit life or other credit disability insurance policies.** Captive insurance companies writing credit life or credit disability policies in this State shall be subject to sections 431:10B-101 through 431:10B-114. Captive insurance companies shall also be subject to the rules adopted, pursuant to chapter 91, by the commissioner to implement these sections.”

SECTION 2. Section 431:19-102, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) A captive insurance company may engage in the business of any of the following types of insurance:

- (1) All casualty insurance;
- (2) Marine and transportation insurance;
- (3) Marine protection and indemnity insurance, which includes insurance against, or against legal liability of the insured for loss, damage, or expense arising out of or incident to, the ownership, operation, chartering, maintenance, use, repair, or construction of a vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, death, or for loss of or damage to the property of another person;
- (4) Wet marine and transportation insurance, which is that part of marine and transportation insurance that includes only:
  - (A) Insurance upon vessels, crafts, hulls, and of interests therein or with relation thereto;
  - (B) Insurance of marine builder’s risks, marine war risks and contracts, or marine protection and indemnity insurance;
  - (C) Insurance of freights and disbursements pertaining to a subject of insurance; and
  - (D) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, and in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, with respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and



during delays, storage, transshipment, or reshipment incident thereto;

- (5) Property insurance;
- (6) Surety insurance;
- (7) Title insurance; and
- (8) Credit life insurance and credit disability insurance [relating to specific loans or other credit transactions between] offered as part of, or relating directly to the business or operations of its parent or affiliated companies [and any of their directors, officers, and employees].'

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved April 14, 1997.)

Note

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

ACT 17

H.B. NO. 1747

A Bill for an Act Relating to the Kaho'olawe Island Reserve.

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

SECTION 1. Section 199-3, Hawaii Revised Statutes, is amended to read as follows:

**“§199-3 Conservation and resources enforcement officers, duties; other law enforcement officers.** (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, Kaho'olawe island reserve, 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] chapters 6E[,] and 6K, 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) Whether through a specifically designated marine patrol or otherwise, enforce the rules in the areas of boating safety, conservation, and search and rescue relative to the control and management of 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 regulating vessels and their use in the waters of the State; and

- (8) Carry out such other duties and responsibilities as the board of land and natural resources from time to time may direct.

(b) Every state and county officer charged with the enforcement of laws and ordinances shall enforce and assist in the enforcement of title 12 [and chapter], chapters 6E and 6K, and rules adopted thereunder and in the enforcement of chapters 266 and 267 and of all rules adopted thereunder.”

SECTION 2. Section 199-5, Hawaii Revised Statutes, is amended to read as follows:

“**§199-5 Summons or citation.** There shall be a form of summons or citation for use in citing violators of title 12, [chapter] chapters 6E[,] and 6K, and rules adopted thereunder, which do not mandate the physical arrest of the violators. The summons or citation shall be printed in a form commensurate with the form of other summons or citation used in modern methods of arrest and shall be so designed to include all necessary information to make it valid and legal within the laws and rules of the State. The form and content of the summons or citation shall be adopted or prescribed by the district courts.

In every case where a summons or citation is issued the original of the same shall be given to the violator; provided that the district courts may prescribe the issuance to the violator of a carbon copy of the summons or citation and provide for the disposition of the original and any other copies. Every summons or citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.”

SECTION 3. Section 199-6, Hawaii Revised Statutes, is amended to read as follows:

“**§199-6 Failure to obey a summons.** Any person who fails to appear at the place and within the time specified in the summons or citation issued by the officers or their agents or subordinates, upon that person’s arrest for violation of title 12, [chapter] chapters 6E[,] and 6K, and rules adopted thereunder, shall be guilty of a petty misdemeanor and, upon conviction, shall be fined not more than \$500 or be imprisoned not more than thirty days, or both.

If any person fails to comply with a summons or citation issued, or if any person fails or refuses to deposit bail as required and within the time permitted, the officers shall cause a complaint to be entered against the 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 title 12, [chapter] chapters 6E[,] and 6K, and rules adopted thereunder, the officer who issued the summons or citation shall subscribe to it under oath administered by another official or officials of the department of land and natural resources whose names have been submitted to the prosecuting officer and who have been designated by the chairperson of the board of land and natural resources to administer the same.”

SECTION 4. Section 199-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any police officer or agent of the department of land and natural resources upon whom the board of land and natural resources has conferred powers

## ACT 18

of police officers, shall have the authority to conduct searches on probable cause as provided by law and to seize any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource used or taken in violation of the provisions contained in [chapter] chapters 6E and 6K, or title 12, or any rules adopted thereunder. For purposes of this section, "natural resource" includes any archaeological artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds."

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 April 14, 1997.)

## ACT 18

H.B. NO. 1870

A Bill for an Act Relating to Insurance Rate Regulation.

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

SECTION 1. Section 431:14-103, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Upon the issuance of a certificate by a certified safety and health professional to an employer that the employer has an effective safety and health program pursuant to section 396-4.5, the insurer shall provide the employer with a workers' compensation insurance premium discount of at least five per cent[.]; provided that the employer shall maintain the effective safety and health program throughout the policy period. Standards for the issuance of certificates shall be included in rules adopted by the department of labor and industrial relations pursuant to chapter 91."

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

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

(Approved April 14, 1997.)

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S.B. NO. 140

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 425-175, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any provision in part IV, a partner or former partner in a limited liability partnership shall not be individually and personally liable for debts, obligations, and liabilities of or chargeable to the partnership, whether in

contract, tort, or otherwise [arising] that arise out of negligence, including negligent acts and negligent omissions[;], wrongful acts or omissions[;], misconduct[;], or malpractice committed while the partnership is a limited liability partnership and in the course of the partnership business, unless the negligence, wrongful acts or omissions, misconduct, or malpractice were committed by the partner or by a person or persons under the partner's direct supervision and control.”

SECTION 2. Section 425-178, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) At the time of registration pursuant to section 425-153 in the case of a limited liability partnership, and section 425-155, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims [of the type described in section 425-175, or based upon acts, errors, or omissions, a limited liability partnership or foreign limited liability partnership shall comply] based upon negligent or wrongful acts or omissions that arise out of the conduct of the business of the partnership, by complying with one, or pursuant to subsection (b), some combination, of the following:

- (1) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of all claims of the type described in this subsection in an amount of at least \$100,000 multiplied by the number of licensed persons rendering professional services on behalf of the partnership, or at least \$100,000 multiplied by the number of partners in the case of a nonprofessional limited liability partnership; however, the maximum amount of insurance [is] shall not be required to exceed \$5,000,000 [against which no claims are outstanding].
- (2) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims of the type described in subsection (a) in an amount of at least \$100,000 multiplied by the number of licensed persons rendering professional services, or at least \$100,000 multiplied by the number of partners in the case of a nonprofessional limited liability partnership; however, the maximum amount of security [is] shall not be required to exceed \$5,000,000 [against which no claims are outstanding].
- (3) A limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding \$10,000,000. In order to comply with this alternative method of meeting the requirements established in this section, a limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the director, signed by an authorized member partner of the limited liability partnership or foreign limited liability partnership, accompanied by such forms as prescribed by the director. In order to be current in a given year, the partnership form of confirming compliance with this optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular

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fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.”

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 14, 1997.)

## ACT 20

S.B. NO. 207

A Bill for an Act Relating to the Liquor Tax.

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

SECTION 1. The legislature finds that the encouragement of local industries during this economic downturn is more important than it ever has been. In particular, while Hawaii has a thriving beer and wine industry, the very high taxes on the sale of liquor make it next to impossible to sell beer and wine produced in Hawaii on the mainland. An exemption similar to that provided in chapter 237, Hawaii Revised Statutes, for selling products out of State should be provided for the sale of liquor out of State. Since there are few if any sales currently out of State, such an exemption would encourage the growth of local industry, while not impacting the state treasury in a noticeable manner.

The purpose of this Act is to exempt the out-of-state sale of liquor from the liquor tax.

SECTION 2. Chapter 244D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§244D- Exemption for sales of liquor shipped out of the State. (a)** There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the value or gross proceeds arising from the manufacture, production, or sale of liquor shipped by the manufacturer, producer, or seller to a point outside the State where the liquor is resold or otherwise consumed or used outside the State.

(b) For the purposes of this section, the manufacturer, producer, or seller shall take from the purchaser, a certificate, in such form as the department shall prescribe, certifying that the liquor purchased is to be resold or otherwise consumed or used outside the State. Any purchaser who shall furnish such a certificate shall be obligated to pay to the seller, upon demand, if the liquor purchased is not resold or otherwise consumed or used outside the State, the amount of the additional tax which by reason thereof is imposed upon the seller.”

SECTION 3. Section 244D-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every person who sells or uses any liquor in the State not taxable under this chapter, in respect of the transaction by which the person or the person’s vendor acquired the liquor, shall pay a gallonage tax which is hereby imposed at the following rates for the various liquor categories defined in section 244D-1:

[(1) \$5.20 per wine gallon on distilled spirits;

- (2) \$2.00 per wine gallon on sparkling wine;
- (3) \$1.30 per wine gallon on still wine;
- (4) \$0.81 per wine gallon on cooler beverages;
- (5) \$0.81 per wine gallon on beer other than draft beer;
- (6) \$0.50 per wine gallon on draft beer;

For the period July 1, 1995, to June 30, 1996, the tax rate shall be:

- (1) \$5.81 per wine gallon on distilled spirits;
- (2) \$2.03 per wine gallon on sparkling wine;
- (3) \$1.32 per wine gallon on still wine;
- (4) \$0.82 per wine gallon on cooler beverages;
- (5) \$0.90 per wine gallon on beer other than draft beer;
- (6) \$0.51 per wine gallon on draft beer;

For the period July 1, 1996, to June 30, 1997, the tax rate shall be:

- (1) \$5.87 per wine gallon on distilled spirits;
- (2) \$2.06 per wine gallon on sparkling wine;
- (3) \$1.34 per wine gallon on still wine;
- (4) \$0.83 per wine gallon on cooler beverages;
- (5) \$0.91 per wine gallon on beer other than draft beer;
- (6) \$0.52 per wine gallon on draft beer;]

For the period July 1, 1997, to June 30, 1998, the tax rate shall be:

- (1) \$5.92 per wine gallon on distilled spirits;
- (2) \$2.09 per wine gallon on sparkling wine;
- (3) \$1.36 per wine gallon on still wine;
- (4) \$0.84 per wine gallon on cooler beverages;
- (5) \$0.92 per wine gallon on beer other than draft beer;
- (6) \$0.53 per wine gallon on draft beer;

On July 1, 1998, and thereafter, the tax rate shall be:

- (1) \$5.98 per wine gallon on distilled spirits;
- (2) \$2.12 per wine gallon on sparkling wine;
- (3) \$1.38 per wine gallon on still wine;
- (4) \$0.85 per wine gallon on cooler beverages;
- (5) \$0.93 per wine gallon on beer other than draft beer;
- (6) \$0.54 per wine gallon on draft beer;

and at a proportionate rate for any other quantity so sold or used.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved April 14, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 21**

S.B. NO. 910

A Bill for an Act Relating to Procurement.

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

SECTION 1. Section 103D-304, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

## ACT 21

“(d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a screening committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (c) along with any other pertinent information, including references and reports. The screening committee shall be comprised of a minimum of three employees of the purchasing agency with sufficient education, training, and licenses or credentials in the area of the services required. If the purchasing agency and using agency are different, the committee shall include at least one qualified employee from the using agency. When the committee includes an employee from a using agency, the employee shall be appointed by the head of the using agency. If qualified employees are not available from these agencies, the officers may designate employees of other governmental bodies. The screening committee shall establish criteria for the selection, and evaluate the submissions of persons on the list prepared pursuant to subsection (c) and any other pertinent information which may be available to the agency, against that selection criteria. The committee may conduct confidential discussions with any person who is included on the list prepared pursuant to subsection (c) regarding the services which are required and the services they are able to provide. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. The committee shall provide the head of the purchasing agency with the names of [the three persons] a minimum of three persons who the committee concludes are the most qualified to provide the services required, with a summary of each of their qualifications. The contract file shall contain a copy of the criteria established for the selection and the committee’s summary of qualifications for each of the persons provided to the head of the purchasing agency by the committee.

(e) The head of the purchasing agency shall evaluate the summary of qualifications for each of the [three] persons provided by the screening committee and may conduct additional discussions with any of them. The head of the purchasing agency shall then rank the [three] persons in order of preference. The head of the purchasing agency shall negotiate a contract with the first person, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, complexity, and nature of the services to be rendered. If a satisfactory contract cannot be negotiated with the first person, negotiations with that person shall be formally terminated and negotiations with the second person on the list shall commence. Failing accord with the second person, negotiations with the [last] next person on the list shall commence. If a contract at a fair and reasonable price cannot be negotiated, the screening committee may be asked to submit [the names of three] a minimum of three additional persons for the head of the purchasing agency to rank, and resume negotiations in the same manner provided in this subsection. Negotiations shall be conducted confidentially.”

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 14, 1997.)

## ACT 22

S.B. NO. 1300

A Bill for an Act Relating to Employment Security Appeals.

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

SECTION 1. Section 383-38, Hawaii Revised Statutes, is amended to read as follows:

**“§383-38 Appeals, filing, and hearing.** (a) The claimant or any other party entitled to notice of a determination or redetermination as herein provided may file an appeal from the determination or redetermination at the office of the department [of labor and industrial relations] in the county in which the claimant resides or in the county in which the claimant was last employed, within ten days after the date of mailing of the notice to the claimant’s or party’s last known address, or if the notice is not mailed, within ten days after the date of delivery of the notice to the claimant or party. The department may for good cause extend the period within which an appeal may be filed to thirty days. Written notice of a hearing of an appeal shall be sent by first class, nonregistered, noncertified mail to the claimant’s or party’s last known address.

(b) The appeal under subsection (a) shall be heard in the county in which the appeal is filed, [provided] except that the department may by its [regulations] rules provide for the holding of a hearing in another county with the consent of all parties or where necessary in order that a fair and impartial hearing may be had, and may provide for the taking of depositions. Unless the appeal is withdrawn with the permission of the referee, the referee after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination or redetermination. The parties to any appeal shall be promptly notified of the decision of the referee and shall be furnished with a copy of the decision and the findings and conclusions in support thereof and the decisions shall be final and shall be binding upon each party unless a proceeding for judicial review is initiated by the party pursuant to section 383-41; provided that within the time provided for taking an appeal and prior to the filing of a notice of appeal, the referee may reopen the matter, upon the application of the director of<sup>1</sup> [labor and industrial relations] or any other party, or upon the referee’s own motion, and thereupon may take further evidence or may modify or reverse the referee’s decision, findings, or conclusions. If the matter is reopened, the referee shall render a further decision in the matter either reaffirming or modifying or reversing the referee’s original decision, and notice shall be given thereof in the manner hereinbefore provided. Upon reopening, the referee who heard the original appeal shall reconsider the matter, except where the referee is no longer employed as a referee or the referee disqualifies oneself from reconsidering the referee’s decision.

(c) The time to initiate judicial review under section 383-41 shall run from the notice of such further decision, if the matter has been reopened[.] under subsection (b).

(d) If a claimant or party does not receive the written notice under subsection (a), a second written notice shall be sent by certified mail, and the hearing on the appeal shall be rescheduled accordingly.”

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



## ACT 23

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

(Approved April 14, 1997.)

### Note

1. "Of" should be bracketed.

## ACT 23

S.B. NO. 45

A Bill for an Act Relating to Veterans.

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

SECTION 1. Section 363-4, Hawaii Revised Statutes, is amended to read as follows:

“**§363-4 Establishment of cemeteries on Hawaii, Kauai, Maui, Molokai, and Lanai.** The department of land and natural resources shall set aside, or acquire by exchange, purchase, or condemnation, in the manner provided by law, land suitable for the establishing of veterans cemeteries [as follows: five acres] on the [island] islands of Hawaii, [four acres on the island of] Maui, [three acres on the island of] Kauai, [one acre on the island of] Molokai, and [one acre on the island of] Lanai.”

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 14, 1997.)

## ACT 24

S.B. NO. 285

A Bill for an Act Relating to the Courts.

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

SECTION 1. Section 602-59, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) An application for writ of certiorari may be filed with the supreme court no later than [ten] thirty days after the filing of the decision of the intermediate appellate court; the supreme court shall determine to accept the application within ten days of its filing. The failure of the supreme court to accept within ten days shall constitute a rejection 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 14, 1997.)

## ACT 25

S.B. NO. 333

A Bill for an Act Relating to Domestic Violence.

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

SECTION 1. Section 571-42, Hawaii Revised Statutes, is amended to read as follows:

**“§571-42 Procedure in adult cases.** (a) In any criminal proceeding arising under section 571-14, except as to cases involving abuse of a family or household member, the court, with the consent of the defendant or the parties in interest, may make a preliminary investigation and such adjustment as is practicable, without prosecution. The procedure and disposition applicable in the trial of [such] cases arising under section 571-14, including cases involving abuse of a family or household member, in a criminal court shall be applicable to any trial [in] of these cases by the family court. On request of the court, the appropriate prosecuting officer shall prepare and prosecute any criminal case within the purview of section 571-14.

(b) Where in the judge’s opinion it is necessary to protect the welfare of the persons before the court, the judge may conduct hearings in chambers[,] and may exclude persons having no direct interest in the case.

(c) In proceedings arising under section 571-14(3), (4), or (5), the court may [also] make a preliminary investigation and, with the consent of the parties in interest, may make such adjustment as is practicable without further formal procedures.

(d) In any noncriminal proceeding arising under section 571-14, any findings of fact or disposition shall be based upon a preponderance of evidence admissible under the rules of evidence applicable to the trial of civil cases.”

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 14, 1997.)

## ACT 26

S.B. NO. 959

A Bill for an Act Relating to the Uniform Prudent Investor Act.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM PRUDENT INVESTOR ACT**

§ -1 **Prudent investor rule.** (a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

**§ -2 Standard of care; portfolio strategy; risk and return objectives.**

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- (5) The expected total return from income and the appreciation of capital;
- (6) Other resources of the beneficiaries;
- (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- (8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

**§ -3 Diversification.** A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances or directives of the trust, the purposes of the trust are better served without diversifying.

**§ -4 Duties at inception of trusteeship.** Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

**§ -5 Loyalty.** A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

§ **-6 Impartiality.** If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

§ **-7 Investment costs.** In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

§ **-8 Reviewing compliance.** Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ **-9 Delegation of investment and management functions.** (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
- (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State.

§ **-10 Language invoking standard of chapter.** The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

§ **-11 Application to existing trusts.** This chapter applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this chapter governs only decisions or actions occurring after that date.

§ **-12 Short title.** This chapter may be cited as the "Hawaii Uniform Prudent Investor Act".

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

(Approved April 14, 1997.)

A Bill for an Act Relating to Citations for Air Pollution Control Violations.

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

SECTION 1. Section 342B-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who violates the vehicular smoke emission rules and open burning control rules adopted by the department pursuant to this chapter may be issued a summons or citation for such violation. Violations of vehicular smoke emission rules and open burning control rules shall constitute a violation as defined in section 701-107 and shall be enforced by police officers. The summons or citation shall be printed in the form hereinafter described, warning the person to appear and answer the charge against the person at a certain place and at a time within seven days of the issuance of the summons or citation.”

SECTION 2. New statutory material is underscored.

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

(Approved April 14, 1997.)

A Bill for an Act Relating to Leave Sharing.

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

SECTION 1. Section 79-33, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§79-33]]~~ **Leave sharing program.** (a) The chief executive of the State or a county may establish a program to allow employees to donate accumulated vacation leave credits to another employee within the same jurisdiction who has a serious personal illness or injury[.] or who has a family member who has a serious personal illness or injury. The program shall allow employees who are not entitled to vacation leave to donate accumulated sick leave credits.

(b) The director of human resources development or of personnel services of a jurisdiction desiring to establish a leave sharing program shall adopt rules pursuant to chapter 91 governing donors, recipients, and an approval process that ensures fair treatment and freedom from coercion of employees and imposes no undue hardship on the employer's operations. At a minimum, the rules shall require that an eligible recipient must have:

- (1) No less than six months of service within the respective jurisdiction;
- (2) Exhausted or is about to exhaust all vacation leave, sick leave, and compensatory time credits; provided, however, that sick leave need not be exhausted when the illness or injury involves a family member;
- (3) A personal illness or injury certified by a competent medical examiner as being serious and the cause of the recipient's inability to work; provided that, the illness or injury is not covered under chapter 386 or, if covered, all benefits under chapter 386 have been exhausted[; and]

- or, a family member whose illness or injury is certified by a competent medical examiner as being serious;
- (4) No disciplinary record of sick leave abuse within the past two years.’’

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

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

(Approved April 14, 1997.)

## ACT 29

H.B. NO. 1839

A Bill for an Act Making an Emergency Appropriation for the Department of Health, Child and Adolescent Mental Health Division.

*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 section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Although funds were appropriated to the department of health for the child and adolescent mental health program for the fiscal period beginning July 1, 1996, and ending June 30, 1997, a critical funding emergency now exists. The program will expend all appropriated funds before the end of the current fiscal year, and the department will be unable to meet its fiscal obligation to provide services to emotionally disturbed children and adolescents. The increases in case referrals and court-directed placements are the primary contributing factors to this financial situation.

The purpose of this Act is to appropriate or authorize moneys to prevent the reduction or discontinuance of services to emotionally disturbed children and adolescents.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$9,218,665 or so much thereof as may be necessary for fiscal year 1996-1997 to be used for services provided to emotionally disturbed children and adolescents.

SECTION 4. The sum appropriated shall be expended by the department of health for purposes of this Act.

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

(Approved April 17, 1997.)

A Bill for an Act Relating to Children and Youth.

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

SECTION 1. In 1994, the legislature passed Act 243 to establish a day and a week in October honoring the State's children, because the children of Hawaii are an important human resource. The purpose of this Act is to extend the celebration honoring children to an entire month of activities and to include youth in this celebration.

SECTION 2. Section 8-11, Hawaii Revised Statutes, is amended to read as follows:

“[§8-11] Children's Children and Youth Day and [Week.] Month. The first Sunday in October shall be known and designated as [“Children's” “Children and Youth Day”, and the [following week] entire month of October shall be known and designated as [“Children's Week”.] “Children and Youth Month”. This day and [week] month are not and shall not be construed to be state holidays.”

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 21, 1997.)

A Bill for an Act Relating to Gold and Silver Stamping.

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

SECTION 1. The purpose of this Act is to make state laws regulating gold and silver stamping consistent with the National Gold and Silver Stamping Act.

SECTION 2. Section 482D-9, Hawaii Revised Statutes, is amended to read as follows:

“[§482D-9] Contraband; forfeiture. (a) It is unlawful for any manufacturer or dealer to possess any article of merchandise found to be in violation of section 482D-3, 482D-4, [or] 482D-5[.], or 482D-6. All articles of merchandise found to be in violation of section 482D-3, 482D-4, [or] 482D-5, or 482D-6 shall be contraband and subject to seizure and forfeiture as provided in part VII, chapter 708 and chapter 712A. Any articles seized and forfeited pursuant to this section, and any proceeds thereof, may be made available to any victim who has a valid claim for loss or damage against the person from whom the articles were seized.

(b) This section shall not apply to antiques and second-hand jewelry.

(c) As used in this section, unless the context otherwise requires:

“Antique” means any article of merchandise that is at least one hundred years old.

“Second-hand jewelry” means any jewelry offered for sale after the first sale to a consumer.”

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 April 21, 1997.)

## ACT 32

S.B. NO. 958

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

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

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

“(3) “Agreement” means the bargain of the parties 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 chapter (sections 490:1-205 [and], 490:2-208[.], and 490:2A-207). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 490:1-103). (Compare “Contract”.)”

SECTION 2. Section 490:1-201, Hawaii Revised Statutes, is amended by amending the definition of “value” to read as follows:

“(44) “Value”. Except as otherwise provided with respect to negotiable instruments and bank collections (sections 490:3-303, [[]490:4-210[)], and [[]490:4-211[)]) a person gives “value” for rights if he acquires them:

- (a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
- (b) As security for or in total or partial satisfaction of a preexisting claim; or
- (c) By accepting delivery pursuant to a preexisting contract for purchase; or
- (d) Generally, in return for any consideration sufficient to support a simple contract.”

SECTION 3. Section 490:2-103, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

- “(3) The following definitions in other Articles apply to this Article:  
 “Check”. Section 490:3-104.  
 “Consignee”. Section 490:7-102.



- “Consignor”. Section 490:7-102.
- “Consumer goods”. Section 490:9-109.
- “Dishonor”. Section [490:3-507.] 490:3-502.
- “Draft”. Section 490:3-104.”

SECTION 4. Section 490:2-511, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Subject to the provisions of this chapter on the effect of an instrument on an obligation (section [490:3-802,] 490:3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.”

SECTION 5. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Subject to the provisions of section [[490:4-210[]] on the security interest of a collecting bank, section 490:8-321 on security interests in securities and section 490:9-113 on a security interest arising under the [Article] Articles on Sales[,] and Leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

- (a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
- (b) Value has been given; and
- (c) The debtor has rights in the collateral.”

SECTION 6. Section 490:9-302, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A financing statement must be filed to perfect all security interests except the following:

- (a) A security interest in collateral in possession of the secured party under section 490:9-305;
- (b) A security interest temporarily perfected in instruments or documents without delivery under section 490:9-304 or in proceeds for a ten-day period under section 490:9-306;
- (c) A security interest created by an assignment of a beneficial interest in a trust or a decedent’s estate;
- (d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 490:9-313;
- (e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
- (f) A security interest of a collecting bank (section [[490:4-210[]]) or in securities (section 490:8-321) or arising under the [Article] Articles on Sales and Leases (see section 490:9-113) or covered in subsection (3) of this section;
- (g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

- (h) A security interest in a deposit account. Such a security interest is perfected:
- (i) As to a deposit account maintained with the secured party, when the security agreement is executed;
  - (ii) As to a deposit account maintained with any organization other than the secured party, when notice thereof is given in writing to the organization with whom the deposit account is maintained.”

SECTION 7. Section 490:9-312, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: section [[490:4-210]] with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 490:9-103 on security interests related to other jurisdictions; section 490:9-114 on consignments.”

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

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

(Approved April 22, 1997.)

## ACT 33

S.B. NO. 985

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, article 8, Hawaii Revised Statutes, is repealed.

SECTION 2. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article 8 to read as follows:

### “ARTICLE 8.

#### INVESTMENT SECURITIES

#### PART 1. SHORT TITLE AND GENERAL MATTERS

**§490:8-101 Short title.** This article may be cited as Uniform Commercial Code—Investment Securities.

**§490:8-102 Definitions.** (a) In this article:

“Adverse claim” means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

“Bearer form”, as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

“Broker” means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

“Certificated security” means a security that is represented by a certificate.

“Clearing corporation” means:

- (1) A person that is registered as a "clearing agency" under the federal securities laws;
- (2) A federal reserve bank; or
- (3) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

"Communicate" means to:

- (1) Send a signed writing; or
- (2) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

"Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 490:8-501(b)(2) or (3), that person is the entitlement holder.

"Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

"Financial asset", except as otherwise provided in section 490:8-103, means:

- (1) A security;
- (2) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
- (3) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article.

As the context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

"Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

"Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

"Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

"Registered form", as applied to a certificated security, means a form in which:

- (1) The security certificate specifies a person entitled to the security; and
- (2) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

"Securities intermediary" means:

- (1) A clearing corporation; or

- (2) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

“Security”, except as otherwise provided in section 490:8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

- (1) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
- (2) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
- (3) Which:
  - (A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or
  - (B) Is a medium for investment and by its terms expressly provides that it is a security governed by this article.

“Security certificate” means a certificate representing a security.

“Security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5.

“Uncertificated security” means a security that is not represented by a certificate.

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

“Appropriate person”. Section 490:8-107

“Control”. Section 490:8-106

“Delivery”. Section 490:8-301

“Investment company security”. Section 490:8-103

“Issuer”. Section 490:8-201

“Overissue”. Section 490:8-210

“Protected purchaser”. Section 490:8-303

“Securities account”. Section 490:8-501

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

(d) The characterization of a person, business, or transaction for purposes of this article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

**§490:8-103 Rules for determining whether certain obligations and interests are securities or financial assets.** (a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by article 3, even though it also meets the requirements of that article. However, a

negotiable instrument governed by article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in section 490:9-115, is not a security or a financial asset.

**§490:8-104 Acquisition of security or financial asset or interest therein.**

(a) A person acquires a security or an interest therein, under this article, if:

(1) The person is a purchaser to whom a security is delivered pursuant to section 490:8-301; or

(2) The person acquires a security entitlement to the security pursuant to section 490:8-501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in section 490:8-503.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b).

**§490:8-105 Notice of adverse claim.** (a) A person has notice of an adverse claim if:

(1) The person knows of the adverse claim;

(2) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) One year after a date set for presentment or surrender for redemption or exchange; or

(2) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

- (1) Whether in bearer or registered form, has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or
  - (2) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.
- (e) Filing of a financing statement under article 9 is not notice of an adverse claim to a financial asset.

**§490:8-106 Control.** (a) A purchaser has “control” of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has “control” of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

- (1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or
- (2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has “control” of an uncertificated security if:

- (1) The uncertificated security is delivered to the purchaser; or
- (2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has “control” of a security entitlement if:

- (1) The purchaser becomes the entitlement holder; or
- (2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder’s own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c)(2) or (d)(2) has control even if the registered owner in the case of subsection (c)(2) or the entitlement holder in the case of subsection (d)(2) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

**§490:8-107 Whether indorsement, instruction, or entitlement order is effective.** (a) “Appropriate person” means:

- (1) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;
- (2) With respect to an instruction, the registered owner of an uncertificated security;
- (3) With respect to an entitlement order, the entitlement holder;
- (4) If the person designated in paragraph (1), (2), or (3) is deceased, the designated person’s successor taking under other law or the designated person’s personal representative acting for the estate of the decedent; or

- (5) If the person designated in paragraph (1), (2), or (3) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.
  - (b) An indorsement, instruction, or entitlement order is effective if:
    - (1) It is made by the appropriate person;
    - (2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under section 490:8-106(c)(2) or (d)(2); or
    - (3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.
  - (c) An indorsement, instruction, or entitlement order made by a representative is effective even if:
    - (1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or
    - (2) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.
  - (d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.
  - (e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

**§490:8-108 Warranties in direct holding.** (a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

- (1) The certificate is genuine and has not been materially altered;
  - (2) The transferor or indorser does not know of any fact that might impair the validity of the security;
  - (3) There is no adverse claim to the security;
  - (4) The transfer does not violate any restriction on transfer;
  - (5) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
  - (6) The transfer is otherwise effective and rightful.
- (b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:
- (1) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;
  - (2) The security is valid;
  - (3) There is no adverse claim to the security; and
  - (4) At the time the instruction is presented to the issuer:
    - (i) The purchaser will be entitled to the registration of transfer;

- (ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;
- (iii) The transfer will not violate any restriction on transfer; and
- (iv) The requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

- (1) The uncertificated security is valid;
- (2) There is no adverse claim to the security;
- (3) The transfer does not violate any restriction on transfer; and
- (4) The transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

- (1) There is no adverse claim to the security; and
- (2) The indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

- (1) The instruction is effective; and
- (2) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g).

(i) Except as otherwise provided in subsection (g), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) to (f). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b), and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

**§490:8-109 Warranties in indirect holding.** (a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

- (1) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and
- (2) There is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a



securities account makes to the securities intermediary the warranties specified in section 490:8-108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in section 490:8-108(a) or (b).

**§490:8-110 Applicability; choice of law.** (a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

- (1) The validity of a security;
- (2) The rights and duties of the issuer with respect to registration of transfer;
- (3) The effectiveness of registration of transfer by the issuer;
- (4) Whether the issuer owes any duties to an adverse claimant to a security; and
- (5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

- (1) Acquisition of a security entitlement from the securities intermediary;
- (2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- (3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and
- (4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) to (5).

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

- (1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
- (2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (1), but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
- (3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2), the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.
- (4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or

(2) and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (3), the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

**§490:8-111 Clearing corporation rules.** A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this article and affects another party who does not consent to the rule.

**§490:8-112 Creditor's legal process.** (a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d).

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d).

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

**§490:8-113 Statute of frauds inapplicable.** A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

**§490:8-114 Evidentiary rules concerning certificated securities.** The following rules apply in an action on a certificated security against the issuer:

- (1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.
- (2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.
- (3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the

defendant establishes a defense or a defect going to the validity of the security.

- (4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

**§490:8-115 Securities intermediary and others not liable to adverse claimant.** A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

- (1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process;
- (2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or
- (3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

**§490:8-116 Securities intermediary as purchaser for value.** A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

## PART 2. ISSUE AND ISSUER

**§490:8-201 Issuer.** (a) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

- (1) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;
- (2) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;
- (3) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or
- (4) Becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

**§490:8-202 Issuer's responsibility and defenses; notice of defect or defense.** (a) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

- (1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.
- (2) Paragraph (1) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in section 490:8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

**§490:8-203 Staleness as notice of defect or defense.** After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

- (1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

- (2) Is not covered by paragraph (1) and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

**§490:8-204 Effect of issuer's restriction on transfer.** A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

- (1) The security is certificated and the restriction is noted conspicuously on the security certificate; or
- (2) The security is uncertificated and the registered owner has been notified of the restriction.

**§490:8-205 Effect of unauthorized signature on security certificate.** An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

- (1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or
- (2) An employee of the issuer, or of any of the persons listed in paragraph (1), entrusted with responsible handling of the security certificate.

**§490:8-206 Completion or alteration of security certificate.** (a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

- (1) Any person may complete it by filling in the blanks as authorized; and
- (2) Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

**§490:8-207 Rights and duties of issuer with respect to registered owners.**

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This article does not affect the liability of the registered owner of a security for a call, assessment, or the like.

**§490:8-208 Effect of signature of authenticating trustee, registrar, or transfer agent.** (a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

- (1) The certificate is genuine;
- (2) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and
- (3) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under subsection (a) does not assume responsibility for the validity of the security in other respects.

**§490:8-209 Issuer's lien.** A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

**§490:8-210 Overissue.** (a) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d), the provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

### PART 3. TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

**§490:8-301 Delivery.** (a) Delivery of a certificated security to a purchaser occurs when:

- (1) The purchaser acquires possession of the security certificate;
- (2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
- (3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(b) Delivery of an uncertificated security to a purchaser occurs when:

- (1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
- (2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

**§490:8-302 Rights of purchaser.** (a) Except as otherwise provided in subsections (b) and (c), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

**§490:8-303 Protected purchaser.** (a) “Protected purchaser” means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

- (1) Gives value;
- (2) Does not have notice of any adverse claim to the security; and
- (3) Obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

**§490:8-304 Indorsement.** (a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in section 490:8-108 and not an obligation that the security will be honored by the issuer.

**§490:8-305 Instruction.** (a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by section 490:8-108 and not an obligation that the security will be honored by the issuer.

**§490:8-306 Effect of guaranteeing signature, indorsement, or instruction.** (a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

- (1) The signature was genuine;
- (2) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and
- (3) The signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

- (1) The signature was genuine;
- (2) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) The signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) and also warrants that at the time the instruction is presented to the issuer:

(1) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) or a special guarantor under subsection (c) does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

**§490:8-307 Purchaser's right to requisites for registration of transfer.**

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

**PART 4. REGISTRATION**

**§490:8-401 Duty of issuer to register transfer.** (a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(1) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(2) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (section 490:8-402);

(4) Any applicable law relating to the collection of taxes has been complied with;

(5) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 490:8-204;

(6) A demand that the issuer not register transfer has not become effective under section 490:8-403, or the issuer has complied with section 490:8-



403(b) but no legal process or indemnity bond is obtained as provided in section 490:8-403(d); and

(7) The transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

**§490:8-402 Assurance that indorsement or instruction is effective.** (a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

- (1) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;
- (2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;
- (3) If the indorsement is made or the instruction is originated by a fiduciary pursuant to section 490:8-107(a)(4) or (5), appropriate evidence of appointment or incumbency;
- (4) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
- (5) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

- (1) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.
- (2) "Appropriate evidence of appointment or incumbency" means:
  - (i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within sixty days before the date of presentation for transfer; or
  - (ii) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

**§490:8-403 Demand that issuer not register transfer.** (a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i)

the person who initiated the demand at the address provided in the demand, and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

- (1) The certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;
  - (2) A demand that the issuer not register transfer had previously been received; and
  - (3) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.
- (c) The period described in subsection (b)(3) may not exceed thirty days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

- (1) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or
  - (2) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.
- (e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

**§490:8-404 Wrongful registration.** (a) Except as otherwise provided in section 490:8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

- (1) Pursuant to an ineffective indorsement or instruction;
  - (2) After a demand that the issuer not register transfer became effective under section 490:8-403(a) and the issuer did not comply with section 490:8-403(b);
  - (3) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
  - (4) By an issuer acting in collusion with the wrongdoer.
- (b) An issuer that is liable for wrongful registration of transfer under subsection (a) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by section 490:8-210.

(c) Except as otherwise provided in subsection (a) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

**§490:8-405 Replacement of lost, destroyed, or wrongfully taken security certificate.** (a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

- (1) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;
- (2) Files with the issuer a sufficient indemnity bond; and
- (3) Satisfies other reasonable requirements imposed by the issuer.

(b) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by section 490:8-210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

**§490:8-406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.** If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under section 490:8-404 or a claim to a new security certificate under section 490:8-405.

**§490:8-407 Authenticating trustee, transfer agent, and registrar.** A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

## PART 5. SECURITY ENTITLEMENTS

**§490:8-501 Securities account; acquisition of security entitlement from securities intermediary.** (a) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e), a person acquires a security entitlement if a securities intermediary:

- (1) Indicates by book entry that a financial asset has been credited to the person's securities account;
- (2) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or
- (3) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary

or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

**§490:8-502 Assertion of adverse claim against entitlement holder.** An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under section 490:8-501 for value and without notice of the adverse claim.

**§490:8-503 Property interest of entitlement holder in financial asset held by securities intermediary.** (a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 490:8-511.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under sections 490:8-505 to 490:8-508.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against a purchaser of the financial asset or interest therein only if:

- (1) Insolvency proceedings have been initiated by or against the securities intermediary;
- (2) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;
- (3) The securities intermediary violated its obligations under section 490:8-504 by transferring the financial asset or interest therein to the purchaser; and
- (4) The purchaser is not protected under subsection (e).

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 490:8-504.

**§490:8-504 Duty of securities intermediary to maintain financial asset.**

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it

has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a).

(c) A securities intermediary satisfies the duty in subsection (a) if:

- (1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

**§490:8-505 Duty of securities intermediary with respect to payments and distributions.** (a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

- (1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

**§490:8-506 Duty of securities intermediary to exercise rights as directed by entitlement holder.** A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

- (1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

**§490:8-507 Duty of securities intermediary to comply with entitlement order.** (a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

- (1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or

distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

**§490:8-508 Duty of securities intermediary to change entitlement holder's position to other form of security holding.** A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

- (1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or
- (2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

**§490:8-509 Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.** (a) If the substance of a duty imposed upon a securities intermediary by sections 490:8-504 to 490:8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by sections 490:8-504 to 490:8-508 is subject to:

- (1) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and
- (2) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 490:8-504 to 490:8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

**§490:8-510 Rights of purchaser of security entitlement from entitlement holder.** (a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under section 490:8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does

not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

**§490:8-511 Priority among security interests and entitlement holders.** (a) Except as otherwise provided in subsections (b) and (c), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders."

SECTION 3. Chapter 490, Hawaii Revised Statutes, is amended by adding to part 1 of article 9 two new sections to be designated and to read as follows:

**“§490:9-115 Investment property.** (1) In this article:

“Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

“Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

- (a) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or
- (b) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

“Commodity customer” means a person for whom a commodity intermediary carries a commodity contract on its books.

“Commodity intermediary” means:

- (a) A person who is registered as a futures commission merchant under the federal commodities laws; or
- (b) A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

“Control” with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in section 490:8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security

entitlements or commodity contracts carried in the securities account or commodity account.

“Investment property” means:

- (a) A security, whether certificated or uncertificated;
- (b) A security entitlement;
- (c) A securities account;
- (d) A commodity contract; or
- (e) A commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

- (a) A security interest in investment property may be perfected by control.
- (b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.
- (c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.
- (d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

- (a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.
- (b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interests of secured parties each of whom has control rank equally.
- (c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor’s own securities intermediary has priority over any security interest granted by the debtor to another secured party.
- (d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the



debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

- (e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.
- (f) In all other cases, priority between conflicting security interests in investment property is governed by section 490:9-312(5), (6), and (7). Section 490:9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.

**§490:9-116 Security interest arising in purchase or delivery of financial asset.** (1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected."

SECTION 4. 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.

Governing law in the Article on Funds Transfers. Section 490:4A-507.

Letters of Credit. Section 490:5-116.

Bulk sales subject to the Article on Bulk Sales. Section 490:6-103.

Applicability of the Article on Investment Securities. Section [490:8-106.] 490:8-110.

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

SECTION 5. Section 490:1-206, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 490:2-201) nor of securities (section [490:8-319]) 490:8-113) nor to security agreements (section 490:9-203).”

SECTION 6. Section 490:4-104, Hawaii Revised Statutes, is amended by amending the definition of “documentary draft” in subsection (a) to read as follows:

“(6) “Documentary draft” means 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,] 490:8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;”

SECTION 7. Section 490:9-103, Hawaii Revised Statutes, is amended by amending subsection (6) as follows:

“(6) [Uncertificated securities. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.] Investment property. (a) This subsection applies to investment property.

(b) Except as otherwise provided in subsection (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in subsection (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer’s jurisdiction as specified in section 490:8-110(d).

(d) Except as otherwise provided in subsection (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary’s jurisdiction as specified in section 490:8-110(e).

(e) Except as otherwise provided in subsection (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary’s jurisdiction. The following rules determine a “commodity intermediary’s jurisdiction” for purposes of this subsection:

- (1) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary’s jurisdiction.
- (2) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in paragraph (1), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary’s jurisdiction.
- (3) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in paragraph (1) or (2), the commodity intermediary’s jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer’s account.
- (4) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in paragraph (1) or

(2) and an account statement does not identify an office serving the commodity customer's account as provided in paragraph (3), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located."

SECTION 8. Section 490:9-105, Hawaii Revised Statutes, is amended by amending subsections (1), (2), and (3) to read as follows:

“(1) In this Article unless the context otherwise requires:

[(a)] “Account debtor” means the person who is obligated on an account, chattel paper, or general intangible[;].

[(b)] “Chattel paper” means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or a hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper[;].

[(c)] “Collateral” means the property subject to a security interest, and includes accounts and chattel paper which have been sold[;].

[(d)] “Debtor” means the person who owes payment or other performance of the obligation secured, whether or not [he] the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term “debtor” means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires[;].

[(e)] “Deposit account” means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a negotiable certificate of deposit[;].

[(f)] “Document” means document of title as defined in the general definitions of Article 1 (section 490:1-201), and a receipt of the kind described in subsection (2) of section 490:7-201[;].

[(g)] “Encumbrance” includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests[;].

[(h)] “Filing” means recording[;].

[(i)] “Goods” includes all things which are movable at the time the security interest attaches or which are fixtures (section 490:9-313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals, or the like (including oil and gas) before extraction. “Goods” also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals,<sup>1</sup> and growing crops[;].

[(j)] “Instrument” means a negotiable instrument (defined in section 490:3-104), [or a certificated security (defined in section 490:8-102)] or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment[;]. The term does not include investment property.

[(k)] “Mortgage” means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like[;].

[(l)] An advance is made “pursuant to commitment” if the secured party has bound [himself] the party’s self to make it, whether or not a subsequent event not within [his] the party’s control has relieved or may relieve [him] the party from [his] the party’s obligation;

[(m)] “Security agreement” means an agreement which creates or provides for a security interest[;].

[(n)] “Secured party” means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

[(o)] “Transmitting utility” means any person primarily engaged in the railroad, street railway, or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas, or water, or the provision of sewer service.

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

“Account”. Section 490:9-106.

“Attach”. Section 490:9-203.

“Commodity contract”. Section 490:9-115.

“Commodity customer”. Section 490:9-115.

“Commodity intermediary”. Section 490:9-115.

“Construction mortgage”. Section 490:9-313(1)(c).

“Consumer goods”. Section 490:9-109(1).

“Control”. Section 490:9-115.

“Equipment”. Section 490:9-109(2).

“Farm products”. Section 490:9-109(3).

“Fixture”. Section 490:9-313.

“Fixture filing”. Section 490:9-313.

“General intangibles”. Section 490:9-106.

“Inventory”. Section 490:9-109(4).

“Investment property”. Section 490:9-115.

“Lien creditor”. Section 490:9-301(3).

“Proceeds”. Section 490:9-306(1).

“Purchase money security interest”. Section 490:9-107.

“United States”. Section 490:9-103.

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

“Broker”. Section 490:8-102.

“Certificated security”. Section 490:8-102.

“Check”. Section 490:3-104.

“Clearing corporation”. Section 490:8-102.

“Contract for sale”. Section 490:2-106.

“Control”. Section 490:8-106.

“Delivery”. Section 490:8-301.

“Entitlement holder”. Section 490:8-102.

“Financial asset”. Section 490:8-102.

“Holder in due course”. Section 490:3-302.

“Letter of credit”. Section 490:5-102.

“Note”. Section 490:3-104.

“Proceeds of a letter of credit”. Section 490:5-114(a).

“Sale”. Section 490:2-106.

“Securities intermediary”. Section 490:8-102.

“Security”. Section 490:8-102.

“Security certificate”. Section 490:8-102.

“Security entitlement”. Section 490:8-102.

“Uncertificated security”. Section 490:8-102.”

SECTION 9. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Subject to the provisions of section ~~[[490:4-210[]]~~ on the security interest of a collecting bank, ~~[section 490:8-321 on security interests in securities]~~ sections 490:9-115 and 490:9-116 on security interests in investment property, and section 490:9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

- (a) The collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property, and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
- (b) Value has been given; and
- (c) The debtor has rights in the collateral.”

SECTION 10. Section 490:9-301, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

- (a) Persons entitled to priority under section 490:9-312;
- (b) A person who becomes a lien creditor before the security interest is perfected;
- (c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business to the extent that [he] the person gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
- (d) In the case of accounts [and], general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that [he] the person gives value without knowledge of the security interest and before it is perfected.”

SECTION 11. Section 490:9-302, Hawaii Revised Statutes, is amended by amending subsection (1), to read as follows:

“(1) A financing statement must be filed to perfect all security interests except the following:

- (a) A security interest in collateral in possession of the secured party under section 490:9-305;
- (b) A security interest temporarily perfected in instruments, certificated securities, or documents without delivery under section 490:9-304 or in proceeds for a ten-day period under section 490:9-306;

- (c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
- (d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 490:9-313;
- (e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
- (f) A security interest of a collecting bank (section [[1490:4-210]]) [or in securities (section 490:8-321)] or arising under the Article on Sales (see section 490:9-113) or covered in subsection (3) of this section;
- (g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;
- (h) A security interest in a deposit account. Such a security interest is perfected:
  - (i) As to a deposit account maintained with the secured party, when the security agreement is executed;
  - (ii) As to a deposit account maintained with any organization other than the secured party, when notice thereof is given in writing to the organization with whom the deposit account is maintained[.];
- (i) A security interest in investment property which is perfected without filing under section 490:9-115 or 490:9-116.

SECTION 12. Section 490:9-304, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than [certificated securities or] instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 490:9-306 on proceeds.”

2. By amending subsections (4) and (5) to read:

“(4) A security interest in instruments [(other than certificated securities)], certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument [(other than a certificated security)], a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

- (a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to section 490:9-312(3); or
- (b) Delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.”

SECTION 13. Section 490:9-305, Hawaii Revised Statutes, is amended to read as follows:

**“§490:9-305 When possession by secured party perfects security interest without filing.** A security interest in goods, instruments [(other than certificated securities)], money, negotiable documents, or chattel paper may be perfected by the secured party’s taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party’s taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party’s interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.”

SECTION 14. Section 490:9-306, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) “Proceeds” include whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are “cash proceeds.” All other proceeds are “noncash proceeds.””

2. By amending subsection (3) to read:

“(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless:

- (a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or
- (b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or
- (c) The original collateral was investment property and the proceeds are identifiable cash proceeds; or

[(c)] (d) The security interest in the proceeds is perfected before the expiration of the ten-day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.”

SECTION 15. Section 490:9-309, Hawaii Revised Statutes, is amended to read as follows:

**“§490:9-309 Protection of purchasers of instruments, documents and securities.** Nothing in this Article limits the rights of a holder in due course of a

negotiable instrument (section 490:3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 490:7-501) or a [bona fide] protected purchaser of a security (section [490:8-302]) 490:8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers.”

SECTION 16. Section 490:9-312, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: section [[490:4-210[]] with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 490:9-103 on security interests related to other jurisdictions; section 490:9-114 on consignments[.]; and section 490:9-115 on security interests in investment property.”

2. By amending subsection (7) to read:

“(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under section [490:8-321 on securities,] 490:9-115 or 490:9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.”

SECTION 17. Section 490:10-104, Hawaii Revised Statutes, is amended to read as follows:

“**§490:10-104 Laws not repealed.** [(1)] The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees’ businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 490:1-201).”

SECTION 18. (a) This Act does not affect an action or proceeding commenced before this Act takes effect.

(b) If a security interest in a security is perfected at the date this Act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this Act, no further action is required to continue perfection. If a security interest in a security is perfected at the date this Act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this Act, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this Act is taken within that period. If a security interest is perfected at the date this Act takes effect and the security interest can be perfected by filing under this Act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>



## ACT 34

SECTION 20. This Act shall take effect upon its approval.

(Approved April 22, 1997.)

### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 34

S.B. NO. 1110

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. Section 281-36, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed.<sup>1</sup>

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

(Approved April 22, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 35

S.B. NO. 1490

A Bill for an Act Relating to Public Accountancy.

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

SECTION 1. Chapter 466, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§466- Educational requirements for examination and licensure effective December 31, 2000.** (a) Effective December 31, 2000, an applicant for the Uniform Certified Public Accountant Examination shall have at least one-hundred-fifty semester hours of college education. Within the one-hundred-fifty semester hours, the applicant shall have:

- (1) A baccalaureate or higher degree conferred by a college or university acceptable to the board; and
- (2) An accounting concentration or its equivalent as specified in the rules of the board;

except that examination applicants holding conditional credit for the Uniform Certified Public Accountant Examination before December 31, 2000, may continue to meet the educational requirements provided in section 466-5(f) until such time as the conditional credit expires.

(b) Effective December 31, 2000, an applicant shall meet the educational requirements of subsection (a) to obtain a certified public accountant license, except that applicants for licensure who have successfully completed the Uniform Certified Public Accountant Examination before December 31, 2000, or held conditional credit before December 31, 2000, and subsequently completed the examination before the conditional credit expired, may continue to meet the educational requirements of section 466-5(b).”

SECTION 2. Section 466-5, Hawaii Revised Statutes, is amended to read as follows:

**“§466-5 License of certified public accountant.** (a) A license and a permit are required to practice public accountancy. The board may license and grant the designation of “certified public accountant” to any person who has met the following:

- (1) Attained eighteen years of age;
- (2) Possesses a history of competence, trustworthiness, and fair dealing;
- (3) Educational requirements of [subsection (b);] this section or section 466-\_\_\_\_\_;
- (4) Experience requirements of subsection (d);
- (5) Examination requirements of subsection (e); and
- (6) Paid the appropriate fees and assessments.

(b) The educational requirement for a license shall include a baccalaureate degree conferred by a college or university recognized by the board and:

- (1) Completion of not less than thirty semester hours of study in addition to those semester hours required for a baccalaureate degree. The baccalaureate degree and the thirty semester hours of additional study shall include a minimum of eighteen semester hours of upper division or graduate level accounting or auditing subjects. The content of the additional qualifying hours of study shall be determined by rules adopted by the board pursuant to chapter 91; or
- (2) If the applicant has a minimum of eighteen semester hours of upper division or graduate level accounting and auditing subjects, the applicant may elect to replace the thirty semester hours with an additional thirty months of professional experience in a public accounting practice. This experience shall not be credited toward the experience requirements in subsection (d).

(c) A person shall be exempt from the requirements in subsection (b) or section 466-\_\_\_\_\_ if that person:

- (1) Holds a current license as a public accountant under section 466-6; or
- (2) Holds, and has continued to hold, a valid comparable certificate, registration, or license of certified public accountant of another state for a period of not less than ten years preceding the date of the person’s application under this section, and has been in active practice of public accountancy in one or more states for a period of not less than five years preceding the date of the application[; or
- (3) As the board determines, has met the educational requirements of this State for a license of certified public accountant as the requirements existed when the person was originally issued a license of certified public accountant by the other state].

(d) Each applicant shall present satisfactory evidence in the form of a notarized or certified statement from present or former employer(s) that the applicant has met one of the following experience requirements for license:

- (1) Completion of one thousand five hundred chargeable hours in the performance of audits involving the application of generally accepted accounting principles and auditing standards earned while in public accounting practice; or
- (2) Completion of two years of professional experience in public accounting practice as defined in section 466-3.

(e) The examination required to be passed shall be in writing, shall be held twice a year, and shall test the applicant’s knowledge of the subjects of accounting theory, accounting practice, auditing, and other related subjects as the board may

specify by rule. The time for holding the examination shall be fixed by the board and may be changed from time to time. The board shall prescribe the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required by an applicant for a license; provided that the board shall, to the extent possible, see to it that the grading of the examination and the passing grades are uniform with those applicable in all other states. The board may use the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants, and may contract with third parties to perform the administrative services with respect to the examination as the board deems appropriate to assist it in performing its duties herein.

(f) The board may allow an applicant to sit for the Uniform Certified Public Accountant Examination, if the applicant has met at least one of the following:

- (1) Baccalaureate degree in accounting conferred by a college or university acceptable to the board; or
- (2) Baccalaureate degree with a major in a subject other than in accounting, plus eighteen semester hours of upper division or graduate level accounting or auditing subjects, conferred by a college or university acceptable to the board; or
- (3) Baccalaureate degree or its equivalent in accounting, conferred by a college or university outside of the United States, and submission of a letter of acceptance from an accredited United States college or university to its advanced degree program[.] or an educational equivalency report prepared by an evaluator approved by the board.

(g) The board shall prescribe the terms and conditions under which an applicant who has taken the examination prescribed in subsection (e), but who has not satisfactorily completed the examination, may be given credit for any part thereof that the applicant has satisfactorily completed. The board may also provide a specific length of time for an applicant to apply for reexamination.

(h) A person who [is the holder of a valid comparable certificate, registration, or license of certified public accountant issued] passed the Uniform Certified Public Accountant Examination under the laws of another state may be exempted from taking the [Uniform Certified Public Accountant Examination.] examination required pursuant to subsections (a)(5) and (e). The board shall prescribe the methods and requirements for exemption from examination requirements. The board shall prescribe the methods and requirements for exemption for the holder of a valid comparable certificate, registration, or license and a degree from a foreign country.

(i) A person who, on January 1, 1974, holds a license of certified public accountant issued under the laws of this State theretofore existing shall not be required to obtain an additional license of certified public accountant under this chapter, but shall otherwise be subject to all the provisions of this chapter; and the license theretofore issued shall, for all purposes, be considered a license issued under this chapter and subject to the provisions herein.

[(j)] A person applying for a license of certified public accountant after December 31, 1983, shall be allowed the option of electing to replace the requirements of subsection (b)(1) with an additional thirty months of professional experience in a public accounting practice.

(k) [(j)] Licenses shall be effective for a period not exceeding two years and shall be renewable biennially on or before December 31 of every odd-numbered year upon application to the board.

[(l)] [(k)] The board may renew the license of a certified public accountant who completes a renewal application and fulfills the following requirements:

- (1) Holds a valid and current license; and
- (2) Paid appropriate fees and assessments.

[(m)] (l) Failure to renew a license on or before December 31 of every odd-numbered year, shall constitute a forfeiture of license. Continued practice in public accountancy without renewing or restoring a license and permit shall constitute unlicensed activity. Any person engaged in unlicensed activity shall be subject to sections 466-9, 466-11, 487-13, and 26-9.

[(n)] (m) The board shall specify the method and requirements of application for restoration of a forfeited license. The date of restoration of the license shall be the date of board approval of the restoration. Restorations shall not be retrospective.”

SECTION 3. Section 466-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An application for admission to the examination described in section [466-5(f)] 466-5(e) shall be accompanied by the application and examination fees. The board may prescribe by rule the terms and conditions upon which an applicant who is unable to attend the examination may receive a credit in the amount of the fee paid toward a subsequent examination.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved April 22, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 36

S.B. NO. 1501

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Section 431:3-203.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§431:3-203.5]] Foreign insurer; [accreditation.] certification. Notwithstanding section 431:3-203 or any other law to the contrary in this code, the insurance commissioner shall grant a certificate of authority to any applicant, regardless of the number of previous years experience in the business of insurance, that is an insurer licensed under the insurance laws of one of not less than three states annually designated by the insurance commissioner from among the states which are accredited by the National Association of Insurance Commissioners. The loss of accreditation by a state designated by the commissioner shall not in itself affect the validity of a previously issued certificate of authority by the commissioner to a foreign insurer licensed under the insurance laws of the previously accredited state. Nor shall the commissioner’s de-selection of a state affect the validity of a previously issued certificate of authority to a foreign insurer licensed by that state. Each year, after having designated, or redesignated, the accredited states whose insurers shall be authorized to transact insurance in this State, the commissioner shall cause to be published in a newspaper of general circulation in this State, and in those of the designated states, the fact that those states have been so designated. The commissioner may waive the filing of any document required to be submitted under section

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431:3-212. Nothing in this section shall limit the commissioner's authority to require a foreign insurer to proceed with the [accreditation] certification process under this article if the commissioner, at the commissioner's discretion, determines that it would be in the public interest."

SECTION 2. Section 431:3-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any insurer failing or refusing to submit the annual filings or any of the documents in accordance with subsection (a) shall be liable for a [penalty] fine in an amount not less than \$100 and not more than \$500 for each day of delinquency. The commissioner may suspend or revoke the certificate of authority of any insurer that fails to file any of the documents required pursuant to subsection (a)."

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 22, 1997.)

## ACT 37

S.B. NO. 1507

A Bill for an Act Relating to the Licensure Examination Requirements for Psychologists.

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

SECTION 1. Section 465-6, Hawaii Revised Statutes, is amended to read as follows:

"**§465-6 Powers and duties.** In addition to any other powers and duties authorized by law, the board shall:

- (1) Examine the qualifications of applicants for licensing under this chapter to determine their eligibility for licensing as psychologists [and forward to the director the names of applicants who are eligible for licensing no later than ninety days after the date of application];
- (2) [Prepare, administer,] Administer and grade examinations [and tests] for applicants as may be required for the purposes of this chapter. The board shall determine the [scope and length of the] examinations [and tests, whether they shall be oral, written, or both] and the score that shall be deemed a passing score. Examinations [must] shall be scheduled at least once annually;
- (3) Keep a record of action taken on all applicants for licensing; the names of all persons licensed; petitions for temporary permits; actions involving suspension, revocation, or denial of licenses; decisions on waiver of examination in whole or in part and receipt and disbursal of any moneys; and
- (4) Adopt, amend, and repeal pursuant to chapter 91, rules as it deems proper for the purposes of this chapter."

SECTION 2. Section 465-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every applicant for a license as a psychologist shall submit evidence satisfactory to the board that the applicant meets the following requirements:

- (1) The applicant for licensure shall possess a doctoral degree from a professional psychology training program, awarded by an institution of higher education, or from a regionally accredited institution;
- (2) The applicant for licensure shall demonstrate that the applicant has completed two years of supervised experience in health service in psychology, of which at least one year is an internship or residency program in an organized health service training program, and one year is post doctoral; and
- (3) The applicant for licensure has passed [an] a written examination as may be prescribed by the board.”

SECTION 3. Section 465-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A license may be issued to a senior psychologist who satisfies subsection (a)(1) and (2), and the following:

- (1) Holds a valid and current license in another jurisdiction in which the Examination for Professional Practice in Psychology was not required for licensure at the time of licensure;
- (2) Before application in this jurisdiction, has been licensed as a psychologist for at least twenty years in a United States or Canadian jurisdiction where that license was based on a doctoral degree;
- (3) Has had no disciplinary sanction against the person’s license in any jurisdiction during the entire period of being licensed as a psychologist;
- (4) Has passed [this jurisdiction’s examination] an open book examination in jurisprudence; and
- (5) Has submitted the application and fees as required.”

SECTION 4. Section 465-7.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A psychologist providing diagnostic or treatment services in a clinical psychologist civil service position shall be licensed under this chapter; provided that a psychologist employed in a clinical psychologist position with a government agency in this State prior to January 1, 1988, shall be eligible for licensure subject to:

- (1) Meeting the requirements of section [465-7(1)] 465-7(a)(1) and [(4);] (3); provided that the examination requirement shall be limited to the state jurisprudence open book examination;
- (2) Holding or having held the nonemergency hire position for two years; and
- (3) Obtaining licensure before June 30, 1990.”

SECTION 5. Section 465-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board may recommend licensing without written [or oral] examination of an applicant who has not previously failed to pass an examination in psychology prescribed by the board and who submits evidence satisfactory to the board that the applicant is certified or licensed, and in good standing, to practice psychology in another state deemed by the board to have standards equivalent to this chapter.”

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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 April 22, 1997.)

## ACT 38

S.B. NO. 1508

A Bill for an Act Relating to Prelicensing Inspections.

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

SECTION 1. Section 437-7, Hawaii Revised Statutes, is amended by amending subsections (g), (h), and (i) to read as follows:

“(g) Upon the filing of any application, a staff member shall endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the executive officer shall [refer the application to a staff member for investigation and report.] review a self-inspection report completed by the applicant and made a part of the application. The report shall include:

- (1) A statement [as to whether or not] that the applicant is [for any reason] not disqualified by this chapter from obtaining or exercising a license[;] and [whether or not the licensee] has complied with all the requirements of this chapter relative to the making and filing of the licensee’s application;
- (2) Information relating to any and all other matters and things which [in the judgment of the staff member] pertain to or affect the matter of the application or the issuance or the exercise of the license applied for;
- (3) In the case of an application for a dealer’s or auction’s license [in addition to the foregoing:] the applicant shall submit a report which shall include:
  - (A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and
  - (B) If the applicant has held a prior dealer’s or auction’s license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license; and
- (4) In the case of an application for a dealer’s license, if the applicant proposes to engage in the business of selling new motor vehicles, a copy of the dealer sales and service agreement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative.

(h) After the filing of the [report,] application, the board may interview the applicant and upon the interview and other information that is before the board, it may grant or deny the license.

(i) No dealer’s or auction’s license shall be issued under this chapter unless and until the applicant submits:

- (1) A description of the premises intended to become the licensed premises, the office facilities, equipment, and surrounding conditions;

- (2) A statement that the applicant has met the requirements under section 437-11;
- (3) A copy of a minimum one-year lease or rental agreement for the site the applicant has entered into; and
- (4) Photographs of the premises and facilities;

and the board [has caused to be made a thorough inspection of the premises upon which the proposed business is to be conducted and] is satisfied that [it] the applicant has met all the requirements as provided in this chapter and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable manner.”

SECTION 2. Section 437-7, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

“(l) The executive officer may grant preliminary approval of a dealer or auction license application if all licensing requirements have been met [and the applicant’s inspection report is satisfactory]. The board shall ratify all preliminary approvals.”

SECTION 3. Section 437-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Requirements to be met before issuance of dealer’s and auction’s license.

- (1) The following requirements shall be met by an applicant for a dealer’s license before a license may be issued by the motor vehicle industry licensing board:
  - (A) The applicant has a site which will be used primarily for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles;
  - (B) The site has a permanent building thereon suitable for the display at any one time of at least three motor vehicles having an average base of at least ninety inches; and
  - (C) The site has suitable sanitation facilities [thereon; and
  - (D) The applicant has entered into, and provided the board with a copy of, a lease or rental agreement for the site. The lease or rental agreement shall be for a minimum term of one year].
- (2) The following requirements shall be met by an applicant for an auction’s license before a license may be issued by the motor vehicle industry licensing board:
  - (A) The applicant has a permanent site which will be used primarily for the purpose of selling, displaying, offering for sale, or otherwise dealing in motor vehicles; and
  - (B) The site has suitable sanitation facilities [thereon; and
  - (C) The applicant has entered into, and provided the board with a copy of, a lease or rental agreement for the site. The lease or rental agreement shall be for a minimum term of one year].”

SECTION 4. Section 461-4.5, Hawaii Revised Statutes, is amended to read as follows:

“**§461-4.5 Powers and duties.** (a) In addition to any other powers and duties authorized by law, the board [shall]:



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- (1) [Adopt.] Shall adopt, amend, and repeal rules pursuant to chapter 91, as it deems proper for the purposes of this chapter, Public Law 100-293, and 21 Code of Federal Regulations part 205;
- (2) [Examine.] Shall examine, license, reinstate, and renew the licenses of qualified applicants for registered pharmacists and wholesale prescription drug distributors, and issue and renew permits to operate pharmacies;
- (3) [Inspect, or may designate a duly authorized representative to inspect, any pharmacy or] May require the inspection of any wholesale prescription drug distributor premises in the State [where drugs are packed, packaged, compounded, sold, offered for sale, exposed for sale, stored, warehoused, or kept for sale or distribution] to ensure compliance with this chapter and rules adopted under this chapter[; and], or may require an applicant for a pharmacy license to submit a statement that the premises, including but not limited to security and sanitation, are in conformance with the board's requirements and that the applicant possesses the reference materials and technical clinical equipment and supplies as may be specified in rules adopted under this chapter; and
- (4) [Fine.] May fine, suspend, or revoke any license or permit for any cause prescribed by this chapter, or for any violation of the rules adopted under this chapter, and refuse to grant or renew any license or permit for any cause which would be ground for revocation or suspension of a license or permit.

(b) Nothing in this chapter shall modify or limit any powers of the board or the department of health of this State.”

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 April 22, 1997.)

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S.B. NO. 1509

A Bill for an Act Relating to Education Requirements for Professional and Vocational Licensing.

*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:
- (1) Eighteen years of age or over;
  - (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;
  - (3) (2) 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

[(4)] (3) 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 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 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. Section 457-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An applicant for a license to practice nursing as a registered nurse shall submit an application on a form prescribed by the board and shall provide written evidence, verified by oath or affirmation, that the applicant[:

- (1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (2) Has] has completed a nursing program approved by the Hawaii board of nursing."

SECTION 3. Section 457-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An applicant for a license to practice nursing as a licensed practical nurse shall submit an application on a form prescribed by the board and shall provide written evidence, verified by oath or affirmation, that the applicant[:

- (1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (2) Has] has completed a licensed practical nurse program, or its equivalent, approved by the board, and holds a diploma or certificate therefrom."

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 22, 1997.)

A Bill for an Act Relating to Notarized Signatures on Professional and Vocational License Applications.

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

SECTION 1. Section 436B-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Application for a license shall be made [under oath] on an application form to be furnished by the licensing authority. An applicant shall provide the following information on the application form:

- (1) The applicant’s legal name;
- (2) Affirmation that the applicant is beyond the age of majority;
- (3) The applicant’s current residence, business and mailing addresses, and phone numbers;
- (4) The applicant’s social security number if the licensing authority is authorized by federal law to require the disclosure;
- (5) 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;
- (6) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States;
- (7) Disclosure of similar licensure in any state or territory;
- (8) Disclosure of disciplinary action by any state or territory against any license held by the applicant; and
- (9) Any other information the licensing authority may require to investigate the applicant’s qualifications for licensure.

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

SECTION 2. Section 437-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person applying for a salesperson’s license under this section shall be granted a temporary license by the executive officer of the board; provided no patent disqualification of the applicant is disclosed or no valid objection to the granting of the temporary license is apparent and if all requirements relative to the filing of the application appear to have been met and the dealer files [an affidavit certifying] a statement that this person is employed by and under the supervision of the dealer. A fee shall be charged for the issuance of the temporary license, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and the license shall remain in effect until the board approves or denies the application for a permanent license.”

SECTION 3. Section 438-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each person who desires to practice as a barber or as an apprentice barber or to operate a barber shop shall first file with the board a written application[, under oath,] on a form prescribed and supplied by the board, deposit with the board

the required fees, and satisfy the applicable qualification requirements specified in this section.”

SECTION 4. Section 439-11, Hawaii Revised Statutes, is amended to read as follows:

“**§439-11 Application for examination.** Each person who desires to practice or instruct as a beauty operator or instructor shall file with the board a written application[, under oath,] on a form prescribed and supplied by the board and shall submit satisfactory proof of the required age and qualifications specified in section 439-12 and pay the required application and examination fees.”

SECTION 5. Section 440-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any individual, partnership, club, association, organization, or corporation may make application to the commission for a license to conduct, hold, and give professional boxing contests. The application shall be in writing, addressed to the commission, and [duly verified] signed by the applicant, or if the applicant is a club, association, organization, or corporation, by a duly authorized officer thereof, and shall include the following:

- (1) Evidence of financial integrity for an individual applicant, for each partner of a partnership or joint venture, or for each corporate entity or association to include a:
  - (A) Current credit report covering a five-year period immediately preceding the date of application;
  - (B) Current financial statement certified by a registered certified public accountant or a registered public accountant;
  - (C) State tax clearance from the state department of taxation;
- (2) For corporations organized under the laws of the State, a copy of the affidavit of officers on file with the department of commerce and consumer affairs, or certificates of registration for foreign corporations and partnerships;
- (3) Proof that the applicant has contracted for medical insurance coverage for all boxers on the applicant’s cards.”

SECTION 6. Section 440-12, Hawaii Revised Statutes, is amended to read as follows:

“**§440-12 Licenses, participants.** Any individual, partnership, or corporation may make application to the commission for a license to act as a physician, referee, judge, matchmaker, manager, timekeeper, second, or professional boxer to participate, either directly or indirectly, in any contest. The application shall be in writing, addressed to the commission, and [duly verified] signed by the applicant or, if the applicant is a corporation, by a duly authorized officer thereof. The application shall contain a recital of facts as may be specified by the commission in order for it to determine whether or not the applicant possesses the necessary physical, mental, and moral qualifications to entitle the applicant to a license.

In addition, the applicant for a referee, judge, manager, or second license shall take and pass a written examination as provided by the commission. The commission may exempt an applicant for a manager or second license from taking the examination, if the applicant holds a valid manager or second license in another jurisdiction with comparable boxing regulations.

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Any license to act as a physician, referee, judge, matchmaker, manager, timekeeper, second, or professional boxer may be suspended or revoked by the commission upon cause as it deems sufficient after due hearing."

SECTION 7. Section 441-29, Hawaii Revised Statutes, is amended to read as follows:

**"§441-29 Application for license; fees.** Every applicant for a license under this chapter shall file an application with the director in such form and setting forth such information as may be prescribed or required by the director and shall furnish such additional information bearing upon the issuance of the license as the director requires. [Every application shall be sworn to before an officer authorized to administer oaths.] In the case of a copartnership or corporation any officer may sign the application [and verify the same] on behalf of the applicant. The application shall be accompanied by an application fee."

SECTION 8. Section 442-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful for any person to practice chiropractic without a license. Any person applying for a license to practice chiropractic shall submit an application to the board of chiropractic examiners no later than sixty days prior to the examination, accompanied by the application and examination fees and all documents and affidavits that may be prescribed by law. The application shall be submitted in accordance with the rules of the board, shall be on a form prescribed by the board, and shall be signed [and verified under oath] by the applicant. In addition thereto, each applicant shall furnish to the board:

- (1) A photostatic copy of the applicant's diploma from a chiropractic college or school holding status with the commission on accreditation as provided in this section;
- (2) Satisfactory proof that the applicant has completed two years of liberal arts or science study at a university or college; provided that this requirement shall not apply to applicants having entered an approved chiropractic college on or before October 31, 1955; and
- (3) Evidence of having attended and graduated from a chiropractic college accredited by, or recognized as a candidate for accreditation by, any chiropractic accrediting agency recognized by the United States Department of Education. Students who have matriculated in any chiropractic college prior to October 15, 1984, shall be exempt."

SECTION 9. Section 443B-4.52, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Not less than sixty days before a collection agency terminates its business operations in the State, the registrant shall transmit a [notarized] statement to the director and to each of the agency's clients indicating:

- (1) That the registrant intends to terminate business in this State;
- (2) The effective date of the termination; and
- (3) That prior to the termination, the registrant shall lawfully expend or disburse all funds acquired in the course of business."

SECTION 10. Section 444-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every applicant for a license under this chapter shall complete and file an application provided by the board and shall furnish any additional information bearing upon the issuance of the license as the board shall require. [Every application shall be sworn to before an officer authorized to administer oaths.] In the case of a partnership, joint venture, or corporation, any partner, member, or officer thereof may sign the application [and verify the same] on behalf of the applicant.”

SECTION 11. Section 452-12, Hawaii Revised Statutes, is amended to read as follows:

“**§452-12 Application for examination.** Each person who desires to practice the occupation of massage therapist shall file with the board a written application [under oath,] on a form prescribed and supplied by the board, and shall submit such credentials as may be required by this chapter or the rules adopted by the board, and shall also pay the board the required fees.”

SECTION 12. Section 452-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An applicant desiring to license a massage therapy establishment shall file with the board a written application [under oath,] on a form prescribed and supplied by the board, and setting forth that the applicant has complied with all of the requirements in a manner and detail as may be required by the rules established by the board. A license fee shall be paid to the board together with the application fee.”

SECTION 13. Section 457-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An applicant for a license to practice nursing as a registered nurse shall submit an application on a form prescribed by the board and shall provide written evidence[, verified by oath or affirmation,] that the applicant:

- (1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (2) Has completed a nursing program approved by the Hawaii board of nursing.”

SECTION 14. Section 457-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An applicant for a license to practice nursing as a licensed practical nurse shall submit an application on a form prescribed by the board and shall provide written evidence[, verified by oath or affirmation,] that the applicant:

- (1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and
- (2) Has completed a licensed practical nurse program, or its equivalent, approved by the board, and holds a diploma or certificate therefrom.”

SECTION 15. Section 459-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry, before beginning or continuing practice, upon presentation of satisfactory evidence[, verified by oath,] that the

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applicant is a graduate of an optometric college, school, or university approved by the board of examiners in optometry and accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States Department of Education, shall pass all examinations required by the board and comply with the following requirements:

- (1) Submit a completed application for licensure to the department of commerce and consumer affairs;
- (2) Submit a nonrefundable application fee together with the application; and
- (3) Submit a copy of the applicant's diploma or certificate of graduation from an optometric college, school, or university approved in accordance with this subsection."

SECTION 16. Section 460J-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every applicant for a license under this chapter shall file an application on forms prescribed or required by the board, and shall furnish any additional information bearing upon the issuance of the license as the board requires. Every application shall be [sworn to before an officer authorized to administer oaths and shall be] accompanied by the application and examination fees. In the case of a partnership, joint venture, or corporation, any licensed member or officer therefor may sign the application [and verify the same] on behalf of the applicant and every application shall be accompanied by the application and license fees. In the case of a proprietorship, every application shall be accompanied by the application and license fees."

SECTION 17. Section 463-9, Hawaii Revised Statutes, is amended to read as follows:

"**§463-9 Form of application for license.** Application for a license shall be made [under oath] on a form prescribed by the board which may require a statement of the applicant's full name, age, date and place of birth, residence and business address, the business or occupation the applicant has engaged in for ten years immediately preceding the date of the filing of the application with names and addresses of employers, the date and place of any arrest or conviction of a crime where there has not been any order annulling or expunging the sentence or of any offense involving moral turpitude, whether the applicant has received treatment for any psychiatric or psychological disorder, or whether the treatment has ever been recommended, and such information, including fingerprints of the applicant and such other information as the board may require to investigate the character, competency, and integrity of the applicant. The board shall conduct such investigation of the applicant's background, character, competency, and integrity as it deems appropriate, and shall request criminal history records of the applicant from each jurisdiction in which the application form indicates the applicant lived for any substantial period of time. The Hawaii criminal justice data center shall provide such information on request to the director of commerce and consumer affairs."

SECTION 18. Section 464-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Application for licensure shall be made upon a form prescribed by the board and shall be signed [and sworn to] by the applicant. With each application

there shall be paid to the board an application fee, the fee to be nonreturnable after the application has been entered in the records of the board.

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

SECTION 19. Section 466-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Each applicant shall present satisfactory evidence in the form of a [notarized or] certified statement from present or former employer(s) that the applicant has met one of the following experience requirements for license:

- (1) Completion of one thousand five hundred chargeable hours in the performance of audits involving the application of generally accepted accounting principles and auditing standards earned while in public accounting practice; or
- (2) Completion of two years of professional experience in public accounting practice as defined in section 466-3."

SECTION 20. Section 467-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every applicant for issuance of a real estate license, registration, or certificate under this chapter shall file an application with the commission in a form and setting forth the information as may be prescribed or required by the commission, and shall furnish any additional information bearing upon the issuance of the license, registration, and certificate as it requires. [Every application shall be sworn to before an officer authorized to administer oaths.] In the case of a partnership or corporation, any general partner or officer thereof may sign the application [and verify the same] on behalf of the applicant. The commission may prescribe deadlines for the submission of applications."

SECTION 21. Section 468L-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each travel agency shall renew its registration on or before December 31 of each odd-numbered year. A [notarized] statement on a form designed and provided by the department verifying that the practices of the travel agency are in accordance with section 468L-5, shall be filed with the renewal. [The director, by rule, may permit alternatives to the notarized statement that provide for at least the same level of verification.]"

SECTION 22. Section 514A-12, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-12 Copy of the floor plans to be filed.** Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the



layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the [verified] statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with and approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings. If the plans do not include a [verified] statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, there shall be recorded within thirty days from the date of completion of the building or buildings as "date of completion" is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a [verified] statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as built, which amendment shall require only the vote or written consent of the declarant or such other person or persons as are provided in the declaration. The plans shall be kept by the recording officer as provided by rules adopted by the department of land and natural resources, pursuant to chapter 91, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "apartment ownership," with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby."

SECTION 23. 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:

- (1) A nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (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 prescribed by the commission."

SECTION 24. Section 514A-40, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) 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 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 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 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 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 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 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 nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.
    - (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 project; and
    - (3) A statement by the declarant of the expected useful life of each item reported on in paragraph (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."

SECTION 25. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 26. This Act shall take effect upon its approval.

(Approved April 22, 1997.)

A Bill for an Act Relating to Optometry Examination Requirements.

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

SECTION 1. Section 459-8, Hawaii Revised Statutes, is amended to read as follows:

“**§459-8 Conduct of examinations.** Each applicant whose application is received by the board after December 31, 1986, shall pass all written examinations given by the National Board of Examiners in Optometry. Beginning January 1, 1991, each applicant shall also pass a practical (Patient Care) examination administered by the National Board of Examiners in Optometry.

The board shall state in its rules the pass/fail cutoff scores for all required examinations. The board shall accept the passing scores of all National Board of Examiners in Optometry written examinations if the examinations were passed in their entirety by the applicant after December 31, 1986. The board shall accept the scores of the practical (Patient Care) examination only if the examination was passed by the applicant [less than five years prior to the date the application was received by the board.] after January 1, 1991. The board may accept the scores of the National Board of Examiners in Optometry written examinations passed before December 31, 1986, and the National Board of Examiners in Optometry practical (Patient Care) examination passed before January 1, 1991, if the examinations are determined by the National Board of Examiners in Optometry to be substantially equivalent to the current examinations and the applicant holds a current and valid license under the laws of another state.”

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

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

(Approved April 22, 1997.)

A Bill for an Act Relating to Massage Therapy.

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

SECTION 1. Section 452-16, Hawaii Revised Statutes, is amended to read as follows:

“**§452-16 Renewal of license; fees.** Massage therapist and massage therapy establishment licenses shall expire on June 30 of each even-numbered year following the date of issuance unless renewed for the next biennium. These licenses may be renewed by filing an application therefor, accompanied by a renewal fee. The application shall be made between May 1 and June 30 of each even-numbered year. Failure to apply for renewal as provided in this section shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after expiration upon the filing of an application in the same manner and payment[,] of a penalty fee in addition to all delinquent fees[, of a penalty fee].

Thereafter, the [license shall not be restored unless the regular] person shall apply as a new applicant and the board may require the person to take and pass the examination and satisfy all requirements for the examination, including training [have been met.], if the board is not satisfied that the person possesses current knowledge and skills for the practice of massage therapy.”

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 22, 1997.)

## ACT 43

S.B. NO. 1514

A Bill for an Act Relating to Optometry Licensure.

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

SECTION 1. Section 459-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Each licensee shall pay a biennial license fee to the board on or before December 31 of each odd-numbered year for a renewal of the license for the biennium. The failure of any licensee to pay the biennial license fee and submit proof of satisfying the continuing education program requirements on or before December 31 of each odd-numbered year shall automatically constitute a forfeiture of the license. Any license which is so forfeited may be restored upon payment of a [penalty fee and all delinquent fees] penalty, renewal, and recordkeeping fee as provided in rules adopted by the director pursuant to chapter 91, and upon submission of proof that the person whose license has been forfeited has satisfied all continuing education requirements for [the period of time the license has been forfeited.] the biennium immediately preceding the application for restoration of the license. The applicant shall pay a recordkeeping fee for each biennium the license was on forfeited status.”

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 22, 1997.)

## ACT 44

S.B. NO. 1517

A Bill for an Act Relating to Motor Vehicle Industry Licensing.

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

SECTION 1. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner’s plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
- (8) In the case of an individual applicant or holder of a license, if the applicant or holder is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age;
- (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;

- (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
- (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;
- (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
- (17) Being a salesperson or dealer:
  - (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;
  - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle;
  - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;
  - (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1, regardless of the dollar amount of the transaction; or
  - (E) Has engaged in any improper business conduct;
- (18) Being an applicant or holder of a dealer's license:
  - (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
  - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
  - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (19) Being an applicant or holder of an auction's license has sold or proposed to sell new motor vehicles without being franchised therefor;
- (20) Being an applicant for a salesperson's license:
  - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer; or
  - [(B) Does not intend to be employed as a salesperson as the principal occupation; or
  - (C)] (B) Intends to be employed as a salesperson for more than one dealer.”

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

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

(Approved April 22, 1997.)

ACT 45

S.B. NO. 1518

A Bill for an Act Relating to Real Estate Brokers and Salespersons.

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

SECTION 1. Section 467-9, Hawaii Revised Statutes, is amended to read as follows:

**“§467-9 License, registration, certificate, and applications.** (a) Every applicant for issuance of a real estate license, registration, or certificate under this chapter shall file an application with the commission in a form and setting forth the information as may be prescribed or required by the commission, and shall furnish any additional information bearing upon the issuance of the license, registration, and certificate as it requires. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a partnership or corporation, any general partner or officer thereof may sign the application and verify the same on behalf of the applicant. The commission may prescribe deadlines for the submission of applications.

(b) Unless approved by the commission, no real estate broker’s license shall be issued under or changed [under] to any trade name, corporate name, or partnership name which contains the name, part of the name, initials, or nickname of:

- (1) An unlicensed person;
- (2) A [licensed] real estate salesperson; or
- (3) A real estate broker whose real estate license is not associated with or employed [with] by the subject real estate broker applicant.

A real estate broker’s license name includes any trade name approved by the commission.

(c) A real estate broker’s license shall be placed on an inactive status unless the real estate broker immediately changes its name, trade name, corporate name, or partnership name that contains the name, part of the name, initials, or nickname of [an unlicensed person, licensed real estate salesperson, or real estate broker who is]:

- (1) [No] A real estate licensee who is no longer associated with or employed by the subject real estate broker, [including any association or employment as a real estate broker or salesperson as defined in section 467-1; or] except in the case of incapacitating disability or death of the real estate licensee where written authorization is obtained from the real estate licensee or legal representative of the licensee permitting use of the name; or
- (2) [No] A real estate licensee who is no longer a current active real estate licensee due to revocation, termination, forfeiture, surrender, or [change to] inactive status.

The changes shall comply with this chapter and the rules of the commission.

(d) Notwithstanding subsection (b), a real estate broker’s license name may include the name of a franchise registered with the business registration division of the department of commerce and consumer affairs.”

SECTION 2. Section 467-30, Hawaii Revised Statutes, is amended by amending subsection (b), to read as follows:

“(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, or corporation and 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 on or before December 31 of each year as a condominium hotel operator with the commission; provided that after December 31, 1996, registration shall be on a biennial basis on or before December 31 of each even-numbered year. Registration information shall include but not be limited to the number of apartments managed for others as well as the number of apartments 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 apartments being utilized as a condominium hotel. Each month or fraction of a month of non-compliance shall be deemed a new and separate violation;
- (3) Provide evidence of a current fidelity [bonding to the commission] bond or a certification statement from an insurance representative of an insurance company registered with the insurance division of the department of commerce and consumer affairs to the commission certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission, and that the bond is in an amount equal to \$500 multiplied by the aggregate number of apartments 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 apartments excludes the number of apartments owned by the condominium hotel operator either as a sole proprietor, partnership, or corporation or those apartments 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. The commission may adopt rules establishing conditions and terms by which it may grant an exemption or bond alternative, or permit deductibles. No fidelity bond exemption shall be granted to a condominium hotel operator who is exempt from paragraph (1); and
- (4) Pay an application fee and [upon approval] an initial registration or a re-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;

provided that this subsection shall not apply to persons who are subject to section 467-2.”

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

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

(Approved April 22, 1997.)



A Bill for an Act Relating to Regulation of Private Detectives and Guards.

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

SECTION 1. Section 463-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The licensee shall be given [thirty] sixty days from the date of mailing the notice in which to answer.”

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 22, 1997.)

A Bill for an Act Relating to Securities.

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

SECTION 1. Section 36-21, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Any bonds or interest-bearing notes or obligations [of]:
  - (A) Of the State (including state director of finance’s warrant notes issued pursuant to chapter 40)[, or of];
  - (B) Of the United States[, or those for];
  - (C) For which the faith and credit of the United States are pledged for the payment of principal and interest[, or in federal];
- (2) Federal land bank bonds[or joint];
- (3) Joint stock farm loan bonds[, or];
- (4) Federal Home Loan Bank notes and bonds [or];
- (5) Federal Home Loan Mortgage Corporation bonds[, or];
- (6) Federal National Mortgage Association notes and bonds[, or in securities];
- (7) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof[, or in repurchase];
- (8) Repurchase agreements fully collateralized by any such bonds or securities[, or in federally];
- (9) Federally insured savings accounts[, or in time];
- (10) Time certificates of deposit[, or in certificates];
- (11) Certificates of deposit open account[, or in repurchase];

- (12) Repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies;
- (13) Student loan resource securities including:
- (A) Student loan auction rate securities;
  - (B) Student loan asset-backed notes;
  - (C) Student loan program revenue notes and bonds; and
  - (D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues;

issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers maintain a triple-A rating by Standard & Poors, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;

provided that the investments are due to mature not more than five years from the date of investment. Income derived therefrom shall be a realization of the general fund.

Except with respect to an early withdrawal penalty on an investment permitted by this section, the amount of such penalty being mutually agreed at the time of acquisition of such investment, no investment permitted by this section shall require or may in the future require payments by the State, whether unilateral, reciprocal, or otherwise, including margin payments, or shall bear interest at a variable rate which causes or may cause the market price of such investment to fluctuate; provided that such limitation shall not apply to money market mutual funds which (1) invest solely in (A) direct and general obligations of the United States of America or (B) obligations of any agency or instrumentality of the United States of America the payment of the principal and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America, (2) are rated at the time of purchase "AAAm-G" or its equivalent by Standard & Poor's Ratings Group, and (3) are open-end management investment companies regulated under the Investment Company Act of 1940, as amended, which calculate their current price per share pursuant to Rule 2a-7 (17 Code of Federal Regulations section 270.2a-7) promulgated under such act.

Furthermore, the State shall not acquire any investment or enter into any agreement in connection with the acquisition of any investment or related to any existing investment held by the State, which would require or may in the future require any payment by the State, whether unilateral, reciprocal, or otherwise, such as swap agreements, hedge agreements, or other similar agreements. For purposes of this section, a swap or hedge payment is any payment made by the State in consideration or in exchange for a reciprocal payment by any person, such as a variable rate payment in exchange for a fixed rate payment, a fixed rate payment in exchange for a variable rate payment, a payment when a cap or a floor amount is exceeded, or other similar payment."

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

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

(Approved April 23, 1997.)

A Bill for an Act Relating to Nurses.

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

SECTION 1. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of "professional service" to read as follows:

““Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 457, 459, 460, 461, 463E, 465, 466, 471, 605, and section 554-2, and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter 415.”

SECTION 2. New statutory material is underscored.

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

(Approved April 23, 1997.)

A Bill for an Act Relating to the Disposition of Financial Disclosure Statements.

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

SECTION 1. Section 84-17.5, Hawaii Revised Statutes, is amended to read as follows:

“**§84-17.5 Disclosure files; disposition.** (a) All financial disclosure statements filed by a legislator, employee, or delegate to a constitutional convention shall be maintained by the state ethics commission during the term of office of the legislator, employee, or delegate and for a period of [three] six years thereafter. Upon the expiration of the [three] six-year period, the financial disclosure statement and all copies thereof shall be destroyed.

(b) Upon the expiration of [three] six years after an election for which a candidate for state elective office or a constitutional convention has filed a financial disclosure statement, the state ethics commission shall destroy the candidate’s financial disclosure statement and all copies thereof.

(c) Financial disclosure statements provided for in section 84-17(d) shall cease to be public records once the [three] six-year period in subsection (a) or (b) has run.

(d) Nothing herein shall bar the state ethics commission from retaining a financial disclosure statement or copy of a financial disclosure statement that has become part of a charge case or advisory opinion request, or is part of an ongoing investigation.”

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

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

(Approved April 23, 1997.)

## ACT 50

H.B. NO. 462

A Bill for an Act Relating to Fines for Late Filers of Financial Interests Disclosures.

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

SECTION 1. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) Failure of a legislator, a delegate to the constitutional convention, or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter. Any legislator, delegate to a constitutional convention, or employee who fails to file a disclosure of financial interests when due shall be assessed a penalty of \$50. The state ethics commission shall notify a person, by registered mail, return receipt requested, of the failure to file and the disclosure of financial interests shall be submitted to the commission not later than 4:30 p.m. on the tenth day after notification of the failure to file has been mailed to the person. If a disclosure of financial interests has not been filed within ten days of the due date, an additional penalty of \$10 for each day a disclosure remains unfiled shall be added to the penalty. All penalties collected under this section shall be deposited in the State’s general fund. Any monetary penalty for late filing shall be in addition to any other action the commission may take under this chapter for violations of the state ethics code. The commission may waive any penalties assessed under this subsection for good cause shown.”

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. New statutory material is underscored.

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

(Approved April 23, 1997.)

## ACT 51

H.B. NO. 463

A Bill for an Act Relating to Frivolous Charges.

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

SECTION 1. Section 84-31, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A person who files a frivolous charge with the commission against any person covered by this chapter shall be civilly liable to the person charged for all costs incurred in defending the charge, including but not limited to costs and attorneys’ fees. In any case where the commission decides not to issue a complaint in response to a charge, the commission shall upon the written request of the person charged make a finding as to whether or not the charge was frivolous. The person charged may initiate an action in the circuit court for recovery of fees and costs incurred in commission proceedings within one year after the commission renders a

## ACT 52

decision. The commission's decision shall be binding upon the court for purposes of a finding pursuant to section 607-14.5."

SECTION 2. New statutory material is underscored.

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

(Approved April 23, 1997.)

## ACT 52

H.B. NO. 617

A Bill for an Act Relating to Children Born to Parents Not Married to Each Other.

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

SECTION 1. Section 386-2, Hawaii Revised Statutes, is amended by amending the definition of "child" to read as follows:

""Child" includes a posthumous child, adopted child, stepchild, [illegitimate] child born to parents not married to each other, and hanai child acknowledged prior to the personal injury."

SECTION 2. Section 532-6, Hawaii Revised Statutes, is amended to read as follows:

**"§532-6 To [illegitimate] child[.] born to parents not married to each other.** Every [illegitimate] child born to parents not married to each other at the time of the child's birth and for whom the parent and child relationship has not been established pursuant to chapter 584 shall be considered as an heir to [his] the child's mother, and shall inherit her estate, in whole or in part, as the case may be, in like manner as if [he] the child had been born in lawful wedlock."

SECTION 3. Section 532-7, Hawaii Revised Statutes, is amended to read as follows:

**"§532-7 From [illegitimate] persons[.] born to parents not married to each other.** If any [illegitimate] person born to parents not married to each other dies intestate, without leaving lawful issue, or a [widow, his] spouse, the decedent's estate shall descend to [his] the decedent's mother; but if [he] the decedent leaves a [widow, she] spouse, the spouse shall take one-half, and [his] the decedent's mother the other half, and if [his] the decedent's mother is not living, but [his widow] the decedent's spouse is, then the [widow] spouse shall take one-half, and the remaining half shall go to [his] the decedent's brothers and sisters in equal parts, the children of any deceased brother or sister taking by right of representation. In default of surviving brothers or sisters, or their issue, such one-half shall go to the brothers and sisters of [his] the decedent's mother in equal shares, the issue of any such brother or sister who is deceased, taking by right of representation. In default of any relatives as are in this section mentioned, the half, and the whole in the event that [he] the decedent leaves no [widow,] spouse, shall go to [his] the decedent's next of kin. No action shall be commenced or prosecuted on behalf of the State to recover or hold any property which but for this section, might have been held to have escheated to the State."

SECTION 4. Section 571-47, Hawaii Revised Statutes, is amended to read as follows:

**“§571-47 Determination of [legitimacy] parentage of child born in wedlock.** Whenever, in any action involving the custody or support of a child apparently born in lawful wedlock, the [legitimacy] parentage of the child is placed in issue, the court may make the child a party to the action, if not already a party, and shall thereupon determine the [legitimacy] parentage of the child as one of the issues in the action. The court shall appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by any or all parties as the circumstances may justify. In the event the child is not made a party to the action, a determination that the child [is illegitimate] was not born to parents married to each other at the time of the child’s birth shall not be binding upon the child.”

SECTION 5. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

**“§572-1 Requisites of valid marriage contract.** In order to make valid the marriage contract, which shall be only between a man and a woman, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew, whether the relationship [is legitimate or illegitimate;] is the result of the issue of parents married or not married to each other;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) The man does not at the time have any lawful wife living and that the woman does not at the time have any lawful husband living;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The man and woman to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the man and the woman to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony.”

SECTION 6. Section 574-3, Hawaii Revised Statutes, is amended to read as follows:

**“§574-3 [Illegitimate children.] Children born to parents not married to each other.** The registrar of births shall register any [illegitimate] child born to parents not married to each other at the time of the child’s birth and where either the natural parents have not married each other or where the parent and child relation-

ship has not been established pursuant to chapter 584,<sup>1</sup> as having both a family name and given name chosen by the mother.”

SECTION 7. Section 577-14, Hawaii Revised Statutes, is amended to read as follows:

“**§577-14 [Illegitimate children;] Children born to parents not married to each other; support.** Except as otherwise provided by law, children whose parents have not been legally married, in contemplation of chapter 572, shall be [denominated illegitimate,] designated as children whose parents have not been married to other at the time of the children’s birth,<sup>1</sup> provided that any person, who in writing duly acknowledged before an officer authorized to take acknowledgments[,] declares himself to be the father of [such] those children, shall be compellable to provide [such] those children with necessary maintenance and support [as if they were born in lawful wedlock,] and to pay the expenses of the mother’s pregnancy and confinement. The mothers in all cases shall be compellable to maintain and support them during their minority.”

SECTION 8. Section 580-21, Hawaii Revised Statutes, is amended to read as follows:

“**§580-21 Grounds for annulment.** The family court [may], by a decree of nullity, may declare void the marriage contract for any of the following causes, existing at the time of the marriage:

- (1) That the parties stood in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as the whole blood, uncle and niece, aunt and nephew, whether the relationship [is legitimate or illegitimate;] is the result of the issue of parents married or not married to each other;
- (2) That the parties, or either of them, had not attained the legal age of marriage;
- (3) That the husband had an undivorced wife living, or the wife had an undivorced husband living;
- (4) That one of the parties lacked the mental capacity to consent to the marriage;
- (5) That consent to the marriage of the party applying for annulment was obtained by force, duress, or fraud, and there has been no subsequent cohabitation; and<sup>2</sup>
- (6) That one of the parties was a sufferer of or afflicted with any loathsome disease and the fact was concealed from, and unknown to, the party applying for annulment.”

SECTION 9. Statutory material to be deleted is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on January 1, 1998.

(Approved April 23, 1997.)

**Notes**

1. Comma should be underscored.
2. “And” should be underscored.

## ACT 53

H.B. NO. 789

A Bill for an Act Relating to Firearms.

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

SECTION 1. The legislature finds that two hours of live fire training and practice at a firing range is sufficient for all persons seeking a permit to acquire a pistol or revolver under section 134-2(g), Hawaii Revised Statutes. Much of the safe firearms handling instruction required is better taught in a classroom with dummy ammunition. A total of six required hours remains appropriate. The purpose of this Act is to reduce the required number of hours of fire training at a range from three to two hours and increase the required number of classroom hours from three to four.

SECTION 2. Section 134-2, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Effective July 1, 1995, no person shall be issued a permit under this section for the acquisition of a pistol or revolver unless the person, at any time prior to the issuance of the permit, has completed:

- (1) An approved hunter education course as authorized under section 183D-28;
- (2) A firearms safety or training course or class available to the general public offered by a law enforcement agency of the State or of any county;
- (3) A firearms safety or training course offered to law enforcement officers, security guards, investigators, deputy sheriffs, or any division or subdivision of law enforcement or security enforcement by a state or county law enforcement agency; or
- (4) A firearms training or safety course or class conducted by a state certified or National Rifle Association certified firearms instructor or a certified military firearms instructor that provides, at a minimum, a total of ~~[[at]]~~ least ~~[three]~~ two hours of firing training at a firing range and a total of at least ~~[three]~~ four hours of classroom instruction, which may include a video, that focuses on:
  - (A) The safe use, handling, and storage of firearms and firearm safety in the home; and
  - (B) Education on the firearm laws of the State.

An affidavit signed by the certified firearms instructor who conducted or taught the course, providing the name, address, and phone number of the instructor and attesting to the successful completion of the course by the applicant shall constitute evidence of certified successful completion under this paragraph.”

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 April 23, 1997.)



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] eleven thousand pounds or less; and
- (4) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of [ten] eleven 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. 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 23, 1997.)

A Bill for an Act Relating to Criminal Procedure.

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

SECTION 1. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“**§853-4 Chapter not applicable; when.** This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is a felony [which] that involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person, or is a misdemeanor or petty misdemeanor [which] that carries a mandatory minimum sentence and [which] that involves the inten-

- tional, knowing, or reckless bodily injury or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
  - (4) The offense charged is a class A felony;
  - (5) The offense charged is nonprobationable;
  - (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct [which] that if perpetrated in this State would be punishable as a felony;
  - (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct [which] that if perpetrated in this State would constitute a felony;
  - (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
  - (9) A firearm was used in the commission of the offense charged;
  - (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
  - (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether [or not] the period of deferral has already expired;
  - (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
  - (13) The offense charged is:
    - (A) Escape in the first degree;
    - (B) Escape in the second degree;
    - (C) Promoting prison contraband in the first degree;
    - (D) Promoting prison contraband in the second degree;
    - (E) Bail jumping in the first degree;
    - (F) Bail jumping in the second degree;
    - (G) Bribery;
    - (H) Bribery of a witness;
    - (I) Intimidating a witness;
    - (J) Bribery of or by a juror;
    - (K) Intimidating a juror;
    - (L) Jury tampering;
    - (M) Promoting prostitution in the first degree;
    - (N) Promoting prostitution in the second degree;
    - (O) Promoting prostitution in the third degree;
    - (P) Abuse of family and household members[.];
    - (Q) Sexual assault in the second degree;
    - (R) Sexual assault in the third degree.

The court may adopt by rule [adopt] other criteria in this area.”

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.

**ACT 56**

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

(Approved April 23, 1997.)

**ACT 56**

H.B. NO. 1296

A Bill for an Act Relating to Garnishment.

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

SECTION 1. Section 652-1, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) [Limits on process, when.] If any party named in the process as garnishee is a corporation, firm, or person having places of business in more than one judicial circuit or district in the State, the service of process upon the garnishee upon service in any one circuit or district shall operate [only] to secure the garnishee fund [within the circuit or circuits in which the process is served in cases where the process is issued out of a circuit court, or within the district in which process is served in cases where the process is issued out of a district court.] in each place of business in the State.”

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

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

(Approved April 23, 1997.)

**ACT 57**

H.B. NO. 1326

A Bill for an Act Relating to Liquor.

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

SECTION 1. Section 281-1, Hawaii Revised Statutes, is amended by amending the definition of “retail licensee” to read as follows:

““Retail licensee” means any licensee holding a class 2 or class 4 through class [13] 14 license.”

SECTION 2. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Class 14. Brewpub licenses. A brewpub licensee:

- (1) Shall manufacture not more than five thousand barrels of malt beverages on the licensee’s premises during the license year;
- (2) May sell malt beverages manufactured on the licensee’s premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees[;] pursuant to conditions imposed by county planning and public works departments;

- (4) May sell intoxicating liquor, [regardless of source,] purchased from a class 1, manufacturer licensee, or a class 3, wholesale dealer's licensee, to consumers for consumption on the licensee's premises; provided that the premises is owned and operated by the licensee.

The categories of establishments shall be as follows:

- (A) A standard bar; or  
 (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules."

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

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

(Approved April 23, 1997.)

## ACT 58

H.B. NO. 1377

A Bill for an Act Relating to the Disposition of Judiciary Records.

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

SECTION 1. Section 602-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§602-5.5]] Disposition of judiciary records.** Notwithstanding the provisions of section 94-3, the supreme court shall determine the care, custody, and disposition of all judiciary case, fiscal, and administrative records. A record of dispositional activity shall be maintained stating whether a record was retained by the judiciary, transferred to public archives, the University of Hawaii, the Hawaiian Historical Society, or other agency, or destroyed. This record shall be kept on forms specified by the supreme court. [The original copy of the record shall be filed in the public archives.] One copy of the record shall be filed [with] in the court [in which] where the records originated[, one copy with the office of the attorney general, and one copy with the comptroller.] and the original shall be filed with the administrative director of the courts or an agency designated by the director.”

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

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

(Approved April 23, 1997.)

A Bill for an Act Relating to Adjudication of Traffic Infractions.

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

SECTION 1. Section 291D-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291D-3]]~~ **Applicability.** (a) Notwithstanding any other provision of law to the contrary, all traffic infractions shall be adjudicated pursuant to this chapter, except as provided in subsection (b). This chapter shall be applied uniformly throughout the State and in all counties. Penal sanctions except fines shall not apply to a violation of a county ordinance that would constitute a traffic infraction under this chapter. Traffic infractions shall not be classified as criminal offenses.

(b) Traffic infractions that involve an accident resulting in personal injury or property damage or are committed in the same course of conduct as a criminal offense for which the offender is arrested or charged shall not be adjudicated pursuant to this chapter, but shall be adjudicated by the appropriate district or circuit court of the circuit in which the traffic infraction was committed, whichever has jurisdiction pursuant to the applicable statute or rules of court. In no event shall section 701-109 preclude prosecution for a criminal offense where a traffic infraction committed in the same course of conduct has been adjudicated pursuant to this chapter.

(c) If the defendant fails to appear for a traffic infraction which is committed in the same course of conduct as a criminal offense for which the offender is arrested or charged, the court shall enter a judgment by default in favor of the State for the traffic infraction unless the court determines that good cause or excusable neglect exists for the defendant’s failure to appear. The court shall enter a disposition pursuant to the Hawaii rules of penal procedure for the criminal offense.”

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

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved April 23, 1997.)

A Bill for an Act Relating to Motor Vehicle Driver Licensing.

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

SECTION 1. Section 286-106, Hawaii Revised Statutes, is amended to read as follows:

“**§286-106 Expiration of licenses.** Every driver’s license issued under this part, whether an original issuance or a renewal, shall expire on the first birthday of the licensee occurring not less than four years after the date of the issuance of the license, unless sooner revoked or suspended; provided that the license shall expire on the first birthday of the licensee occurring not less than two years after the date of the issuance of the license if at that time the licensee:

- (1) Is sixty-five years of age or older;
- [(2) Has been convicted of violations of the traffic laws of the State and of county traffic ordinances in the previous two years which, under the provisions of section 286-128, total nine points;
- (3)] (2) Is twenty-four years of age or younger; or
- [(4)] (3) Exhibits a physical condition or conditions which the examiner of drivers reasonably believes has impaired the driver's ability to drive, unless the licensee:
  - (A) Obtains a certificate from a licensed physician that the licensee's physical condition or conditions do not impair the licensee's ability to drive; or
  - (B) Is able to correct the physical impairment, or by using a vehicle adapted to overcome the physical impairment is to the satisfaction of the examiner of drivers able to drive safely."

SECTION 2. Section 286-107, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The examiner of drivers may accept an application for a renewal of a driver's license made not more than six months prior to the date of expiration.

If, however, [within the twelve months' period immediately preceding the expiration of the license for which a renewal application is made, the applicant for renewal has been convicted for violations of state traffic laws or county traffic ordinances for which the courts have imposed, under section 286-128, a total of six or more points, or if] the renewal is not applied for within ninety days after the expiration of the license, the applicant for renewal shall be treated as an applicant for a new license and examined as provided in section 286-108.”

SECTION 3. Section 286-107, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any resident of this State who holds a category (1), (2) or (3) license and who by reason of the resident's temporary absence from the State is unable to appear in person before the examiner of drivers to apply for a renewal of the resident's driver's license, may, if the resident is not disqualified from renewing the resident's license under subsection (a), apply for a renewal by mail. The resident's request to have the resident's license renewed by mail must be received by the examiner of drivers within ninety days after the expiration of the resident's license. The examiner of drivers shall upon receipt of the request, furnish the applicant with all necessary forms and instructions. An application for renewal made pursuant to this subsection shall be accompanied by a statement from a licensed physician certifying that the applicant had been examined by the licensed physician not more than six months prior to the expiration date of the applicant's license and that the applicant had been found by such examination to have met the physical requirements established by the state director of transportation for the renewal of licenses. The application for renewal shall also be accompanied by:

- (1) A notarized statement of the applicant certifying
  - (A) To the fact that the applicant is a resident of this State; and
  - (B) To the fact that the applicant does not possess any valid license to operate the same or similar category or categories of motor vehicles, issued by another licensing authority (unless such license is concurrently surrendered); and
  - [(C) To the fact that the applicant has not been convicted for violations of state traffic laws or county traffic ordinances which

under section 286-128 total six or more points, within the twelve-month period immediately preceding the expiration of the license for which the renewal application is made; and]

- (2) Such other information as may be required by the examiner of drivers which is reasonably necessary to confirm the identity of the applicant and the applicant's fitness to continue to operate a motor vehicle."

SECTION 4. Section 286-128, Hawaii Revised Statutes, is amended to read as follows:

**“§286-128 [Point system for evaluation of operating records of all persons operating motor vehicles and for determination of their continuing qualifications.] Evaluation of nonresident driving privileges; reports of outside convictions; reports of convictions by courts-martial or United States Commis-**

**sioners.** [(a) There is established a point system for the evaluation of the operating records of all persons operating motor vehicles and for the determination of the continuing qualifications of such persons to operate motor vehicles. The system shall have as its basic element a graduated scale of points assigning relative values to the various violations of the traffic laws of the State and of traffic ordinances of its counties to be imposed by the district judge in accordance with the following schedule of minimum and maximum points:

- (1) Driving while under the influence of intoxicating liquor ..... 4 to 8
- (2) Reckless driving ..... 3 to 6
- (3) Driving while license suspended or revoked (includes court conviction as well as safety responsibility violations) ..... 3 to 6
- (4) Fraudulent use of license ..... 3 to 6
- (5) Excessive speeding (fifteen miles or more over the established speed limit) ..... 3 to 6
- (6) Leaving scene of accident ..... 3 to 6
- (7) Speeding (ten miles or more over the established speed limit) 1 to 4
- (8) Failure to report accident immediately ..... 1 to 4
- (9) Inattention to driving; negligent driving ..... 1 to 4
- (10) Permitting unlicensed driver to drive ..... 1 to 4

(b) When district judge shall suspend driver's license based on point system.

The district judge shall suspend, for a period of from one to six months, the driver's license of any person upon a showing of the person's record, based upon a uniform point system as provided herein, that the licensee has been convicted of or forfeited bail for, or has been found under chapter 571 to have violated traffic laws of the State or ordinances of its counties with such frequency as to indicate a disrespect for such laws or ordinances and a disregard for the safety of other persons on the highways. The district judge upon a showing of good cause may suspend the license suspension. For the purpose of this part, a total of twelve points assessed against any driver as determined by the values designated above shall indicate such disrespect and disregard. Nothing herein shall preclude the district judge from imposing any greater sentence as may be provided by law.

(c) (a) Nonresident privilege of driving a motor vehicle. The privilege of driving a motor vehicle on the highways of this State and the several counties, given to a nonresident under the laws of this State, shall be subject to suspension by the district judge in like manner, and for like cause, the same as a driver's license issued by this State may be suspended.

[(d)] (b) Reports of outside convictions; recording against drivers. The district judges of each county shall enter into reciprocal agreements with the proper agency of any other county and the governor of the State may enter into such agreements with any state or territory for the purpose of reporting convictions or bail

forfeitures in such county, state, or territory by a person holding a driver's license in such county, state, or territory. Such convictions or bail forfeitures in such county, state, or territory of a violation therein which if committed in this State would be a violation of the traffic laws of this State or the ordinances of the several counties, shall be recorded against a driver the same as if the conviction or bail forfeiture had been made in the State.

(e) (c) Reports of convictions by courts-martial or United States commissioners; recording against drivers. Convictions by courts-martial of any of the various branches of the armed forces of the United States or by a United States commissioner of a violation either on or off government property which, if committed in this State, would be a violation of the traffic laws of this State or the ordinances of the several counties, may be recorded against a driver the same as if the conviction had been in the courts of this State.

(f) Reports prima facie evidence to show convictions. In all proceedings held under this section, the original or photostatic or other copies of the reports filed with the district judges of each county, including official reports received from the directors of motor vehicle divisions, state highway departments, or other agencies of any county, state, or territory charged with the duty of keeping records of offenses against the traffic laws of such counties, states, or territories, and reports of courts-martial or United States commissioners, when such copies are duly certified by the various agencies supplying them as true copies of the original on file therewith, shall be deemed prima facie evidence of the information contained in such reports, for the purpose of showing any convictions or bail forfeiture.

(g) Computation of points. In computing the total number of points charged to any person after a particular violation, those accrued as a result of violations that have occurred during the twelve months' period including and immediately preceding the last violation shall be counted at their full value; those accrued from twelve to twenty-four months preceding the last violation shall be counted at one-half their established value; and those resulting from violations more than twenty-four months prior to the last violation shall not be counted. If no violation has been charged against a person during the twenty-four-month period, a total of six favorable points will be credited to the person's account, which may be used to offset the points chargeable on accounts of violations. In the event that a district judge subsequent to the bail forfeiture does hear the case, the district judge may set aside the points resulting from the bail forfeiture and designate the points the district judge deems necessary; provided that no licensee shall twice be assigned points for the same traffic violation. The method of computing and crediting points under this subsection shall not apply if, at the time of computation, the person as to whom the computation is being made has outstanding any traffic infraction other than the one for which the computation is being made.

(h) Notice of suspension to driver; return of license. Upon determination and order by the district judge that a person has accumulated sufficient points to warrant the suspension of the person's license and the period of suspension, the licensee shall turn in the licensee's license as directed by the district judge if the licensee is present in court. If the licensee is not present in court when the district judge makes a determination and order that the license shall be suspended, then the clerk of the district court shall notify the licensee in writing by certified mail, return receipt requested to addressee only, that the licensee's license has been suspended and the licensee shall, within fifteen days after receipt of the notice of suspension, return the licensee's license to the clerk of the district court. Any person wilfully failing to return the person's license as required by this section shall, on conviction thereof, be fined not more than \$100 or imprisoned for not more than thirty days, or both.



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(i) In the event of an appeal from a district court to the supreme court, or a trial in the circuit courts, such courts shall be governed by this section and if occasion arises shall direct the district court to carry out their order.

(j) Any provisions herein to the contrary notwithstanding, whenever an employee is cited for driving a vehicle with unsafe, faulty, or improper equipment, brakes, or lights and the responsibility for such condition is that of the employer, no points shall be assessed against the driver.

(k) Where bail forfeiture is allowed, the court shall assess against the driver the minimum points set forth in subsection (a) above, but in no case less than one point.

(l) Any provision in this section to the contrary notwithstanding, in the case where the violation of subsection (a)(8) is due to the size or nature of the vehicle, or the necessity of the driver's following a specific route or schedule in the course of the driver's employment, and not to inattention or fault on the part of the driver, the court shall assess no points.

(m) (d) Upon determination and order by a district judge that a person has [accumulated six points] violated traffic laws of the State or ordinances of its counties with such frequency as to indicate a disrespect for such laws or ordinances and a disregard for the safety of other persons on the highways within a twelve-month period, the licensee shall report in person for a review of the licensee's driving record with the judge as directed by the judge if the licensee is present in court. If the licensee is not present in court when the district judge makes a determination and order that the licensee has [accumulated six points] violated traffic laws of the State or ordinances of its counties with such frequency as to indicate a disrespect for such laws or ordinances and a disregard for the safety of other persons on the highways within a twelve-month period and is directed to report in person for a review of the licensee's driving record, then the clerk of the district court shall notify the licensee in writing by certified mail, return receipt requested, to addressee only, that the licensee is directed to report in person, within fifteen days after receipt of the notice to report, for a review of the licensee's driving record with the judge. At the review, the judge may order a licensee who has [accumulated six points] violated traffic laws of the State or ordinances of its counties with such frequency as to indicate a disrespect for such laws or ordinances and a disregard for the safety of other persons on the highways within a twelve-month period to attend a course of instruction in driving retraining by a designated driver instructor or driver training school. Any person who fails to report in person for a review of the person's driving record with the judge as required by this subsection or who fails to attend a course of instruction in driver retraining pursuant to the order of the judge as required by this subsection shall be fined not more than \$100 or shall have the person's license suspended not more than one year, or both.

[ (n) At the end of the period for which a person's driver's license has been suspended under this part when the person's license is reinstated, all points assessed against the person, except for six, shall be set aside.]”

SECTION 5. Section 291-11.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A person who fails to comply with the requirements of this section shall be subject to a fine of \$20 for each violation [but shall not be guilty of a violation for which points shall be assessed pursuant to section 286-128].”

SECTION 6. Section 291-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who violates this section shall be subject to a fine of \$25 for each violation [but shall not be guilty of a violation for which points shall be assessed pursuant to section 286-128].”

SECTION 7. Section 291C-227, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291C-227]]~~ **Penalty.** A person who violates any provision of this part shall [not be guilty of a violation for which points shall be assessed pursuant to section 286-128 but shall] for a first conviction thereof be fined \$75; for conviction of a second offense committed within one year after the date of the first offense, the person shall be fined \$150; for conviction of a third or subsequent offense committed within one year after the date of the first offense, the person shall be fined \$200.”

SECTION 8. Section 291D-2, Hawaii Revised Statutes, is amended by amending the definition of “hearing” to read:

““Hearing” means a proceeding conducted by the district court pursuant to section 291D-8 at which a driver either contests the notice of traffic infraction or admits to the traffic infraction but offers an explanation to mitigate the monetary assessment [or traffic points, or both,] imposed.”

SECTION 9. Section 291D-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The form for the notice of traffic infraction shall be prescribed by rules of the district court which shall be uniform throughout the State. Except in the case of traffic infractions involving parking, the notice shall include the following:

- (1) A statement of the specific traffic infraction, including a brief statement of facts, for which the notice was issued;
- (2) A statement of the monetary assessment, established for the particular traffic infraction pursuant to section 291D-9, to be paid by the driver [and the range of points that may be assessed by the court pursuant to section 286-128, both of] which shall be uniform throughout the State;
- (3) A statement of the options provided in section 291D-6(b) for answering the notice and the procedures necessary to exercise the options;
- (4) A statement that the person to whom the notice is issued must answer, choosing one of the options specified in section 291D-6(b), within fifteen days;
- (5) A statement that failure to answer the notice of traffic infraction within fifteen days shall result in the entry of judgment by default for the State and a late penalty assessed and, if the driver fails to pay the monetary assessment within an additional thirty days or otherwise take action to set aside the default, notice to the director of finance of the appropriate county that the person to whom the notice was issued shall not be permitted to renew or obtain a driver’s license or, where the notice was issued to a motor vehicle, the registered owner will not be permitted to register, renew the registration of, or transfer title to the motor vehicle until the traffic infraction is finally disposed of pursuant to this chapter;
- [(6) A statement that if, after receipt of the answer, the court determines that the assessment of points for the traffic infraction will cause the number of points on the person’s traffic abstract to equal or exceed twelve, the matter will be scheduled for trial and that, if the person fails to appear

- for trial, a penal summons will be issued to bring the person before the court and the court will take action as provided in section 291D-10;
- (7) (6) A statement that, at a hearing to contest the notice of traffic infraction conducted pursuant to section 291D-8 or in consideration of a written statement contesting the notice of traffic infraction, no officer will be present unless the driver timely requests the court to have the officer present. The standard of proof to be applied by the court is whether a preponderance of the evidence proves that the specified traffic infraction was committed;
  - [(8)] (7) A statement that, at a hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction or in consideration of a written request for mitigation, the person will be considered to have committed the traffic infraction;
  - [(9)] (8) A space in which the driver's signature, current address, and driver's license number may be affixed; and
  - [(10)] (9) The date, time, and place at which the driver must appear in court if the driver chooses to go to hearing."

SECTION 10. Section 291D-7, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) When an admitting answer is received, the court shall review the driver's abstract [and determine the number of points, if any, to be assessed pursuant to section 286-128. If the points to be assessed by the court do not cause the number of points on the person's abstract to equal or exceed a total of twelve, the]. The court shall enter judgment in favor of the State in the amount of the monetary assessment specified in the notice of traffic infraction [and assess the determined number of points]. If the monetary assessment is not submitted with the answer, the court shall take action as provided in section 291D-10. [If the points to be assessed by the court cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the admission and refund the monetary assessment and schedule the matter for trial. Also, the court shall notify the person of the date, time, and place of the trial and inform the person that if the person fails to appear for trial, a penal summons shall be issued to bring the person before the court, and that the court shall take action as provided in section 291D-10.]

- (b) When a denying answer is received, the court shall proceed as follows:
  - (1) In the case of a traffic infraction that does not involve parking, the court shall [determine whether the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed a total of twelve. If the assessment of points for the traffic infraction will cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the request for a hearing, schedule the matter for trial, and notify the person in writing of the date, time, and place of the trial. If the assessment of points for the traffic infraction will not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall] proceed as provided in section 291D-8(a).
  - (2) In the case of a traffic infraction that involves parking, the court shall notify the person or registered owner or owners in writing of the date, time, and place of hearing to contest the notice of traffic infraction. The notice of hearing shall be sent within thirty days from the postmarked date of the answer to the address stated in the denying answer or, if none is given, to the address at which the vehicle is registered. The notification also shall advise the person that, if the person fails to

appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, that the monetary assessment must be paid within thirty days from notice of default, and, if it is not paid, that the court will take action as provided in section 291D-10.

- (3) When a denying answer is accompanied by a written statement of the grounds on which the person contests the notice of the traffic infraction, the court shall [determine whether the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed a total of twelve. If the assessment of points for the traffic infraction will cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the denial and request for a decision based on the written statement, schedule the matter for trial, and notify the person in writing of the date, time, and place of the trial. If the assessment of points for the traffic infraction will not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall] proceed as provided in section 291D-8(a) and shall notify the person of its decision, including the amount of the monetary assessment [or points, if any,] by mailing it within thirty days of the postmarked date of the answer to the address provided by the person in the answer, or if none is given to the address given when the notice of traffic infraction was issued or, in the case of parking violations, to the address stated in the denying answer or, if none is given, to the address at which the vehicle is registered. The decision also shall advise the person, if it is determined that the infraction was committed, that the person has the right, within thirty days, to request a trial and shall specify the procedures for doing so. The notice of decision shall also notify the person, if a monetary assessment is assessed by the court, that if the person does not request a trial, the assessment shall be paid within thirty days. The notice shall warn the person that if the assessment is not paid within thirty days, the court shall take action as provided in section 291D-10.
- (c) When an answer admitting commission of the infraction but seeking to explain mitigating circumstances is received, the court shall proceed as follows:
  - (1) In the case of a traffic infraction which does not involve parking, the court shall [determine whether the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed a total of twelve. If the assessment of points for the traffic infraction will cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the admission and request to explain mitigating circumstances and notify the person in writing of the date, time, and place of the trial. If the assessment of points for the traffic infraction will not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall] proceed as provided in section 291D-8(b).
  - (2) In case of a traffic infraction which involves parking, the court shall notify the person in writing of the date, time, and place of the hearing. The notice shall be sent, within thirty days from the postmarked date of the answer, to the address at which the vehicle is registered. The notice of hearing on mitigating circumstances shall advise the person that the court will enter judgment for the State and the hearing will be limited to an explanation of the mitigating circumstances. The notice of hearing also shall state that if the person fails to appear at the hearing, the monetary assessment must be paid within thirty days of the scheduled

hearing. The notice of hearing shall warn the person that if the monetary assessment is not paid within thirty days, the court shall take action as provided in section 291D-10.

- (3) If a written explanation is included with an answer admitting commission of the infraction, the court shall [determine whether the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed a total of twelve. If the assessment of points for the traffic infraction will cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the denial and request for a decision based on the written statement, schedule the matter for trial, and notify the person in writing of the date, time, and place of the trial. If the assessment of points for the traffic infraction will not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall] enter judgment for the State and, after reviewing the explanation, determine the amount of the monetary assessment [and points] to be assessed, if any. The court shall then notify the person of the monetary assessment to be paid [and the points assessed] for the infraction, if any. There shall be no appeal from the order. If the court assesses a monetary assessment, the court shall also notify the person that the assessment shall be paid within thirty days of the postmarked date of the decision. The notice shall also warn the person that if the monetary assessment is not paid within thirty days, the court shall take action as provided in section 291D-10."

SECTION 11. Section 291D-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) In proceedings to contest the issuance of a notice of traffic infractions:
- (1) In lieu of the personal appearance by the officer who issued the notice of traffic infraction, the court shall consider the notice of traffic infraction and any other written report made by the officer together with any oral or written statement by the driver, or in the case of traffic infractions involving parking, the operator or registered owner of the motor vehicle;
  - (2) The court may compel by subpoena the attendance of the officer who issued the notice and other witnesses from whom it may wish to hear;
  - (3) The standard of proof to be applied by the court shall be whether a preponderance of the evidence proves that the traffic infraction was committed; and
  - (4) After due consideration of the evidence and arguments, if any, the court shall determine whether commission of the traffic infraction has been established. Where the commission of the traffic infraction has not been established, an order dismissing the notice of traffic infraction with prejudice shall be entered in the records. Where it has been established that the traffic infraction was committed, the court shall enter judgment for the State and may assess a monetary assessment pursuant to section 291D-9[, and points, if applicable, pursuant to section 286-128]. The court also shall inform the person of the right to request, within thirty days, a trial pursuant to section 291D-13. If the person requests a trial at the hearing, the court shall provide the person with the trial date forthwith. If trial is elected, arraignment and plea shall be held at the time of trial.
- (b) In proceedings to explain mitigating circumstances:

- (1) The procedure shall be informal and shall be limited to the issue of mitigating circumstances. A person who requests to explain the circumstances shall not be permitted to contest the issuance of the notice of traffic infraction; and
- (2) After the court has received the explanation, the court shall enter judgment for the State and may assess a monetary assessment, pursuant to section 291D-9[, and points, if applicable, pursuant to section 286-128];
- (3) The court after receiving the explanation may vacate the admission and dismiss the notice of traffic infraction with prejudice where the explanation establishes that the infraction was not committed; and
- (4) There shall be no appeal from the order.’’

SECTION 12. Section 291D-12, Hawaii Revised Statutes, is amended to read as follows:

“**[[§291D-12]] Powers of the district court judge sitting in the traffic division.** A district court judge sitting in the traffic division and hearing cases pursuant to this chapter shall have all the powers of a district court judge under chapter 604, including the following powers:

- (1) To conduct traffic infraction hearings and to impose monetary assessments;
- (2) To permit deferral of monetary assessment or impose community service in lieu thereof;
- [(3) To impose or to suspend the imposition of traffic violation points;
- (4) (3) To dismiss a notice of traffic infraction or to set aside a judgment for the State;
- [(5) (4) To order temporary driver’s license suspension or license reinstatement;
- [(6) (5) To order the director of finance not to issue or renew the driver’s license or to register, renew the registration of, or issue title to a motor vehicle of any person who has not paid a monetary assessment or performed community service in lieu thereof;
- [(7) (6) To issue penal summonses and bench warrants and initiate contempt of court proceedings in proceedings conducted pursuant to section 291D-13; and
- [(8) (7) To exercise other powers the court finds necessary and appropriate to carry out the purposes of this chapter.’’

SECTION 13. Section 291D-13, Hawaii Revised Statutes, is amended to read as follows:

“**[[§291D-13]] Trial.** [(a) If an admission made pursuant to section 291D-6 or a determination made pursuant to section 291D-8 that a person committed a traffic infraction would cause the number of traffic points on the person’s abstract to equal or exceed a total of twelve, the notice of traffic infraction shall be adjudicated in a trial pursuant to the Hawaii Rules of Penal Procedure and rules of the district court.

(b) (a) If, after proceedings to contest the notice of traffic infraction, a determination is<sup>1</sup> made that a person committed the traffic infraction, the person may request, within thirty days of the determination, a trial pursuant to the rules of penal procedure and rules of the district court, provided that arraignment and plea for such trial shall be held at the time of trial. If the person requests a trial at the conclusion of the proceedings to contest the notice of traffic infraction, the court shall provide the

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person with the trial date forthwith. [Except as provided in subsection (a), a] A notice of traffic infraction shall not be adjudicated pursuant to this section until proceedings pursuant to section 291D-8 have been completed.

[(c)] (b) The result of the final determination or any admission made pursuant to section 291D-6 shall not be admissible in any trial conducted pursuant to section 291D-13.”

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved April 23, 1997.)

### Note

1. Prior to amendment “has been” appeared here.

## ACT 61

H.B. NO. 1407

A Bill for an Act Relating to the Certification of Election Results.

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

SECTION 1. Section 11-153, Hawaii Revised Statutes, is amended to read as follows:

**“§11-153 More or less ballots than recorded.** (a) If there are more ballots than the poll book indicates, this shall be an overage and if less ballots, it shall be an underage. The election officials or counting center employees responsible for the tabulation of ballots shall make a note of this fact on a form to be provided by the chief election officer. The form recording the overage or underage shall be sent directly to the chief election officer or the clerk in county elections separate and apart from the other election records.

(b) If the electronic voting system is being used in an election, the overage or underage [may] shall be recorded after the tabulation of the ballots. In an election using the paper ballot voting system, the precinct officials shall proceed to count the votes<sup>1</sup> cast for each candidate or on a question after recording the overage or underage.

(c) [As soon after the election as possible<sup>2</sup>] The chief election officer or the clerk shall make a list of all precincts in which an overage or underage occurred and the amount of the overage or underage. This list shall be filed and kept as a public record in the office of the chief election officer or the clerk in county elections and the clerks<sup>3</sup> office in counties other than the city and county of Honolulu in elections involving state candidates.

An election contest may be brought under part XI, if the overage or underage in any district could affect the outcome of an election.”

SECTION 2. Section 11-155, Hawaii Revised Statutes, is amended to read as follows:

**“§11-155 Certification of results of election.** On receipt of certified tabulations from the election officials concerned, the chief election officer or county clerk in county elections shall compile, certify, and release the election results after

the expiration of the time for bringing an election contest. The certification shall be based on a comparison and reconciliation of the following:

- (1) The results of the canvass of ballots conducted pursuant to chapter 16;
- (2) The audit of pollbooks (and related record books) and resultant overage and underage report;
- (3) The audit results of the manual audit team;
- (4) The results of the absentee ballot reconciliation report compiled by the clerks; and
- (5) All logs, tally sheets, and other documents generated during the election and in the canvass of the election results.

A certificate of election or a certificate of results declaring the results of the election as of election day shall be issued pursuant to section 11-156[.]; provided that in the event of an overage or underage, a list of all precincts in which an overage or underage occurred shall be attached to the certificate. The number of candidates to be elected receiving the highest number of votes in any election district shall be declared to be elected. Unless otherwise provided, the term of office shall begin or end as of the close of polls on election day. The position on the question receiving the appropriate majority of the votes cast shall be reflected in a certificate of results issued pursuant to section 11-156.”

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

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

(Approved April 23, 1997.)

#### Notes

1. Prior to amendment “vote” appeared here.
2. Prior to amendment “the” appeared here.
3. Prior to amendment “clerk’s” appeared here.

## ACT 62

H.B. NO. 1579

A Bill for an Act Relating to Agriculture.

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

SECTION 1. Section 141-3.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of agriculture shall give at least five days notice to the landowner and the occupier of any private property of its intention to enter the property for the control or eradication of a pest. Written notice sent to the landowner’s last known address by certified mail, postage prepaid, return receipt requested, shall be deemed sufficient notice. In the event that certified mail is impractical because the department, despite diligent efforts, cannot determine land ownership or because of urgent need to initiate control or eradication measures, notice given once in a daily or weekly publication of general circulation, in the county where any action or proposed action will be taken, or notice made as otherwise provided by law, shall be deemed sufficient notice. The notice shall set forth all pertinent information on the pest control program and the procedures and methods to be used for control or eradication.”



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SECTION 2. Section 142-29, Hawaii Revised Statutes, is amended to read as follows:

**“§142-29 Enforcement; citation and summons. Violations of the provisions of this chapter or of any rule adopted pursuant thereto may be enforced by citation and summons issued by:**

- (1) Any state or county law enforcement officer; or**
- (2) Any officer or employee of the department of agriculture, authorized and designated by the board of agriculture to investigate and enforce the provisions of this chapter and all rules adopted by the department pursuant thereto [and to investigate violations of this chapter and rules adopted thereunder, may issue a citation and summons to any person for violation of any provision of this chapter or of any rule adopted pursuant thereto].”**

SECTION 3. Section 142-30, Hawaii Revised Statutes, is amended to read as follows:

**“§142-30 Form of citation and summons. [There shall be printed a form of citation and summons for use in citing violators of this chapter and rules adopted pursuant thereto warning] (a) In issuing citations and summons for violations of this chapter, law enforcement officers other than those described in section 142-29(2) shall use the summons and complaint citation books issued by the judiciary for violations of the traffic code.**

**(b) Citations issued by officers and employees as described in section 142-29(2) shall use citation and summons forms that shall warn the person to appear and answer the charge against the person at a place and at a time within [seven] thirty days after the citation. The citation and summons shall be so designed to include all necessary information to make it valid and legal [within] under the laws and rules of the State. [The form and contents of the citation and summons shall be as adopted or prescribed by the district courts.**

**In every case when a citation and summons is issued, the original shall be given to the accused; provided that the] The citation and summons shall be in a form that allows a carbon copy to be provided to the accused. The district courts may [prescribe the issuance to the accused of a carbon copy of the citation and summons and] provide for the disposition of the original and any other copies. Every citation and summons shall be consecutively numbered and each carbon copy shall bear the number of its respective original.”**

SECTION 4. Section 142-31, Hawaii Revised Statutes, is amended to read as follows:

**“§142-31 Administration of oath. When a complaint is made by officers and employees as described in section 142-29(2) to any prosecuting officer of the violation of the provisions of this chapter and all rules adopted pursuant thereto, the officer or employee who issued the citation and summons shall subscribe to it under oath administered by another official of the department of agriculture whose name has been submitted to the prosecuting officer and who has been designated by the chairman<sup>1</sup> of the board of agriculture to administer oaths.”**

SECTION 5. Section 142-49, Hawaii Revised Statutes, is amended to read as follows:

“[[§142-49]] Livestock ownership and movement certification. Every owner, upon sale or transportation of livestock, including cattle, horses, sheep, goats, pigs, bison, or llamas, shall complete a certificate describing the animal or animals including sex, breed, age, and brand and indicating the seller or owner, buyer or consignee, and origin and destination. [A copy] Two copies of the certificate shall accompany the shipment, one copy shall be given to the department of agriculture, and a copy shall be retained by the owner. One of the copies of the certificate shall be presented upon request to a law enforcement officer or other officer or employee as described in section 142-29.”

SECTION 6. Section 152-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Upon determining that control or eradication of an infestation is practicable and feasible, the department shall immediately serve notice, either oral or written, on both the landowner of the property and the occupant of the property on which the infestations exist. Written notice sent to the landowner’s address last known to the department by certified mail, postage prepaid, return receipt requested, shall be deemed sufficient notice. In the event that certified mail is impractical because the department, despite diligent efforts, cannot determine land ownership or because of urgent need to initiate control or eradication measures, notice given once in a daily or weekly publication of general circulation, in the county where any action or proposed action will be taken, or notice made as otherwise provided by law, shall be deemed sufficient notice. The notice shall set forth all pertinent information with respect to the infestation and notify the landowner and the land occupant of the procedure and methods of control or eradication.”

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 April 23, 1997.)

**Note**

I. Prior to amendment “chairperson” appeared here.

**ACT 63**

H.B. NO. 1580

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 amending the definition of “animal” to read as follows:

““Animal” means any invertebrate or vertebrate species of the animal kingdom including but not limited to mammal, bird, fish, reptile, mollusk, crustacean, insect, mite, and nematode[, protozoan and other invertebrate], other than common domestic animal such as dog and cat.”

SECTION 2. Section 150A-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall maintain:

- (1) A list of conditionally approved animals and microorganisms that require a permit for import into the State;
- (2) A list of restricted animals and microorganisms that require a permit for both import into the State and possession; and
- (3) A list of animals and microorganisms that are prohibited entry into the State.

Animals and microorganisms on the lists of conditionally approved and restricted animals and microorganisms shall be imported only by permit [issued pursuant to rules, and any violation of the conditions listed on the permit shall be a violation of this section]. Any animal or microorganism that is not on the lists of conditionally approved, restricted, or prohibited animals and microorganisms shall be prohibited until the board’s review and determination for placement on one of these lists; provided that the department may issue a special permit on a case by case basis for the importation and possession of an animal or a microorganism that is not on the lists of prohibited, restricted, or conditionally approved animals or microorganisms,<sup>1</sup> for the purpose of remediating medical emergencies or agricultural or ecological disasters, or conducting medical or scientific research in a manner that the animal or microorganism will not be detrimental to agriculture, the environment, or humans if the importer of the animal or microorganism can meet permit requirements consistent with Centers for Disease Control and National Institute of Health guidelines or other guidelines as determined by the board; and provided further that the department may issue a short-term special permit on a case by case basis not to exceed ninety days for the importation and possession of an animal that is not on the list of prohibited, restricted, or conditionally-approved animals for the purpose of filming, performance, or exhibition if the importer of the animal can meet permit and bonding requirements as determined by the board. All permits referenced in this section shall be issued pursuant to rules and any violation of the conditions listed on the permits shall be a violation 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 April 23, 1997.)

**Note**

1. Comma should be underscored.

**ACT 64**

H.B. NO. 1693

A Bill for an Act Relating to the Hawaii Strategic Development Corporation.

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

SECTION 1. Section 211F-1, Hawaii Revised Statutes, is amended by amending the definition of “economic development project” to read as follows:

““Economic development project” means an endeavor related to industrial [or], commercial, or advanced technology-based agricultural enterprise. [An economic] Economic development project shall not include [tourism-related service businesses, nor that portion of an endeavor devoted to the sale of goods at retail, except that, as used in relation to the corporation procuring insurance for a transac-

tion entered into by a depository institution, and as used in relation to an investment by the corporation in a minority-owned business, an economic development project may include that portion of an endeavor devoted to the sale of goods at retail. The term shall not include] that portion of an endeavor devoted to the construction of housing.”

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

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

(Approved April 23, 1997.)

## ACT 65

H.B. NO. 1718

A Bill for an Act Relating to Recovery of Payments.

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

SECTION 1. Section 346-29.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department may place a lien against the real property of any recipient receiving medical assistance who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, after a state determination, pursuant to notice and hearing requirements of chapter 91, that the recipient cannot reasonably be expected to be discharged from the medical institution and returned home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for six months or longer without a discharge plan.

- (1) The department may not place a lien on the recipient’s home if the recipient’s:
  - [(1)] (A) Spouse;
  - [(2)] (B) Minor, blind, or disabled child; or
  - [(3)]<sup>1</sup> Sibling who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the date of the recipient’s admission to the medical institution; is lawfully residing in the home.
- (2) The department shall not recover funds from the lien on the recipient’s home when:
  - [(1)] (A) A sibling who was residing in the home for a period of at least one year immediately before the date of the recipient’s admission to the medical institution; or
  - [(2)] (B) A son or daughter who was residing in the recipient’s home for a period of at least two years immediately before the date of the recipient’s admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to the recipient which permitted such recipient to reside at home rather than in an institution; lawfully resides in the home and has lawfully resided in the home on a continuous basis since the date of the recipient’s admission to the medical institution.

- (3) The department also shall not recover funds from the lien if the recipient has a surviving spouse; or surviving minor, blind, or disabled child.
- (4) Any lien imposed with respect to this subsection shall be dissolved upon the individual's discharge from the medical institution and return home."

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

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

(Approved April 23, 1997.)

Note

- 1. So in original.

ACT 66

H.B. NO. 1748

A Bill for an Act Relating to Kaho'olawe Penalties.

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

SECTION 1. Chapter 6K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§6K- General administrative penalties.** (a) Except as otherwise provided by law, the commission is authorized to set, charge, and collect administrative fines, or bring legal action to recover administrative costs of the commission or the department, or payment for damages, or for the cost to correct damages resulting from a violation of chapter 6K or any rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, by a fine of not more than \$10,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$15,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$25,000.

(b) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of natural resource or any historic property taken, killed, injured, broken, or damaged in violation of any rule adopted under this chapter. For purposes of this section, "natural resource" includes any archaeological artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds. Also for purposes of this section, "historic property" means any building, structure, object, districts, area, or site, including heiau and underwater site, which is over fifty years old.

(c) Any criminal penalty for any violation of this chapter or any rule adopted under this chapter shall not be deemed to preclude the commission from bringing a civil legal action to recover additional administrative fines and costs. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted under this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person.

(d) In any judicial proceeding to recover an administrative penalty imposed, the commission need only show that notice was given, that a hearing was held or the time granted for requesting a hearing has run without such a request, that an

administrative penalty was imposed, and that the administrative penalty remains unpaid.”

SECTION 2. Section 6K-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§6K-8]]~~ **Penalty.** Any person who violates any of the laws or rules applicable to the island reserve shall be guilty of a petty misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than [one year,] thirty days, or both, for each offense. Each day of each violation shall be deemed a separate offense.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved April 23, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 67**

H.B. NO. 1750

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided, the following restrictions shall apply to all leases:

- (1) Options for renewal of terms are prohibited;
- (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration requirements; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;
- (3) No lease shall be made for any land under a lease which has more than two years to run;
- (4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county;
- (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made if:
  - (A) It contains the personal residence of the lessee;
  - (B) In the case of commercial, industrial, hotel, resort, apartment, and other business uses, the lessee was required to put in substantial building improvements;

- (C) The lessee becomes mentally or physically disabled;
- (D) Extreme economic hardship is demonstrated to the satisfaction of the board; [or]
- (E) It is to the corporate successor of the lessee; or
- (F) In the case of agricultural uses, the assignee meets the qualifications of a bona fide individual farmer or a nonindividual farm concern pursuant to section 171-14.5, in addition to or notwithstanding the other conditions of this paragraph;

provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;

- (6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;
- (7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise;
- (8) Mineral and metallic rights and surface and ground water shall be reserved to the State; and
- (9) No lease of public lands, including submerged lands, nor any extension of any such lease, shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for such purposes, unless such lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, which indicates the public's right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term "lease", for the purposes of this paragraph, includes month-to-month rental agreements and similar tenancies."

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

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

(Approved April 23, 1997.)

## ACT 68

H.B. NO. 1756

A Bill for an Act Relating to Penalties for Violations of Administrative Rules.

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

SECTION 1. Section 261-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person violating this chapter, or any of the rules or orders issued pursuant thereto and relating to:

- (1) [safety] Safety measures, practices, or requirements[, and];
- (2) [airport] Airport security measures or requirements[.]; or
- (3) The licensing and regulation of persons engaged in commercial activities at public airports,

duly adopted or served, shall be guilty of a misdemeanor.”

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

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

(Approved April 23, 1997.)

## ACT 69

H.B. NO. 1760

A Bill for an Act Relating to Motor Vehicle Safety.

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

SECTION 1. Chapter 286A, Hawaii Revised Statutes, is repealed.

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

(Approved April 23, 1997.)

## ACT 70

S.B. NO. 137

A Bill for an Act Relating to Health.

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

SECTION 1. Section 327C-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsection (b), a person shall be considered dead if, in the announced opinion of a physician licensed under part I of chapter 453, physician and surgeon licensed under chapter 460, [or] physician excepted from licensure by section 453-2(b)(3), or registered nurse licensed under chapter 457, based on ordinary standards of current medical practice, the person has experienced irreversible cessation of spontaneous respiratory and circulatory functions. Death will have occurred at the time when the irreversible cessation of the functions first coincided.”



## ACT 71

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

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

(Approved April 23, 1997.)

## ACT 71

S.B. NO. 1159

A Bill for an Act Relating to Business Corporations.

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

SECTION 1. Section 415-48.5, Hawaii Revised Statutes, is amended to read as follows:

**“§415-48.5 Limitation of liability of directors; shareholder approval required.** (a) A corporation shall have the power to eliminate or limit the personal liability of its directors in any action brought by the shareholders or the corporation for monetary damages against any director of the corporation for a breach of fiduciary duty as a director, provided that:

(1) The elimination or limitation shall be authorized, directed, or provided for in:

(A) The articles of incorporation of the corporation; or

(B) Any duly adopted amendment of the articles of incorporation; and

(2) If the provision eliminating or limiting the personal liability of a corporation's directors is authorized, directed, or provided for by amendments to the articles of incorporation, it shall be adopted upon the affirmative vote of the holders of two-thirds of the shares represented at the shareholders' meeting and having voting power; provided that the vote also constitutes a majority of the shares having voting power.

(b) A corporation shall not have the power to eliminate or limit the personal liability of a director:

(1) For any breach of the director's duty of loyalty to the corporation or its shareholders;

(2) For any act or omission of the director not performed in good faith, or which involves intentional misconduct or knowing violation of law, or which constitutes a wilful or reckless disregard of the director's fiduciary duty;

(3) For the director's wilful or negligent violation of any provision of this chapter regarding payment of dividends or stock purchase or redemption; or

(4) For any transaction from which the director received an improper benefit.

(c) The shareholders of the corporation shall receive written notice of any proposal by the corporation to eliminate or limit the personal liability of the directors under subsection (a)(2), and the corporation shall in such cases submit the duly adopted amendment to the articles of incorporation to the director of commerce and consumer affairs.

(d) No provision pursuant to subsection (a)(1) shall be authorized by the corporation to eliminate or limit the liability of directors for acts, omissions, or causes of action occurring, accruing, or arising prior to June 7, 1989.

(e) Nothing in this section shall impair or affect the validity of any provisions of the bylaws of a corporation eliminating or limiting the personal liability of the directors which were authorized, directed, or provided for and approved by the shareholders of the corporation in compliance with this section prior to July 1, 1996."

SECTION 2. New statutory material is underscored.

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

(Approved April 23, 1997.)

## ACT 72

S.B. NO. 1303

A Bill for an Act Relating to Insurance Rate Regulation.

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

SECTION 1. Section 431:14-103, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For the purpose of ratemaking, all insurers shall treat a volunteer firefighter the same as a firefighter employed by a county fire department; provided that the volunteer firefighters are attached to a station where a [commercial drivers license holder] firefighter or volunteer firefighter who has been trained and certified to drive a commercial motor vehicle by either the state or county government, as appropriate, and who maintains a category (3) license as defined by section 286-102(b)(3) is on duty at all times or at least four [commercial drivers license holders] firefighters or volunteer firefighters who have been trained and certified to drive a commercial motor vehicle by either the state or county government, as appropriate, and who maintain a category (3) license as defined by section 286-102(b)(3) are members of the volunteer unit.”

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

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

(Approved April 23, 1997.)

## ACT 73

S.B. NO. 1304

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. Section 286-105, Hawaii Revised Statutes, is amended to read as follows:

“§286-105 What persons are exempt from license. The following persons are exempt from license:

- (1) Any person while driving or operating a motor vehicle in the service or employ of any branch or agency of the federal government; provided that the person has received a license or permit from the branch or agency to operate and drive the motor vehicle; provided further that the branch or agency has been duly authorized by the federal government to issue the license or permit;
- (2) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway; provided that no person under the age of thirteen years shall be permitted to drive or operate any such road machine, farm tractor, or implement of husbandry on a highway;
- (3) Any person who is at least eighteen years of age and who has in the person’s possession a valid driver’s license to drive the categories of motor vehicles listed in section 286-102(b), except section 286-102(b)(4), that is equivalent to a driver’s license issued in this State but was issued to the person in another<sup>1</sup> state of the United States, the Commonwealth of Puerto Rico, United States Virgin Islands, American Samoa, Guam, a province of the Dominion of Canada, or the Commonwealth of the Northern Mariana Islands for that category of motor vehicle which the person is operating; [and]
- (4) Any person who has in the person’s possession a valid commercial motor vehicle driver’s license issued by any state of the United States, Mexico, or a province of the Dominion of Canada that issues licenses in accordance with the minimum federal standards for the issuance of commercial motor vehicles<sup>2</sup> driver’s licenses[.]; and
- (5) Any person who drives or operates state or county motor vehicles while employed by, in the service of, or volunteering for the state or county fire departments, provided that they are trained and certified to drive category (4) motor vehicles as set forth in section 286-102(b)(4) by the state or county government, as appropriate, and provided that the person maintains a category (3) license as set forth in section 286-102(b)(3).”

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

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

(Approved April 23, 1997.)

Notes

- 1. Prior to amendment “any other” appeared here.
- 2. Prior to amendment “vehicle” appeared here.

A Bill for an Act Relating to Medicine and Surgery.

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

SECTION 1. Section 453-3, Hawaii Revised Statutes, is amended to read as follows:

**“§453-3 Limited and temporary licenses.** The board of medical examiners shall issue a limited and temporary license to an applicant who has not been examined as required by section 453-4, and against whom no disciplinary proceedings are pending in any state or territory, if the applicant is otherwise qualified to be examined, and upon determination that:

- (1) There is an absence or a shortage of licensed physicians in a particular locality, and that the applicant has been duly licensed as a physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall permit the practice of medicine and surgery by the applicant only in the particular locality, and no other, as shall be set forth in the license issued to the applicant. The license shall be valid only for a period of eighteen months from the date of issuance. The board shall establish guidelines to determine a locality with an absence or shortage of physicians. For this purpose, the board may consider a locality to have an absence or shortage of physicians if the absence or shortage results from the temporary loss of a physician. In designating a locality with an absence or shortage of physicians, the board shall not delegate its authority to a private organization;
- (2) The applicant is to be employed by an agency or department of the state or county government, and that the applicant has been duly licensed as a physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall only be valid for the practice of medicine and surgery while the applicant is in the employ of such governmental agency or department and in no case shall be used to provide private patient care for a fee. A license issued under this paragraph may be renewed from year to year;
- (3) The applicant would practice medicine and surgery only while under the direction of a physician regularly licensed in the State other than as permitted by this section, and that the applicant intends to take the regular licensing examination conducted by the board within the next eighteen months. A limited and temporary license issued under this paragraph shall be valid for no more than eighteen months from the date of issuance, unless otherwise extended at the discretion of the board of medical examiners; provided that this discretionary extension shall not exceed a period of six months beyond the original expiration date of the limited and temporary license;
- (4) The applicant has been appointed as a resident or accepted for specialty training in a health care facility or organized ambulatory health care facility as defined in section 323D-2 or a hospital approved by the board, and that the applicant shall be limited in the practice of medicine and surgery to the extent required by the duties of the applicant's position or by the program of training while at the health care facility, organized ambulatory health care facility, or hospital. The license shall be valid during the period in which the applicant remains as a resident in training, and may be renewed from year to year during the period; or
- (5) A public emergency exists, and that the applicant has been duly licensed as a physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall only be valid for the period of such public emergency.

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Nothing herein requires the registration or licensing hereunder of nurses, or other similar persons, acting under the direction and control of a licensed physician.”

SECTION 2. New statutory material is underscored.

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

(Approved April 23, 1997.)

ACT 75

S.B. NO. 1484

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 to part IV of article 3 a new section to be appropriately designated and to read as follows:

“**§431:3- Immunity.** There shall be no liability on the part of, and no cause of action shall rise against, the State, the commissioner, or the insurance division or its employees, agents, or independent contractors for any action taken by them in the performance of their powers and duties under this part.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by amending the title of part IV of article 3 to read as follows:

“**[PART IV.] RISK-BASED CAPITAL FOR [LIFE AND HEALTH] INSURERS**”

SECTION 3. Section 431:3-401, Hawaii Revised Statutes, is amended as follows:

(1) By adding two new definitions to be appropriately inserted and to read as follows:

““Life or health insurer” means any insurer that is within the definition of section 431:1-204 or 431:1-205 and is licensed under article 3, or a licensed property and casualty insurer writing only accident and health insurance.

““Property and casualty insurer” means any insurer that is within the definition of section 431:1-206, 431:1-207, 431:1-208, 431:1-209, 431:1-210, or 431:1-211 and is licensed under article 3, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.”

(2) By amending the definition of “adjusted risk-based capital report” to read as follows:

““Adjusted risk-based capital report” means a risk-based capital report which has been adjusted by the commissioner in accordance with section [431:3-402(c).] 431:3-402(e).”

(3) By amending the definition of “negative trend” to read as follows:

““Negative trend” means [a], with respect to a life or health insurer, negative trend over a period of time, as determined in accordance with the “trend test calculation” included in the risk-based capital instructions.”

(4) By amending the definition of “total adjusted capital” to read as follows:

““Total adjusted capital” means the sum of:

- (1) An insurer’s statutory capital and surplus[; and] as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under section 431:3-301; and
- (2) Any other items that the risk-based capital instructions may provide.”

SECTION 4. Section 431:3-402, Hawaii Revised Statutes, is amended to read as follows:

“**[§431:3-402] Risk-based capital reports.** (a) Every domestic insurer, on or before each March 15 (the “filing date”), shall prepare and submit to the commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing any information that is required by the risk-based capital instructions. In addition, every domestic insurer shall file its risk-based capital report:

- (1) With the National Association of Insurance Commissioners in accordance with the risk-based capital instructions; and
- (2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk-based capital report not later than the later of:
  - (A) Fifteen days from the receipt of notice to file its risk-based capital report with that state; or
  - (B) The filing date.

(b) [An] A life or health insurer’s risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance [between] among the following, which shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

- (1) The risk with respect to the insurer’s assets;
- (2) The risk of adverse insurance experience with respect to the insurer’s liabilities and obligations;
- (3) The interest rate risk with respect to the insurer’s business; and
- (4) All other business risks and any other relevant risks that are set forth in the risk-based capital instructions.

(c) A property and casualty insurer’s risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance among the following, which shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

- (1) Asset risk;
- (2) Credit risk;
- (3) Underwriting risk; and
- (4) All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.

(d) An excess of capital over the amount produced by the risk-based capital requirements contained in this part and the formulas, schedules, and instructions referenced in this part is desirable in the business of insurance. Accordingly, insurers shall seek to maintain capital above the risk-based capital levels required by this part. Additional capital is used and useful in the business of insurance and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this part.

[(c)] (e) If a domestic insurer files a risk-based capital report which, in the judgment of the commissioner, is inaccurate, then the commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk-based capital report as so adjusted is referred to as an adjusted risk-based capital report.”

SECTION 5. Section 431:3-403, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) “Company action level event” means any of the following events:
- (1) The filing of a risk-based capital report by an insurer which indicates that:
    - (A) The insurer’s total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
    - (B) [The] If a life or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5, and has a negative trend;
  - (2) The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph [(1)(A) or (B),] (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-407; or
  - (3) If, pursuant to section 431:3-407, the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in paragraph [(1)(A) or (B) under section 431:3-407,] (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.
- (b) In the event of a company action level event, the insurer shall prepare and submit to the commissioner a [comprehensive financial] risk-based capital plan which shall:
- (1) Identify the conditions in the insurer which contribute to the company action level event;
  - (2) Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;
  - (3) Provide projections of the insurer’s financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;
  - (4) Identify the key assumptions having an impact on the insurer’s projections and the sensitivity of the projections to the assumptions; and
  - (5) Identify the quality of, and problems associated with, the insurer’s business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case, if any.”

SECTION 6. Section 431:3-404, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ‘‘Regulatory action level event’’ means, with respect to any insurer, any of the following events:

- (1) The filing of a risk-based capital report by the insurer which indicates that the insurer’s total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital;
- (2) The notification by the commissioner to an insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-407;
- (3) If, pursuant to section 431:3-407, the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1) [under section 431:3-407], the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge;
- (4) The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date;
- (5) The failure of the insurer to submit a risk-based capital plan to the commissioner within the time set forth in section 431:3-403(c);
- (6) Notification by the commissioner to the insurer that:
  - (A) The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and
  - (B) The notification constitutes a regulatory action level event with respect to the insurer, if the insurer has not challenged the determination under section 431:3-407;
- (7) If, pursuant to section 431:3-407, the insurer challenges a determination by the commissioner under paragraph (6) [pursuant to section 431:3-407], the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the challenge;
- (8) Notification by the commissioner to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the [regulatory] company action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification, and if the insurer has not challenged the determination under section 431:3-407; or
- (9) If, pursuant to section 431:3-407, the insurer challenges a determination by the commissioner under paragraph (8) [pursuant to section 431:3-407], the notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the challenge[, unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event with respect to the insurer].’’

SECTION 7. Section 431:3-404, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In determining corrective actions, the commissioner may take into account any relevant factors with respect to the insurer based upon the commis-



sioner's examination or analysis of the assets, liabilities, and operations of the insurer, including but not limited to the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted:

- (1) Within forty-five days after the occurrence of the regulatory action level event;
- (2) If the insurer challenges an adjusted risk-based capital report pursuant to section 431:3-407 and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge; or
- (3) If the insurer challenges a revised risk-based capital plan [under section 431:3-407,] pursuant to section 431:3-407 and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after notification to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge."

SECTION 8. Section 431:3-405, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) “Authorized control level event” means any of the following events:
- (1) The filing of a risk-based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital;
  - (2) The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-407;
  - (3) If, pursuant to section 431:3-407, the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in [section 431:3-407(1),] paragraph (1), notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge;
  - (4) The failure of the insurer to respond in a manner satisfactory to the commissioner to a corrective order; provided the insurer has not challenged the corrective order under section 431:3-407; or
  - (5) If the insurer has challenged a corrective order under section 431:3-407 and the commissioner, after a hearing, has rejected the challenge or modified the corrective order, the failure of the insurer to respond in a manner satisfactory to the commissioner to the corrective order subsequent to rejection or modification by the commissioner.”

SECTION 9. Section 431:3-406, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§431:3-406~~]]~~ **Mandatory control level event.** (a) “Mandatory control level event” means any of the following events:

- (1) The filing of a risk-based capital report which indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital;
- (2) Notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in para-

- graph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-407; or
- (3) If, pursuant to section 431:3-407, the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event [under section 431:3-407(1),] in paragraph (1), notification by the commissioner to the insurer that the commissioner, after a hearing, has rejected the insurer's challenge.
- (b) In the event of a mandatory control level event[.];
- (1) With respect to a life or health insurer, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under section 431:15-201. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period[.]; or
- (2) With respect to a property and casualty insurer, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15, or, in the case of an insurer that is writing no business and is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under section 431:15-201. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.'

SECTION 10. Section 431:3-407, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§431:3-407**~~]]~~ **Hearing.** (a) The insurer shall have the right to a hearing pursuant to chapter 91 upon being notified of any of the following:

- (1) Notification to an insurer by the commissioner of an adjusted risk-based capital report;
- (2) Notification to an insurer by the commissioner that:
  - (A) The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory; and
  - (B) The notification constitutes a regulatory action level event with respect to the insurer;
- (3) Notification to any insurer by the commissioner that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with

respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or

- (4) Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

(b) The insurer shall have the right to a confidential hearing exempt from chapter 92, on the record, and pursuant to chapter 91, at which the insurer may challenge any determination or action by the commissioner. The insurer shall notify the commissioner of its request for a hearing within five days after receiving the notification by the commissioner pursuant to subsection (a). Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than ten days, nor more than thirty days, after the date of the insurer's request."

SECTION 11. Section 431:3-408, Hawaii Revised Statutes, is amended to read as follows:

**“[[§431:3-408]] Confidentiality and prohibition on announcements[.]; prohibition on use in ratemaking.** (a) All risk-based capital reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and risk-based capital plans (including the results or report of any examination or analysis of an insurer performed pursuant to this part and any corrective order issued by the commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer which are filed with the commissioner, constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only to enforce actions taken by the commissioner pursuant to this part or any other provision of the insurance laws of this State.

(b) The comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this part, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing [[an[]] assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided that if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels (or any of them) or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(c) The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall

not be used by the commissioner for ratemaking, nor considered or introduced as evidence in any rate proceeding, nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.”

SECTION 12. Section 431:3-409, Hawaii Revised Statutes, is amended to read as follows:

“[[§431:3-409]] Supplemental provisions[.]; rules; exceptions. [The provisions of this] (a) This part [are] is supplemental to any other laws of this State, and shall not preclude or limit any other powers or duties of the commissioner under those laws, including, but not limited to [[article 15]].

(b) The commissioner may adopt rules necessary for the implementation of this part.

(c) The commissioner may exempt from the application of this part any domestic property and casualty insurer which:

- (1) Writes direct business in this State;
- (2) Writes direct annual premiums of \$2,000,000 or less; and
- (3) Assumes no reinsurance in excess of five per cent of direct premiums written.”

SECTION 13. Section 431:3-410, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the event of a company action level event [or], regulatory action level event, or authorized control level event with respect to any foreign insurer as determined under the risk-based capital statute applicable in the state of domicile of the insurer, or if no risk-based capital provision is in force in that state, under this part, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the risk-based capital law of that state, or if no risk-based capital provision is in force in that state, under section 431:3-403, the commissioner may require the foreign insurer to file a risk-based capital plan with the commissioner. In this event, the failure of the foreign insurer to file a risk-based capital plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this State.”

SECTION 14. Section 431:3-413, Hawaii Revised Statutes, is amended to read as follows:

“[[§431:3-413]] Phase-in provision. (a) For risk-based capital reports required to be filed by life or health insurers with respect to 1994, the following requirements shall apply in lieu of sections 431:3-403, 431:3-404, 431:3-405, and 431:3-406:

- (1) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder;
- (2) In the event of a regulatory action level event under section 431:3-404(a)(1), (2), or (3), the commissioner shall take the actions required under section 431:3-403;
- (3) In the event of a regulatory action level event under section 431:3-404(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event, the commissioner shall take the actions required under section 431:3-404 with respect to the insurer; and

- (4) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under section 431:3-405 with respect to the insurer.
- (b) For risk-based capital reports required to be filed by property and casualty insurers with respect to 1997, the following requirements shall apply in lieu of sections 431:3-403, 431:3-404, 431:3-405, and 431:3-406:
  - (1) In the event of a company action level event with respect to a domestic insurer, the commissioner shall take no regulatory action hereunder;
  - (2) In the event of a regulatory action level event under section 431:3-404(a)(1), (2), or (3), the commissioner shall take the actions required under section 431:3- 403;
  - (3) In the event of a regulatory action level event under section 431:3-404(a)(4), (5), (6), (7), (8), or (9), or an authorized control level event, the commissioner shall take the actions required under section 431:3-404 with respect to the insurer; and
  - (4) In the event of a mandatory control level event with respect to an insurer, the commissioner shall take the actions required under section 431:3-405 with respect to the insurer.”

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 16. This Act shall take effect upon its approval.

(Approved April 23, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 76

S.B. NO. 1778

A Bill for an Act Relating to Electricians.

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

SECTION 1. Section 448E-8.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§448E-8.5~~]]~~ **Continued competency; license renewals.** [Effective July 1, 1996, all journey worker electricians, journey worker industrial electricians, journey worker specialty electricians, supervising electricians, supervising industrial electricians, and supervising specialty electricians] (a) All licensed electricians except the maintenance electricians licensed by the board [prior to June 30, 1996, shall furnish] prior to each license renewal shall:

- (1) Furnish the board with proof of attendance at an educational course related to current updates of the National Electrical Code conducted by the community colleges, [prior to each license renewal, and all such electricians licensed by the board after June 30, 1996, shall successfully] or
- (2) Successfully complete an examination prescribed by the board on current updates to the National Electrical Code [prior to each license renewal]. The board shall contract with a professional testing agency to prepare, administer, and grade the examination. Fees related to the

examination shall be paid by the licensee directly to the  
[[ ]professional[ ]] testing agency.

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

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

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

(Approved April 23, 1997.)

## ACT 77

S.B. NO. 1631

A Bill for an Act Relating to Early Childhood Education.

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

SECTION 1. The legislature finds that children benefit from, and deserve access to, quality early childhood education and developmental services. The economic future of the State depends on the quality of the educational services provided to children at an early age. Although families have the primary responsibility for raising and transmitting values to their children, the legislature finds that the State, in partnership with communities and the private sector, can play an important role in assisting families in their effort to educate young children.

The legislature acknowledges that, in these difficult economic times, any effort by the State to assist in the development of a comprehensive system of early childhood education and care must necessarily be limited by existing resources. Nevertheless, the legislature believes that early childhood education and care are critical to the public good; assisting the private sector in the development of a coordinated system of early education and care serves a public purpose.

Innovative strategies for an incremental development plan should be explored and implemented to assist families with young children. Government can support and encourage the community organizations that are the primary service providers—schools, religious organizations, and private providers—to focus existing private and public resources more efficiently and effectively. This will require establishing more permanent working relationships among communities, the private sector, and government.

The purpose of this Act is to recognize a public and private partnership between the State and a private nonprofit corporation created as a focal point for policy development and dedicated to enhancing, developing, and coordinating quality early childhood education and care services. This Act will also coalesce private resources in partnership with available public money for the betterment of the children in this State.

It is not the intent of this Act to create a new public entity. This Act is intended to authorize a sustainable, effective, participatory coordinating structure that cuts across existing social service systems to coordinate early childhood services for families with young children.

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

**“CHAPTER  
HAWAII EARLY EDUCATION AND CARE**

**§ -1 Hawaii early education and care; designation; duties.** (a) Any state agency may contract with a private nonprofit corporation eligible for tax exempt status in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for the purposes of coordinating policy, disbursing public funds, and implementing community plans related to the provision of early childhood education and care services. The corporation, as a condition for receiving public funds, shall be subject to this chapter and be organized to:

- (1) Develop policy recommendations concerning all aspects of a coordinated early childhood education and care system, including coordination strategies, resource development, and advocacy more particularly described in the good beginnings early childhood education and care master plan as developed under the auspices of the office of the governor;
- (2) Provide the recommendations developed in accordance with paragraph (1) to the interdepartmental council established under section -4 and other appropriate agencies;
- (3) Disburse public funds in the manner authorized by law; and
- (4) Perform other duties as delineated in this chapter.

(b) No powers or duties assigned to the corporation within this chapter shall be construed to designate the corporation as a state agency or public entity.

**§ -2 Board of directors; established; composition.** (a) A corporation may qualify under section -1, provided that the board of directors of the corporation shall consist of not more than nine members, chosen as follows:

- (1) One member appointed by the interdepartmental council established under section -4 shall serve as an ex-officio voting member;
- (2) One member shall represent each county of the State, except the county of Kalawao, to represent the various community councils established in a respective county under section -3;
- (3) One member representing the general business community;
- (4) One member representing the general philanthropic community;
- (5) One member representing the early childhood education and care professional community; and
- (6) One member representing consumers of early childhood education and care services.

(b) The members of the board shall possess knowledge of the educational and developmental needs of young children as well as the support needs of their families.

(c) Vacated positions shall be filled in the same manner through which the member whose position has been vacated was appointed.

**§ -3 Community councils.** (a) The corporation shall oversee the establishment and implementation of not less than four community councils; provided that each county in the State, except the county of Kalawao, shall be represented by a community council. The community councils shall reflect the cultural make-up of the community and shall consist of representatives from groups or organizations that may be in a designated service delivery area, including but not limited to:

- (1) Families;
- (2) Organizations representing parents with young children;
- (3) Public or private nonprofit health, human services, and education agencies; and

- (4) Providers of early childhood education and care services, the business community, and local governments.
- (b) Each community council shall be responsible for developing and implementing a community plan that includes:
  - (1) A description of incremental and collaborative community strategies to provide early childhood education and care services to children and families in a designated service delivery area; and
  - (2) A description of new local financial resources which can be used to enhance services in that community, outcomes to be achieved, and steps to ensure compliance with fiscal accountability requirements established by the corporation and the interdepartmental council.
- (c) The community councils shall be given the maximum flexibility and discretion practicable in developing their community plans and shall submit their community plan to the corporation for review prior to the approval process required under section -5.
- (d) No powers or duties assigned to the community councils by this chapter shall be construed to designate any community council as a state agency or public entity.

**§ -4 Interdepartmental council.** There shall be a temporary interdepartmental council convened by the office of the governor for the special purpose of assisting the corporation in the implementation of its duties as delineated in the good beginnings early childhood education and care master plan. The governor shall appoint:

- (1) The superintendent of education;
  - (2) The director of human services;
  - (3) The director of health;
  - (4) The director of labor and industrial relations;
  - (5) The governor's special assistant for children and youth; and
  - (6) The director of business, economic development, and tourism
- to serve as members of the interdepartmental council. The governor's special assistant for children and youth shall serve as the presiding chairperson.

**§ -5 Approval of community plans; allocation of funding.** (a) Subject to the availability of funds, the corporation and the interdepartmental council, in the spirit of a public and private partnership, shall jointly review and approve the community plan presented by a community council and determine funding levels for each community council. The interdepartmental council shall suggest the disbursement of public funds through the appropriate departments represented on the council.

(b) The corporation and the interdepartmental council shall jointly submit an annual report to the governor and the legislature, twenty days prior to the convening of each regular session, that describes the activities and accomplishments of the corporation and the interdepartmental council, fund balances and expenditures, and the purpose of the expenditures."

SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, 2001.

(Approved April 28, 1997.)



A Bill for an Act Relating to the Definition of Chiropractic.

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

SECTION 1. Section 442-1, Hawaii Revised Statutes, is amended to read as follows:

“**§442-1 Chiropractic defined.** Chiropractic is defined to be the science of palpating and adjusting the articulations of the human spinal column by hand [only]; provided that the practice of chiropractic as contemplated and set forth in this chapter [shall not exclude the use of any method or means, or any agent, either tangible or intangible, for the treatment of disease in the human subject;] may include the use of necessary patient evaluation and management procedures of the human spinal column, hot or cold packs, whirlpool, therapeutic and rehabilitative exercise, traction, electrical and electromechanical stimulation, therapeutic ultrasound, myofascial release, diathermy, infrared, and chiropractic spinal manipulative treatment and extraspinal evaluations for the diagnosis and treatment of neuromusculoskeletal conditions related to the human spinal column, subject to the restrictions contained in this chapter; and provided further that the practice of chiropractic as contemplated and set forth in this chapter shall not include the practice of lomilomi or massage. For the purposes of this section, spinal refers to the five spinal regions: cervical region (includes atlanto-occipital joint); thoracic region (includes costovertebral and costotransverse joint); lumbar region; sacral region; and pelvic (sacro-iliac joint) region.”

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

SECTION 3. This Act shall take effect on July 1, 1998.

(Approved April 29, 1997.)

A Bill for an Act Relating to the Return of Merchandise.

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

SECTION 1. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§481B- Returns for refunds, merchandise credits, and exchanges.**

(a) As used in this section, unless the context otherwise requires:

“Ancillary charges” includes all charges paid to the merchant that are necessary for the use of the goods for their purchased purpose and all sums paid for agreements for service, warranty, or replacement.

“Conspicuous sign” means a sign posted in the merchant’s place of business in a location reasonably calculated to bring the sign to the attention of purchasers before a purchaser makes a purchase.

“Exchange” means a transaction between a merchant and a purchaser in which a previously purchased item is exchanged for another item.

“Full amount of the payment” includes the amount paid for the returned goods, including any ancillary charges or taxes incident to the purchase of the returned goods, and without any deduction for restocking of the merchant’s inventory, or for administration of the refund, exchange, or merchandise credit.

“Merchandise credit” means the crediting to the purchaser of the full amount of the payment upon return of the goods and allowing the purchaser to purchase goods from the merchant with the merchandise credit, or applying to the purchaser’s credit account with the merchant, in the amount of the merchandise credit.

“Merchant” means any person engaged in the business of offering goods for sale to purchasers at retail.

“Proof of purchase” means a sales slip, receipt, credit card slip, or any other documentation that substantiates the sale of the goods from the merchant and the amount of payment.

“Purchaser” means a natural person who is returning goods that were purchased or received primarily for personal, family, or household purposes.

“Refund” means the return to the purchaser of the full amount of the payment upon return of the goods, in accordance with this chapter.

“Repacking and transportation charges” means the charges for repacking, pickup, and transportation of goods previously delivered, unpacked, and set up by the merchant at the direction of the purchaser.

“Return” or “return of goods” means the acceptance by the merchant of goods from a purchaser, whether for refund, merchandise credit, or exchange, and includes the cancellation of a custom or special order before the merchant is obligated to make payment on the order and the cancellation of a layaway.

(b) Except as provided in this section, all merchants shall accept the return of goods for refund, merchandise credit, or exchange, giving purchasers rights that are no less than those provided in this section. The merchant may:

- (1) Choose one of the following policies by posting a conspicuous sign notifying purchasers of any one of the following limitations:
  - (A) Refunds only;
  - (B) Refunds or merchandise credit only;
  - (C) Exchanges or merchandise credit only; or
  - (D) No refunds, merchandise credits, or exchanges; and
- (2) Place specific limitations on the policy adopted by posting a conspicuous sign notifying the purchasers of any limitations allowed by subsections (c), (d), (e), and (f).

(c) Any merchant who does not accept the return of goods shall post conspicuous signs bearing the words “All sales final”, or “No returns for refunds, merchandise credits, or exchanges”, or words or phrases of similar import, to inform customers that no return of goods shall be accepted.

(d) Any merchant who limits the period during which goods may be returned to less than sixty days after the date of purchase or delivery shall post conspicuous signs informing purchasers of the limitation of the period during which the return of goods shall be accepted.

(e) Any merchant who excludes a certain category or type of goods from its return policy shall post one or more conspicuous signs identifying that type of goods.

(f) Any merchant who excludes custom or specially ordered goods from its return policy shall post conspicuous signs, or otherwise notify the purchaser, with the purchaser’s written acknowledgement, of the return policy. For custom or specially ordered goods, the policy may allow the merchant to accept the return of the goods and to charge the purchaser for the cost of shipping if the charge is disclosed prior to the purchase.

(g) Any person engaged in the business of offering goods for sale at retail who fails to post a conspicuous sign as required by this section shall accept the return of goods from purchasers and make refunds in accordance with subsection (h).

(h) All merchants, except as provided in subsection (c), shall handle returns for refunds in the following manner:

- (1) If payment was made in cash, the refund shall be made in cash at the time of the return of goods, except that if the amount to be returned exceeds \$25, cash refunds may be made by check issued within ten days of the date of the return;
- (2) If payment was made by check, the refund shall be made in cash upon acceptance of the returned goods by the merchant, or by check issued within ten days of the acceptance of the returned goods by the merchant, except that if the purchaser's check has not cleared the bank on which it was drawn, the refund may be delayed for no more than ten days after the date the purchaser's check has cleared; provided that the merchant shall have complied with this provision if the check is mailed to the purchaser at the address provided by the purchaser within the ten-day period;
- (3) If payment was made by credit card, the refund shall be made by credit to the purchaser's credit card account; provided that the merchant shall initiate the submittal of the charge card credit memo or other appropriate documentation to the merchant's financial institution within five banking business days after the return of goods or, at the merchant's option, the refund may be made in cash at the time of the return of the goods or by check issued and mailed within ten days of the acceptance of the returned goods; or
- (4) If payment was made by charging a credit account administered by the merchant, the refund shall be made by credit to the purchaser's credit account initiated at the time of the return of the goods.

(i) All merchants, except as provided in subsection (c), shall handle returns for merchandise credit in the following manner:

- (1) If the purchaser does not select goods in exchange for the returned goods within thirty days of the return, the merchant shall make a full refund to the purchaser in cash or in accordance with subsection (h). The merchant shall not be required to return cash in exchange for a merchandise credit issued pursuant to this paragraph if the merchant posts a conspicuous sign to notify purchasers that the merchandise credit cannot be turned into cash;
- (2) The merchandise credit shall be valid for a minimum of two years; and
- (3) Before exchanging the merchandise credit for cash or, in the case of a purchaser selecting goods in exchange costing less than the amount of the merchandise credit, refunding the difference in cash, the merchant may require proof of purchase and require the surrender of the credit memo.

(j) All merchants, except as provided in subsection (c), shall handle returns for exchanges in the following manner:

- (1) If the exchange involves an exchange for only size or color, the exchange shall be made without regard to the full amount of payment; provided that the merchant may make an appropriate adjustment if the differing size or color normally sells at a different price; and
- (2) If the exchange does not involve an exchange for only size or color, then if the full amount of the payment for the goods received in exchange is less than the full amount of the payment for the returned

goods, the merchant shall issue a refund or merchandise credit in the amount of the difference.

(k) In determining the full amount of the payment for returns for reasons other than damaged or defective goods, a deduction for repacking and transportation charges may be made from the full amount of the payment, if the deduction is disclosed to the purchaser prior to the purchase.

(l) Any return policies adopted by the merchant pursuant to this section that limits the purchaser's ability to obtain a refund shall not apply if the goods were damaged or defective prior to the time of sale, unless the merchant was aware of the damage or defect and notified the purchaser of the damage or defect in writing prior to the time of sale.

(m) A merchant is not required to accept a return if:

- (1) There is no proof of purchase, by sales slips, receipts, or other evidence of purchase of the goods returned;
- (2) The purchaser has retained the goods in excess of sixty days after the purchase;
- (3) The goods have been used or damaged after sale, or altered by the purchaser at the time of or after the sale; or
- (4) The goods are of a type which are unsuitable for resale, pursuant to any applicable law.

(n) The following constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under section 480-2:

- (1) Any violation of this section; and
- (2) Any act or policy that causes a compromise of the purchaser's rights and protections established by this section."

SECTION 2. Section 481B-5, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved April 29, 1997.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 80

S.B. NO. 1118

A Bill for an Act Relating to Pest Control Operators.

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

SECTION 1. Chapter 460J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§460J- Advertising** (a) It is a misdemeanor for any person, including a person who is exempt by section 460J-26 from this chapter, to advertise with or without any limiting qualifications as a pest control operator unless the person holds a valid license under this chapter for the goods and services advertised.

“Advertise” as used in this section includes but is not limited to:

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

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- (2) The causing, permitting, or allowing of any sign or marking on or in any building, vehicle, or structure;
- (3) Advertising in any newspaper or magazine;
- (4) Any listing or advertising in any directory under a classification or heading that includes the word "pest control"; or
- (5) Commercials broadcast by airwave transmission.

(b) A pest control operator may advertise in print or broadcast medium, as defined in subsection (a) only if the pest control operator includes in the advertisement or listing the pest control operator's applicable and current license number, and provides proof of the number's validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall refuse to publish or broadcast an advertisement or listing for a pest control operator who does not comply with the provisions of this subsection. A publisher or producer who obtains a signed statement from the pest control operator that states that the pest control operator:

- (1) Has read the text of the advertisement or listing;
- (2) Has an applicable and current pest control operator's license for the goods and services advertised;
- (3) Has included all applicable and current license numbers in the advertisement or listing; and
- (4) Is aware of civil and criminal penalties for advertising as a pest control operator without a valid license;

shall be entitled to a rebuttable presumption of compliance with this subsection.

(c) Upon entry of either a final order of the pest control board pursuant to chapter 91 or a judgment by a court of competent jurisdiction finding that a person has advertised in violation of subsection (a), the public utility furnishing telephone service to the person shall disconnect the telephone number contained in the advertisement or listing.

(d) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from its refusal to list or accept advertisements pursuant to subsection (b). Good faith compliance by a public utility with subsection (c) is a complete defense to any civil or criminal action brought against it arising from the termination of telephone service."

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved April 29, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 81

S.B. NO. 1486

A Bill for an Act Relating to Insurance Rate Regulation.

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

SECTION 1. Section 431:14-104, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (e) to read:

“(e) [A] Except for rates filed in accordance with subsections (k), (l), and (m), a filing and any supporting information shall be open to public inspection upon filing with the commissioner.”

2. By amending subsections (i), (j), and (k) to read:

“(i) The commissioner shall review filings [and hold public hearings on the filings] as soon as reasonably possible after they have been made to determine whether they meet the requirements of this article. The commissioner shall calculate the investment income and accuracy of loss reserves upon which filings are based, and the insurer shall provide the information necessary to make the calculation.

(j) [Subject to the exception specified in subsection (k),] Except as provided herein and in subsections (k) and (l) and section 431:14-120, each filing shall be on file for a waiting period of [ninety] thirty days before the filing becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer, rating organization, or advisory organization that made the filing that the commissioner needs the additional time for the consideration of the filing. Upon the written application by the insurer, rating organization, or advisory organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

(k) The following rates shall become effective when filed:

- (1) Specific inland marine rates on risks specially rated by a rating organization; [and]
- (2) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order or rule of a public body, not covered by a previous filing[.]; and
- (3) Any special filing with respect to any class of insurance, subdivision, or combination thereof which is subject to individual risk premium modification and has been agreed to by an insured under a formal or informal bid process.

The rates shall be deemed to meet the requirements of this article until the time the commissioner reviews the filing and so long as the filing remains in effect.”

3. By amending subsection (n) to read:

“(n) No insurer shall make or issue a contract or policy except in accordance with filings which are in effect for the insurer as provided in this article or in accordance with subsections [(l)] (k), (l), or (m). This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required.”

SECTION 2. Section 431:14-120, Hawaii Revised Statutes, is amended to read as follows:

**“§431:14-120 Additional powers for workers’ compensation rate filing and ratemaking.** (a) The commissioner shall review filings as soon as reasonably possible after they have been made to determine whether they meet the requirements of this article. The commissioner shall hold public hearings on workers’ compensation rate filings that result in increases or decreases. The public hearing notice shall be mailed to the insurer, rating organization, or advisory organization that made the filing and filed with the office of the lieutenant governor at least six calendar days before the hearing. The public hearing notice requirement shall be exempt from section 92-41.

(b) Except as provided herein, each filing shall be on file for a waiting period of ninety days before the filing becomes effective. The period may be extended by

the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer, rating organization, or advisory organization that made the filing that the commissioner needs the additional time for the consideration of the filing. Upon the written application by the insurer, rating organization, or advisory organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

(c) The commissioner may institute proceedings for appropriate relief including but not limited to proceedings to roll back current rates whenever it appears to the commissioner that an insurer or other interested persons regulated by this article affecting workers' compensation insurance rates has:

- (1) Violated or failed to comply with any provisions of this part or of any state or federal law;
- (2) Failed to comply with any rule, regulation, or other requirement of any other state or federal agency which affects workers' compensation insurance rates;
- (3) Failed to comply with any provision of its charter or franchise;
- (4) Set or applied any rates, classification, charges, or rules affecting workers' compensation insurance that are unreasonable or are unreasonably discriminatory;
- (5) Failed to give appropriate consideration to investment income earned or realized by insurers, including investment income earned from unearned premium and loss reserve funds in making rates; or
- (6) Failed to recognize good safety performance records of employers in setting premium rates and levels."

SECTION 3. Section 431:14-119, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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

(Approved April 29, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 82**

S.B. NO. 1495

A Bill for an Act Relating to Motor Vehicle Lease Disclosure.

*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  
MOTOR VEHICLE LEASE DISCLOSURE ACT**

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Adjusted capitalized cost” means the gross capitalized cost, less the capitalized cost reduction, and is the amount used by the retail lessor in calculating the base periodic payment in the lease agreement.

“Capitalized cost reduction” means the total amount of any rebate, cash payment, net trade-in allowance, check, credit card debit, and noncash credit or down payment that reduces the gross capitalized cost, but does not include any periodic lease payments due at the inception of the lease or all of the periodic lease payments if they are paid at the inception of the lease.

“Clear and conspicuous” means that written disclosures shall be made in a manner that is readable and understandable to the retail lessee and oral disclosures shall be made in a manner that is audible and understandable to the retail lessee.

“Gross capitalized cost” means the amount agreed upon by the retail lessor and the retail lessee as the value of the motor vehicle and any items that are capitalized or amortized during the lease term, including but not limited to taxes, insurance, service agreements, registration fees, license fees, lease acquisition and administration fees, warranty charges, fees and charges for accessories and for installing accessories, charges for delivery, service and repair, charges for improving the motor vehicle and providing other services incidental to the agreement, the outstanding balance of a prior loan agreement, lease or motor vehicle retail installment contract, and the unpaid portion of the early termination obligation under an outstanding lease agreement.

“Lease agreement” means a written agreement for the transfer from a retail lessor to a retail lessee of the right to possess and use a motor vehicle in exchange for consideration for a scheduled term exceeding four months, whether or not the retail lessee has the option to purchase or otherwise become the owner of the motor vehicle upon expiration of the agreement. The term does not include an agreement which covers an absolute sale, a sale pending approval, or a retail installment sale.

“Lease transaction” means a presentation made to the retail lessee concerning the motor vehicle, including a sales presentation or a document presented to the retail lessee, resulting in the execution of a lease agreement.

“Motor vehicle” means a motor vehicle as defined in section 286-2.

“Retail lessee” means an individual who executes a lease agreement for a motor vehicle from a retail lessor primarily for personal, family, or household purposes.

“Retail lessor” means a person who regularly engages in the business of selling or leasing motor vehicles and who offers or arranges a lease agreement for a motor vehicle. The term includes an agent or affiliate who acts on behalf of the retail lessor.

“Worksheet” means the primary document or documents used by the retail lessor to derive the monthly lease payment for a specific lease transaction.

**§ -2 Disclosures.** A retail lessor shall:

- (1) Disclose in the lease agreement provided to the lessee, in a clear and conspicuous manner, any and all material terms, conditions, and limitations that apply to the lease agreement, including but not limited to the consumer lease disclosures required by the federal Truth in Lending Act and rules adopted under that Act;
- (2) Disclose to the retail lessee in the lease agreement in a separate blocked section, in capital letters of at least ten point bold type, as follows: THIS IS A LEASE AGREEMENT. THIS IS NOT A PURCHASE AGREEMENT. PLEASE REVIEW THESE MATTERS CAREFULLY AND SEEK INDEPENDENT PROFESSIONAL ADVICE IF YOU HAVE ANY QUESTIONS CONCERNING THIS TRANSACTION. YOU ARE ENTITLED TO AN EXACT COPY OF THE



AGREEMENT YOU SIGN. GET ALL PROMISES IN WRITING. ORAL PROMISES ARE DIFFICULT TO ENFORCE.;

- (3) Disclose to the retail lessee in the lease agreement in capital letters of at least ten point bold type, with the appropriate amounts specified, the following:
  - (A) THE GROSS CAPITALIZED COST \$ \_\_\_\_\_
  - (B) THE CAPITALIZED COST REDUCTION \$ \_\_\_\_\_
  - (C) THE ADJUSTED CAPITALIZED COST \$ \_\_\_\_\_;
- (4) Provide the retail lessee with a copy of each document that is signed by the retail lessee during the course of the lease transaction and any document that is referenced or incorporated into the lease agreement. Also, provide the retail lessee with a copy of each document requested by the retail lessee that is presented during the course of the lease transaction;
- (5) Prepare all disclosures made pursuant to sections -2 and -3 and all documents executed in a lease transaction in the language principally used in negotiating the lease transaction; and
- (6) Upon request by the retail lessee at any time during the lease transaction and at any time during the first six months of the term of the lease agreement, provide to the retail lessee at no cost to the retail lessee a copy of the retail lessor's worksheets used to calculate the periodic lease payment. Worksheets that are stored on computer media shall be reduced to printed form for the lessee. The worksheets shall be maintained by the retail lessor or its agents during the first six months of the term of the lease agreement. The retail lessor shall not be required to provide those portions of any worksheets that contain dealer markup information or lease assignment settlement amounts.

§ -3 **Trade-in vehicle.** A trade-in vehicle used to reduce the gross capitalized cost shall be identified as a trade-in vehicle in the lease agreement and identified by year, make, and model. The lease agreement shall also state, in an amount distinct from the capitalized cost reduction, the total credit value of the trade-in vehicle, including a good-faith estimate of any liability against the trade-in vehicle to be discharged by the retail lessor.

§ -4 **Civil remedies.** A retail lessor who fails to comply with the requirements of this chapter shall be deemed to have engaged in an unfair and deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2."

SECTION 2. This Act shall take effect upon its approval; however, compliance with the requirements of this chapter is optional until January 1, 1998.

(Approved April 29, 1997.)

**ACT 83**

S.B. NO. 1499

A Bill for an Act Relating to Unfair Methods of Competition.

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

SECTION 1. Section 431:2-208, Hawaii Revised Statutes, is amended to read as follows:

**“§431:2-208 Access to records.** (a) Every person subject to investigation or examination by the commissioner, its officers, employees, and representatives shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in the person’s possession or control relating to the subject of the investigation or examination, and shall otherwise facilitate the investigation or examination.

(b) If the commissioner finds the accounts to be inadequate [or], improperly kept, or posted, the commissioner may employ experts to rewrite, post, or balance them at the expense of the person being examined, if the person has failed to correct the accounting records after the commissioner has given the person written notice and a reasonable opportunity to do so.

(c) An insurer or licensee shall issue a written response with reasonable promptness, in no case more than fifteen working days, to any written inquiry made by the commissioner regarding a claim or consumer complaint. The response shall be more than an acknowledgment that the commissioner’s communication has been received, and shall adequately address the concerns stated in the communication.”

SECTION 2. Section 431:9-105, Hawaii Revised Statutes, is amended to read as follows:

**“§431:9-105 Adjuster defined.** (a) Adjuster means any individual who:

- (1) Acts solely on behalf of either the insurer or the insured, as an independent contractor or as an employee of an independent contractor; and
- (2) Investigates for, reports to, or adjusts for the individual’s principal relative to claims arising under insurance contracts.

(b) Independent adjuster means an adjuster representing the interests of the insurer.

(c) Public adjuster means an adjuster employed by and solely representing the financial interests of the insured named in the policy.

(d) For the purposes of this article, the following individuals are not deemed to be an adjuster:

- (1) An attorney at law who adjusts insurance losses from time to time incidental to the practice of the attorney’s profession;
- (2) An adjuster of marine losses;
- (3) A salaried employee of a general agent, a subagent, an insurer, or of an adjusting corporation or association owned and controlled by insurers; and
- (4) An individual who acts for a self-insurer or for an insured which administers its own group insurance contract.

(e) Following a catastrophe in this State, a Hawaii license shall not be required of a nonresident independent adjuster for the adjustment of losses; provided:

- (1) The common losses suffered that are to be adjusted are a direct result of that catastrophe;
- (2) The adjuster provides to the licensing branch of the insurance division a certified copy of another state’s current license. That other state shall have similar licensing requirements to section 431:9-217;
- (3) That within three working days of when the nonresident independent adjuster begins work, the insurance company, independent adjusting company, general agent, or subagent that is utilizing the adjuster shall provide on its letterhead to the licensing branch of the insurance division:

(A) The name of the adjuster;

- (B) The adjuster's Hawaii mailing and business addresses and phone numbers; and
- (C) The adjuster's permanent nonresident home and business addresses and phone numbers.

For the purpose of this subsection, a catastrophe exists when due to a sudden, specific, and natural or manmade disaster or phenomenon, there arises property losses in Hawaii that are covered by insurance. These losses must be so severe that resident licensed and independent adjusters will be unable to adjust the losses within a reasonable time as determined by the division.

(f) Upon satisfaction of all the requirements in subsection (e), the nonresident independent adjuster may be registered with the licensing branch of the insurance division and adjust catastrophic losses in this State for up to one hundred twenty days from the date of registration or for a period of time determined by the commissioner, whichever is less.'

SECTION 3. Section 431:9-227, Hawaii Revised Statutes, is amended to read as follows:

**“§431:9-227 General agent or subagent may adjust without a license.**

- (a) (1) On behalf of and as authorized by an insurer, a general agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster; and
- (2) On behalf of and as authorized by the general agent, with respect to whom a subagent is licensed as subagent, a subagent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(b) An adjuster who is a general agent or a subagent is not permitted to adjust or cause the adjustment of any loss where the adjuster's remuneration for the sale of insurance is primarily dependent upon the adjustment of the loss. This subsection shall not be applicable to any general agent or subagent whose remuneration for the sale of insurance, on December 31, 1955, was primarily dependent upon the adjustment of losses, or to any general agent, subagent, or an insurer who, on December 31, 1955, was transacting insurance where the general agent's or subagent's remuneration for the sale of such insurance was primarily dependent upon the adjustment of losses.

[(c) A license shall not be required of a nonresident independent adjuster for the adjustment in this State of a single loss, or of more than one loss arising out of a catastrophe common to all such losses.]'

SECTION 4. Section 431:13-103, Hawaii Revised Statutes, is amended to read as follows:

**“§431:13-103 Unfair methods of competition and unfair or deceptive acts or practices defined.** (a) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
  - (A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
  - (B) Misrepresents the dividends or share of the surplus to be received on any insurance policy;

- (C) Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;
  - (D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
  - (E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;
  - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;
  - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy;
  - (H) Misrepresents any insurance policy as being shares of stock;
  - (I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or
  - (J) Publishes or advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Boycott, coercion, and intimidation.
- (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; or
  - (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.
- (5) False financial statements.
- (A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer; or
  - (B) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer with intent to deceive any

agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
- (7) Unfair discrimination.
  - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract;
  - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the term or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder;
  - (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:
    - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination[.]; or
    - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate; [or]
  - (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:
    - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination[.]; or
    - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
  - (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits; [or]

- (F) To terminate, [or to] modify coverage, or [to] refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to disability insurance sold by a casualty insurer; provided further that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract; [or]
  - (G) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance; or
  - (H) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because the individual refuses to consent to the release of information which is confidential as provided in section 325-101; provided that nothing in this subparagraph shall prohibit an insurer from obtaining and using the results of a test satisfying the requirements of the commissioner, which was taken with the consent of an applicant for insurance; provided further that any applicant for insurance who is tested for HIV infection shall be afforded the opportunity to obtain the test results, within a reasonable time after being tested, and that the confidentiality of the test results shall be maintained as provided by section 325-101.
- (8) Rebates. Except as otherwise expressly provided by law:
- (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to the contract other than as plainly expressed in the contract, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits, or any valuable consideration or inducement not specified in the contract; or
  - (B) Giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract.
- (9) Nothing in [item (7) or item (8)] paragraphs (7) or (8) shall be construed as including within the definition of discrimination or rebates any of the following practices:
- (A) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance[.]; provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders[.];
  - (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense[.];

- (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year[.]; and
  - (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this article.
- (10) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:

- (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- (B) With respect to claims arising under its policies, failing to respond with reasonable promptness, in no case more than fifteen working days, to communications received from:
  - (i) The insurer's policyholder[, or];
  - (ii) Any other persons, including the commissioner[.]; or
  - (iii) The insurer of a person involved in an incident in which the insurer's policyholder is also involved.

The response shall be more than an acknowledgment that such person's communication has been received, and shall adequately address the concerns stated in the communication;

- (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (F) Failing to offer payment within thirty calendar days of affirmation of liability, if the amount of the claim has been determined and is not in dispute;
- (G) Failing to provide the insured, or when applicable the insured's beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported;
- (H) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
- (I) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
- (J) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (K) Attempting to settle claims on the basis of an application which was altered without notice, [or] knowledge, or consent of the insured;
- (L) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
- (M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the

purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

- (N) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
  - (O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;
  - (P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; and
  - (Q) Indicating to the insured on any payment draft, check, or in any accompanying letter that the payment is "final" or is "a release" of any claim if additional benefits relating to the claim are probable under coverages afforded by the policy; unless the policy limit has been paid or there is a bona fide dispute over either the coverage or the amount payable under the policy.
- (11) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination under section 431:2-302. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this section, [complaint shall mean] "complaint" means any written communication primarily expressing a grievance.
- (12) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.
- (b) The commissioner shall by certified mail notify the insurer's agent, as designated pursuant to section 431:2-205, of each complaint filed with the commissioner under this section.

(c) Three or more written complaints received by the commissioner within any twelve-month period charging separate violations of this section shall constitute a rebuttable presumption of a general business practice.

(d) Evidence as to numbers and types of complaints to the commissioner against an insurer, and the commissioner's complaint experience with other insurers writing similar lines of insurance, shall be admissible in an administrative or judicial proceeding brought under this section. No insurer shall be deemed in violation of this section solely by reason of the numbers and types of such complaints except if the presumption under subsection (c) is not rebutted.

(e) If it is found, after notice and an opportunity to be heard, that an insurer has violated this section, each instance of noncompliance may be treated as a separate violation of this section for the purposes of section 431:2-203.

(f) An insurer or licensee shall issue a written response with reasonable promptness, in no case more than fifteen working days, to any written inquiry made by the commissioner regarding a claim or consumer complaint. The response shall be more than an acknowledgment that the commissioner's communication has been received, and shall adequately address the concerns stated in the communication."



## ACT 84

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 April 29, 1997.)

## ACT 84

S.B. NO. 1515

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-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 be engaged in the business of pest control without a license previously obtained under and in compliance with this chapter and the rules of the board. [No person required to be licensed under this chapter shall be subject to chapter 444.]”

SECTION 2. Section 460J-8, Hawaii Revised Statutes, is amended to read as follows:

**“§460J-8 License requirements.** To obtain an operator’s license, a person shall fulfill the following requirements:

- (1) File an application as prescribed by the board;
- (2) Possess a history of honesty, truthfulness, financial integrity, and fair dealing;
- (3) Be at least eighteen years of age;
- (4) Satisfy the board’s examination and experience requirements;
- (5) If a partnership, joint venture, corporation, or sole proprietorship, be under the direct management of a responsible managing employee or operator with an appropriate license;
- (6) Submit 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 or is excluded from the requirements of chapter 386;
- (7) Submit satisfactory proof to the board that the person has obtained liability insurance, pursuant to section 460J-25; and
- (8) Provide other documentation as required by the board.”

SECTION 3. Section 460J-12, Hawaii Revised Statutes, is amended to read as follows:

**“§460J-12 Classification of branches of pest control; examinations; rules [and regulations]; subjects of examination; passing grade.** (a) Licenses issued to operators or field representatives shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. For the purpose of delimiting the type and character of work authorized by the various branch licenses hereinafter set forth, the practice of pest control is classified into the following branches:

- (1) Branch 1. Fumigation. The practice relating to the control of household and wood-destroying pests by fumigation with poisonous or lethal gases.
- (2) Branch 2. General Pest. The practice relating to the control of household pests, other than termites, excluding fumigation with poisonous or lethal gases.
- (3) Branch 3. Termite. The practice relating to the control of wood-destroying pests by the use of insecticides and corrections, excluding fumigation with poisonous or lethal gases.

The board may issue a license for a combination of two or more branches for which an applicant qualifies under this chapter, and such combination license shall be considered one license for the purpose of determining the fee to be charged under section 460J-14.

[(b) Any person who, on or after January 1, 1951, was operating as a fumigator or a pest control operator under a permit issued by the department of health or operating under a license issued by the contractors license board, shall, without requirement or examination, receive a license commensurate to the class of active permit or license presently held by the person.

(c) [(b) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. All examination papers shall be kept for a period of one year, upon the expiration of which such papers may be destroyed on order of the board. Each applicant for license shall be designated by a number instead of by name and the identity thereof shall not be disclosed until the examination papers are graded. No person shall be admitted to the examination room except the examining personnel and the applicants for license.

[(d) (c) The board shall make rules [and regulations] for the purpose of securing fair, impartial, and proper examinations.

[(e) (d) Licensees of any branch may be licensed in other branches upon complying with the requirements for qualification and by examination in such other branches. No failure of the licensee to pass examination in such other branches shall have any effect on existing licenses.

[(f) (e) The examinations shall be in each of the subjects specified in the branch or branches relating to the respective applications. A license according to such applications shall be granted to any applicant who scores a passing grade on the examination in each of the subjects of such branch or branches.”

SECTION 4. Section 460J-14, Hawaii Revised Statutes, is amended to read as follows:

**“§460J-14 Fees; biennial renewal[.]; inactive license.** (a) The biennial renewal fee shall be paid to the board on or before June 30 of each even-numbered year. Failure, neglect, or refusal of any duly licensed operator to pay the biennial renewal fee shall constitute a forfeiture of the person’s license. Any license may be restored upon written application therefor within one year from the due date of the renewal fee and the payment of the delinquent fee plus an amount equal to ten per cent thereof.

(b) Upon written request of a licensee, the board may place the licensee’s active license on an inactive status. The licensee, upon request and payment of the inactive license fee may continue on inactive status. The license may be reactivated at any time by making a written request to the board and by fulfilling the requirements established by the board, including the payment of the appropriate fees. During the inactive period, a licensee on inactive status shall not engage in the practice of pest control that would require a license. Any person who violates this prohibition shall be subject to discipline under this chapter and the board’s rules.

(c) For purposes of this chapter, the dishonoring of any check upon first deposit shall constitute a failure to meet the fee requirements. Failure, neglect, or refusal of any licensee on inactive status to pay the inactive license fee shall constitute a forfeiture of the license.”

SECTION 5. Section 460J-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew any license issued hereunder, for any cause authorized by law, including but not limited to the following:

- (1) Departure from, or disregard of, plans or specifications in the performance of pest control work in any material respect, without consent of the owner or the owner’s authorized representative;
- (2) [~~Disregard and violation~~] Violation of any law of the State or any county relating to building, pesticide use, safety, or labor, including [any] violation of any applicable law or rule of the [department of] departments of agriculture, health, or [of any applicable safety or labor law;] labor and industrial relations;
- (3) Misrepresentation of a material fact by the applicant in obtaining a license;
- (4) Failure on the part of a licensee to complete any operation or construction repairs for the price stated in the contract for the operation or construction repairs or in any modification of the contract;
- (5) Failure to comply with this chapter, or any rule adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for termites;
- (6) The commission of any grossly negligent or fraudulent act by the licensee as an operator;
- (7) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (8) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work relating to any infestation or infection of termites found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by termites whether or not a report was made pursuant to sections 460J-19 and 460J-20;
- (9) Failure of an operator to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than two years after completion of any work or operation for the control of termites;
- (10) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the operator’s operations as an operator when the operator has the ability to pay or when the operator has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (11) The false denial of any debt due or the validity of the claim therefor with intent to secure for the licensee, the licensee’s employer, or other person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (12) Failure to secure or maintain workers’ compensation insurance when not authorized to act as a self-insurer under chapter 386, or when not excluded from the requirements of chapter 386;

- (13) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter; or
- (14) Conviction of any offense described in chapter 708 committed while in the performance of the person's regular occupation as a pest control operator."

SECTION 6. Section 460J-17, Hawaii Revised Statutes, is amended to read as follows:

“[[§460J-17]] **Death or dissociation.** No partnership, joint venture, or corporation shall be deemed to have violated this chapter by acting or assuming to act as a [contractor] pest control operator after the death or dissociation of a licensee who had the direct management of the pest control business thereof prior to final disposition by the board of an application for a license made within thirty days from the date of the death or dissociation.”

SECTION 7. Section 460J-26, Hawaii Revised Statutes, is amended to read as follows:

“**§460J-26 Exemptions.** This chapter shall not apply to [officials]:

- (1) Officials of the federal government on military reservations; [or to personnel]
- (2) Personnel of the United States Department of Agriculture, the state department of agriculture, or state department of land and natural resources, or the United States Public Health Service in the performance of their official duties; [or other]
- (3) Other government employees who conduct research on pesticides or pest control or who use pesticides in the performance of their duties; [or to qualified]
- (4) Qualified scientific personnel specially exempted by the board; [or to persons]
- (5) Persons engaged in pest control for agricultural purposes[.]; or
- (6) Engineers or architects licensed under chapter 464 who:
  - (A) Draft or prepare design documents that prescribe anti-termite or anti-pest measures, including the specification of termiticides, that are required by the building code and other governmental agencies;
  - (B) Conduct building condition or assessment surveys to observe and evaluate the condition of the building or structure, if the primary purpose of these surveys is not to report on the identification of infestations; or
  - (C) Prepare reports based on the results of the surveys specified in subparagraph (B) that identify the location, extent, and probable cause of the pest damage (e.g., “termite damage”); provided that where a report concerns termite damage, the particular type or species of termite shall not be specified unless the report is written in consultation with a licensed pest control operator licensed in termite control or other duly recognized expert in urban entomology, such as an insect taxonomist or urban entomologist with expertise in the identification or control of termites; and provided further that if a licensed pest control operator is not consulted, the report shall include a recommendation that a li-

censed pest control operator be contracted for further assessment or treatment.”

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

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

(Approved April 29, 1997.)

**ACT 85**

S.B. NO. 1516

A Bill for an Act Relating to Motor Vehicle Industry Licensing.

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

SECTION 1. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of “dealer” to read as follows:

““Dealer” includes “auction” as defined in this section or any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. “New motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. “Used motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles. The term “dealer” excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of an auction license issued under this chapter when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement; [or]
- (5) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for the person’s own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person’s use in good faith and not for the purpose of evading any provision of this chapter[.]; or
- (6) A consumer consultant who is not engaged in the business of selling, soliciting, offering, or attempting to negotiate sales or exchanges of motor vehicles or any interest therein for any dealer, and who for a fee provides specialized information and expertise in motor vehicle sales transactions to consumers wishing to purchase or lease motor vehicles. The consumer consultant shall register and pay a fee to the board prior to offering consultant services.”

SECTION 2. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner’s plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
- (8) In the case of an individual applicant or holder of a license, if the applicant or holder is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age;
- (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;

- (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
- (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;
- (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
- (17) Being a salesperson or dealer:
  - (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;
  - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle;
  - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;
  - (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1<sup>1</sup> regardless of the dollar amount of the transaction; or
  - (E) Has engaged in any improper business conduct[;], including but not limited to employing, contracting with, or compensating consumer consultants;
- (18) Being an applicant or holder of a dealer's license:
  - (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
  - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
  - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (19) Being an applicant or holder of an auction's license has sold or proposed to sell new motor vehicles without being franchised therefor;
- (20) Being an applicant for a salesperson's license:
  - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer;
  - (B) Does not intend to be employed as a salesperson as the principal occupation; or

- (C) Intends to be employed as a salesperson for more than one dealer.”

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, 1997.)

**Note**

1. Prior to amendment “,” appeared here.

**ACT 86**

S.B. NO. 1519

A Bill for an Act Relating to Public Accountancy.

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

SECTION 1. Section 466-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a board of public accountancy to be known as the state board of public accountancy, which shall consist of nine members. All members of the board shall be citizens of the United States and residents of this State. [~~Six~~ Seven members thereof shall [be certified public accountants holding] hold current licenses issued under this chapter, of which [five] ~~six~~ of the [six certified public accountant] seven members shall hold current permits to practice public accountancy and be in active practice[. One member thereof shall be a public accountant in active practice holding a current license and a current permit to practice public accountancy issued under this chapter,]; and two shall be public members.”

SECTION 2. Section 466-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Each applicant shall present satisfactory evidence in the form of a notarized or certified statement from present or former employer(s) that the applicant has met one of the following experience requirements for license:

- (1) Completion of one thousand five hundred chargeable hours in the performance of audits involving the application of generally accepted accounting principles and auditing standards earned while in public accounting practice; or
- (2) Completion of two years of professional experience in public [accounting] accountancy practice as defined in section 466-3. Completion of experience in private or government accounting or auditing work, deemed by the board to be equivalent to professional experience in public accountancy practice as defined in section 466-3, may be substituted for all or part of the two years of professional experience in public accounting practice. The nature, variety, and depth of acceptable private or government accounting or auditing experience shall be defined by the board in its rules.

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



**ACT 87**

SECTION 4. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 1999.

(Approved April 29, 1997.)

**ACT 87**

S.B. NO. 1521

A Bill for an Act Relating to the Board of Barbering and Cosmetology.

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

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

“(c) The board of acupuncture, board of public accountancy, board of [barbers, board of cosmetology,] barbering and 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 therapy, 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 section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 2. Section 438-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Student” is a person who is engaged in learning to be a barber in a barber school and while so doing assists in doing any act involved in the practice of barbering under the supervision of an instructor.”

2. By amending the definitions of “apprentice”, “barber”, and “board” to read:

“[“Apprentice”] “Barber apprentice” is a person who is engaged in learning or acquiring the practice of barbering within a barbering [establishment or school,] or beauty shop and while learning assists in[, any of the practices mentioned herein under the immediate direction and supervision of a barber or [instructor.] beauty operator with hairdresser qualifications.

“Barber” is a person[, not an apprentice,] who [engages in the] is licensed to practice [of] barbering.

“Board” means the board of [barbers created under this chapter.] barbering and cosmetology as established pursuant to sections 438-3, 438-5, and 438-6.”

SECTION 3. Section 438-3, Hawaii Revised Statutes, is amended to read as follows:

**“§438-3 [Creation of state board.] Board of barbering and cosmetology.**

(a) There shall be a state board of [barbers] barbering and cosmetology consisting of seven members who shall be appointed and may be removed by the governor. The members shall be residents of the State [and five], of which:

- (1) Two members [must have practiced barbering for at least five consecutive years immediately preceding the member’s appointment] shall be barbers licensed under chapter 438 who have been licensed to practice for at least five years and have been actively and continuously engaged as licensees for that period;
- (2) Two members shall be beauty operators licensed under chapter 439, who have been licensed to practice for at least five years and have been actively and continuously engaged as licensees for that period; and [two]
- (3) Three shall be public members.

Each member shall serve for a term of four years, and until the member’s successor is appointed and qualified.

(b) Board members affiliated with any school teaching any of the classified occupations shall disclose that affiliation and at all times shall adhere to chapter 84 and the interpretations of that chapter by the state ethics commission.”

SECTION 4. Section 438-5, Hawaii Revised Statutes, is amended to read as follows:

**“§438-5 Powers and duties of the board.** (a) In addition to any other powers and duties authorized by law, the board may give examinations for the issuance of licenses to practice barbering[;] and cosmetology; issue apprentice permits or temporary permits; grant, revoke, or suspend licenses, apprentice permits, or temporary permits; and establish, subject to chapter 91 and with the approval of the governor and the director, rules governing the practice of barbering and cosmetology that shall have the force and effect of law.

(b) The board may require the attendance of witnesses and the production of books, records, and papers as it or any person involved may desire at any hearing of any matter which the board has authority to investigate, and for [the] that purpose may require the executive secretary to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers directed to the sheriff or chief of police of the county where the witness resides or is found which shall be served and returned in the same manner as a subpoena in a criminal case. Fees and mileage shall be paid from the funds in the state treasury for the use of the board in the same manner as other expenses of the board.

(c) Any investigation, inquiry, or hearing which the board is empowered by law to hold or undertake may be held or undertaken by or before any member or members of the board or an appointed hearings officer and the finding or order of that member, members, or hearings officer shall be deemed to be the finding or order of the board when approved and confirmed by it.

(d) The board, as prescribed by rules, may recognize the equivalency of barber and hairdresser practices to allow training of an apprentice by either licensee in order for the apprentice to fulfill training requirements.”

SECTION 5. Section 438-6, Hawaii Revised Statutes, is amended to read as follows:

**“§438-6 Appeal from actions of the board.** (a) An appeal may be taken from a final action of the board suspending or revoking a license, apprentice permit, or temporary permit for the causes mentioned in section 438-14 or 439-19 to the

circuit court of the circuit in which the person whose license, apprentice permit, or temporary permit has been suspended or revoked resides. The judgment of the circuit court may be reviewed by the supreme court.

(b) Any person aggrieved by the denial or refusal of a license, apprentice permit, or temporary permit by the board shall submit a request for a hearing pursuant to chapter 91 within sixty days of the date of notification of the denial or refusal.”

SECTION 6. Section 438-7, Hawaii Revised Statutes, is amended to read as follows:

“**§438-7 Applications.** (a) Each person who desires to practice as a barber or as [an] a barber apprentice [barber] or to operate a barber shop shall first file with the board a written application, under oath, on a form prescribed and supplied by the board, deposit with the board the required fees, and satisfy the applicable qualification requirements specified in this section.

(b) An applicant for a barber’s license shall:

- (1) Be at least seventeen years of age;
- (2) Have a total of fifteen hundred clock hours of barber training through the following or a<sup>1</sup> combination thereof:
  - (A) As [an] a barber apprentice, holding [an] a barber apprentice permit; or
  - (B) As a student enrolled in a school that has a barbering curriculum; provided that only classes related to barbering shall be applied towards the accumulation of clock hours[.];

The board shall adopt rules pursuant to chapter 91 to implement this paragraph; and

- (3) Take and pass an examination for licensure.
- (c) An applicant for [an] a barber apprentice permit shall:
  - (1) Be at least seventeen years of age; and
  - (2) Provide proof that the applicant will be training in a licensed barber shop, or beauty shop under supervision of a licensed barber[.], or licensed beauty operator with hairdresser qualifications.
- (d) An applicant for a barber shop license shall:
  - (1) Meet the standards of sanitation required by the department of health and as prescribed by the rules of the board;
  - (2) Identify at least one licensed barber at the barber shop to qualify the barber shop for licensure;
  - (3) Identify the owner of the barber shop who shall be responsible for all operations of the barber shop and who shall ensure that only currently licensed barbers, barber apprentice permittees, [or] barber temporary permittees, or beauty operators, beauty operator temporary permittees, or beauty operator apprentice permittees practice [barbering] in the barber shop;
  - (4) Identify the name and location of the barber shop;
  - (5) Demonstrate that the applicant has adequate equipment and facilities for the practice of barbering as prescribed by the rules of the board; and
  - (6) Provide a statement that the applicant shall allow only [licensed barbers] qualified licensees who have at least one year’s experience to train apprentices as prescribed by the rules of the board.

(e) Any barber applicant who has not obtained licensure after four consecutive examinations offered by the board shall be required to apply and train as an apprentice barber for six months before qualifying for another series of examinations.

(f) Any transfer of ownership of a barber shop, change in a barber shop name, or relocation of a barber shop shall require the filing of a new application for licensure together with the required fees.

(g) The board, as prescribed by rules, may recognize training obtained under a licensed beauty operator with hairdresser qualifications to fulfill the barber training requirement.”

SECTION 7. Section 438-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) 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 barbering under the supervision of a licensed barber or beauty operator with hairdresser qualifications and shall be effective for the period of time covering four consecutive examinations offered by the board after the permit’s date of issuance. If the applicant has not obtained licensure after four consecutive examinations offered by the board, the applicant shall be required to apply and train as an apprentice for six months before qualifying for another series of examinations.”

SECTION 8. Section 438-12, Hawaii Revised Statutes, is amended to read as follows:

“**§438-12 Renewal of licenses.** The holder of a barber or barber shop license issued by the board [of barbers] who continues in active practice shall biennially, on or before December 31 of each odd-numbered year, renew the license and pay the renewal fee. A license that has not been renewed shall be considered forfeited. A forfeited license may be restored within three years after the date of forfeiture upon compliance with the licensing renewal requirements provided by law and upon written application and payment of all applicable fees; provided that the board may consider restoration beyond this period as prescribed by rules of the board.”

SECTION 9. Section 439-1, Hawaii Revised Statutes, is amended by amending the definitions of “apprentice”, “apprentice permit”, and “board” to read as follows:

“[“Apprentice”] “Beauty apprentice” means a person who is engaged in a beauty or barber 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[.] or licensed barber for the hairdresser category.

[“Apprentice permit”] “Beauty 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[.] or licensed barber for the hairdresser category.

“Board” means the board of [cosmetology of the State.] barbering and cosmetology pursuant to sections 438-3, 438-5 and 438-6.”

SECTION 10. Section 439-12, Hawaii Revised Statutes, is amended to read as follows:

“**§439-12 Requisites for admission to examination.** (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examinations; provided that the licensure categories shall be limited to cosmetologist, hairdresser, cosmetician, manicurist,

and instructor. The preliminary qualifications for admission to examination shall be as provided in this section.

(b) A cosmetologist applicant shall be<sup>2</sup> least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) Three thousand six hundred hours of training as [an] a beauty apprentice in a beauty shop under the supervision of a licensed cosmetologist[;] or in a barber shop under the supervision of a licensed barber for the hairdresser training only; or
- (2) One thousand eight hundred hours of training in a licensed beauty school.

(c) A hairdresser applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) Two thousand five hundred hours of training as [an] a beauty apprentice in a beauty shop or barber shop under the supervision of a licensed cosmetologist or hairdresser[;] or licensed barber for the hairdresser training; or
- (2) One thousand two hundred fifty hours of training in a licensed beauty school.

(d) A cosmetician applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) One thousand one hundred hours of training as [an] a beauty apprentice in a beauty shop or barber shop under the supervision of a licensed cosmetologist or cosmetician; or
- (2) Five hundred fifty hours of training in a licensed beauty school.

(e) A manicurist applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) Seven hundred hours of training as [an] a beauty apprentice in a beauty shop or barber shop under the supervision of a licensed cosmetologist, cosmetician, or manicurist; or
- (2) Three hundred fifty hours of training in a licensed beauty school.

(f) An instructor applicant may apply to teach in any of the practices of cosmetology if the applicant has:

- (1) Completed six hundred hours of a board approved course in the theory and practice of teaching; and
- (2) Served actively for a period of at least one year as a licensed beauty operator in the State or in another jurisdiction having standards for beauty operators substantially equivalent to those of this State.

(g) The board shall recognize beauty training obtained in another jurisdiction which is substantially equivalent to the training available in this State. If such training is not equivalent, the board shall make a determination as to whether or not to recognize the training by evaluating the type and duration of the training and the experience required to obtain a license in the other jurisdiction.

(h) The board, as prescribed by rules, may recognize training obtained under a licensed barber to fulfill the hairdresser training requirement."

SECTION 11. Section 439-17, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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, apprentices, or temporary permittees are [performing cosmetology practices] practicing in the shop.”

SECTION 12. Section 439-3, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 439-5, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 439-7, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 439-10, Hawaii Revised Statutes, is repealed.

SECTION 16. All rules, guidelines, and other material adopted or developed by the board of barbers and the board of cosmetology shall remain in full force and effect until the appointment of the members of the board of barbering and cosmetology and thereafter until amended or repealed by the board pursuant to chapter 91. In the interim, every reference to the boards of barbers and cosmetology in those rules, guidelines, and other material is amended to refer to the board of barbering and cosmetology as appropriate.

SECTION 17. Statutory material to be repealed is bracketed.<sup>3</sup> New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval.

(Approved April 29, 1997.)

#### Notes

1. Prior to amendment "any" appeared here.
2. Prior to amendment "at" appeared here.
3. Edited pursuant to HRS §23G-16.5.

## ACT 88

S.B. NO. 1523

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

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

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

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, [board of hearing aid dealers and fitters,] board of massage therapy, 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 section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 2. Section 451A-1, Hawaii Revised Statutes, is amended as follows:

1. By adding the definition of “director” to be appropriately inserted and to read as follows:

““Director” means the director of commerce and consumer affairs.”

2. By deleting the definition of “board”.

[““Board” means the board of hearing aid dealers and fitters.”]

3. By deleting the definition of “temporary permit”.

[““Temporary permit” means the permit issued while an applicant for a license is in training to become a licensed hearing aid dealer and fitter.”]

SECTION 3. 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] a license by endorsement shall apply on a form prescribed by the [board] director and shall furnish to the [board:] director:

- (1) Satisfactory proof that the person is a high school 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.] for a license.

An applicant shall be required to pass a licensing examination.”

SECTION 4. Section 451A-5, Hawaii Revised Statutes, is amended to read as follows:

“§451A-5 Powers and duties of the [board.] director. In addition to any other powers and duties authorized by law, the powers and duties of the [board] director are to:

- (1) Adopt rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) Develop standards for licensure;
- (3) Prepare and administer examinations;
- (4) Issue, renew, suspend, and revoke licenses;
- [5] Register applicants and holders of a license, permit and certificate of endorsement;
- (6) [5] Investigate and conduct hearings regarding any violation of this chapter and any rules [of the board;] adopted by the director;
- [7] Maintain a record of its proceedings;
- (8) [6] Do all things necessary to carry out the functions, powers, and duties set forth in the chapter[;], which may include establishment of an advisory committee; and
- [9] [7] Monitor medical authorizations and waiver records[; and
- (10) Develop policies and procedures, in consultation with the state ethics commission, for handling real or potential conflicts of interest].”

SECTION 5. Section 451A-6, Hawaii Revised Statutes, is amended to read as follows:

“§451A-6 [Scope of the licensing examination. The licensing examination shall assess the applicant’s knowledge of:

- (1) Basic physics of sound;

- (2) Anatomy and physiology of the ear;
- (3) Function of hearing aids;
- (4) Pure tone audiometry, including air and bone conduction testing;
- (5) Live voice or recorded voice speech audiometry, including speech reception threshold and speech discrimination testing;
- (6) Masking when indicated;
- (7) Recording and analyzing test results to determine proper selection of hearing aids; and

(8) Taking earmold impressions.] **Examination.** (a) Every applicant, except those who qualify for a license pursuant to section 451A-10, shall pass an examination to be eligible for licensure. The director shall provide by rules the scope of the examination and the passing score. The director may examine applicants or may contract with a professional testing agency to prepare, administer, and grade the examination.

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

SECTION 6. Section 451A-7, Hawaii Revised Statutes, is amended to read as follows:

“**§451A-7 Issuance of license.** The [board] director shall [register] license each applicant [without discrimination or examination] who satisfactorily meets the experience requirements [or] and who passes an examination as provided in section 451A-2. Upon the payment of application, examination, and license fees, the [board] director shall issue to the applicant a license. [The license shall be valid until January 30 of the year following the year in which the license is issued.]”

SECTION 7. Section 451A-10, Hawaii Revised Statutes, is amended to read as follows:

“**[§451A-10] Certificate] License by endorsement.** Whenever the [board] director determines that another state or jurisdiction has a program with requirements equivalent to or higher than those in effect under this chapter to fit and sell hearing aids, the [board] director may issue [certificates of] licenses by endorsement to applicants who hold current, unsuspended, and unrevoked certificates or licenses to fit and sell hearing aids in another state or jurisdiction. Applicants for [certificate of] licenses by endorsement shall not be required to pass an examination as provided in section 451A-2. The holder of a [certificate of] license by endorsement shall be subject to the same provisions applying to a licensee regarding registration, fees, and grounds for renewal, suspension, and revocation of a license.”

SECTION 8. Section 451A-11, Hawaii Revised Statutes, is amended to read as follows:

“**[§451A-11] Notice to [board of place of business; notice to holders of license.] director.** (a) Any person who holds a license[, certificate of endorsement, or temporary permit] shall notify the [board] director in writing of the person's current mailing and residence address [of the place where the person engages or intends to engage in the fitting or the sale of hearing aids]. It shall be the licensee's duty to provide written notice of any change of address within thirty days of the change.

[(b) The board shall keep a record of the place of business.]



(c) (b) Any notice required to be given by the [board] director to the person shall be mailed to [the person by certified mail at] the last known address [of the last place of business which the person has notified the board]. Failure to provide the written notice of change of address shall absolve the director from any duty to provide notice of any matter required by law to be provided to the licensee.”

SECTION 9. Section 451A-13, Hawaii Revised Statutes, is amended to read as follows:

“**§451A-13 Discipline; grounds; proceeding; hearings.** (a) In addition to any other actions authorized by law, the [board] director may deny, revoke, or suspend any license[, certificate of endorsement, or temporary permit] issued under this chapter and fine or otherwise discipline a licensee for any cause authorized by law, including but not limited to proof that the person has:

- (1) Obtained a license[, certificate of endorsement, or temporary permit] by fraud or deceit;
- (2) Obtained a fee or the making of a sale by fraud or misrepresentation;
- (3) Employed with knowledge, directly or indirectly, any suspended or [unregistered] unlicensed person to perform any work covered by this chapter;
- (4) Applied, caused, or promoted for advertising, the use of any matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation which is misleading, deceptive, or untruthful;
- (5) Advertised a particular model or type of hearing aid for sale which in fact is not immediately available and where it is established that the purpose was to obtain prospects for the sale of a different model or type;
- (6) Represented that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or used the words “doctor”, “clinic”, or similar words, abbreviations, or symbols related to the medical profession when it is not accurate;
- (7) Permitted the use of a license by another;
- (8) Advertised a product or used a manufacturer’s name or trademark which implies a relationship which in fact does not exist;
- (9) Given or offered to give, directly or indirectly, money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or influencing persons to refrain from dealing in the products of competitors;
- (10) Engaged in the fitting and selling of hearing aids under a false name or alias with fraudulent intent;
- (11) Sold a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids;
- (12) Committed gross incompetence or negligence in fitting and selling hearing aids;
- (13) Violated any provisions of this chapter and any rules;
- (14) Submitted to or filed with the [board] director any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement of fact; or

- (15) Failed to report to the [board] director any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final.

(b) Any person who wishes to make a complaint against a person who has a license, certificate of endorsement, or temporary permit shall file a complaint in writing with the board within one year from the date of the action upon which the complaint is based.

(c) (b) Any fine imposed by the [board] director after hearing in accordance with chapter 91 shall be no less than \$100 and no more than \$1,000 for each violation.”

SECTION 10. Section 451A-14, Hawaii Revised Statutes, is amended to read as follows:

“**§451A-14 Prohibited acts and practices.** No person shall:

- (1) Sell, barter, offer to sell, barter, or transfer or assign a license[, certificate of endorsement, or temporary permit];
- (2) Purchase or procure by barter a license[, certificate of endorsement, or temporary permit] with intent to use it as evidence of qualification to practice the fitting and selling of hearing aids;
- (3) Alter a license[, certificate of endorsement, or temporary permit] with fraudulent intent;
- (4) Use or attempt to use a license[, certificate of endorsement, or temporary permit] which is invalid because it was purchased, fraudulently obtained, forged, or materially altered;
- (5) Make a false statement in an application for a license[, certificate of endorsement, or temporary permit,] or in an application for renewal of a license; and
- (6) Sell hearing aids through “door-to-door sales” as defined in section 481C-1.”

SECTION 11. Section 451A-14.1, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) For the purposes of subsection (a), the hearing aid dealer and fitter may offer persons eighteen years of age or older an opportunity to waive the requirement of a medical examination if the hearing aid dealer and fitter:

- (1) Informs the prospective user that the exercise of the waiver is not in the user’s best health interest;
- (2) Does not in any way actively encourage the prospective user to waive the medical examination; and
- (3) Affords the prospective user the opportunity to sign the following statement:

“I have been advised by \_\_\_\_\_  
(hearing aid dealer and fitter’s name) that the [Board of Hearing Aid Dealers and Fitters] Director of Commerce and Consumer Affairs has determined that my best health interest would be served if I had a medical examination by a physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical examination before purchasing a hearing aid.”

(d) Every hearing aid dealer and fitter licensed pursuant to this chapter shall keep a suitable book or file, or a microfilm of the book or file, in which shall be preserved, for a period of not less than five years, every authorization by physicians

or otorhinolaryngologists received pursuant to this section and every statement executed in accordance with subsection (c)(3). The book, file, or microfilm of the authorizations and statements shall at all times be open to inspection by the [board of hearing aid dealers and fitters] director and other law enforcement agencies.”

SECTION 12. Section 451A-17, Hawaii Revised Statutes, is amended to read as follows:

“**[§451A-17] Injunctive relief.** The [board] director may apply for an injunction in any court of competent jurisdiction to enjoin any person who has not been issued a license[, permit, or certificate of endorsement] or whose license[, permit, or certificate of endorsement] has been suspended or revoked or has expired from practicing in the dealing and fitting of hearing aids; and, upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise, may issue a temporary injunction, without notice or bond, enjoining the defendant from further practicing in the dealing and fitting of hearing aids. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the defendant has been or is practicing dealing and fitting of hearing aids without having been issued a license[, permit or certificate of endorsement] or after [it] the license has been suspended or revoked or has expired, the court or any judge thereof may enter a decree enjoining the defendant from further practicing in the dealing and fitting of hearing aids. In case of violation of any injunction issued under this section, the court may summarily try and punish the offender for contempt of court. The injunction proceeding shall be in addition to, and not in lieu of all penalties and other remedies provided in this chapter.”

SECTION 13. Section 451A-18, Hawaii Revised Statutes, is amended to read as follows:

“**[§451A-18] Persons and practices not affected.** This chapter is not intended to:

- (1) Prohibit any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids; provided the person or the organization employing the person does not sell hearing aids or accessories[.];
- (2) Prohibit a person in maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license[.]; provided that it employs persons licensed under this chapter responsible for the fitting and direct sale of such products[; provided also that there shall be filed annually with the board a list of all licensed hearing aid dealers and fitters directly or indirectly employed.]; and
- (3) Apply to a person who is a physician licensed to practice in Hawaii.”

SECTION 14. Section 451A-3, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 451A-9, Hawaii Revised Statutes, is repealed.

SECTION 16. All rules, guidelines, and other material adopted or developed by the board of hearing aid dealers and fitters shall remain in full force and effect until amended or repealed by the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the board of hearing aid dealers and fitters in those rules, policies, procedures,

guidelines, and other material is amended to refer to the director of commerce and consumer affairs as appropriate.

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval.

(Approved April 29, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 89**

S.B. NO. 1524

A Bill for an Act Relating to Dentistry.

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

SECTION 1. Section 448-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board shall meet for the purpose of examining applicants and for other purposes at such times as it designates. Adequate notice of the times and places of examinations shall be given [by publication in a newspaper of general circulation in the State]. The board may prescribe which members shall participate in the examination and licensing procedures.”

SECTION 2. Section 448-9.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person of eighteen years or more, who is a graduate of a foreign dental school not accredited by the American Dental Association and a permanent resident of the United States shall be eligible to take an examination before the board upon submission of:

- (1) An application on a form prescribed by the board to the executive secretary of the board not later than sixty days prior to the date of the scheduled examination;
- (2) Application and examination fees; and
- (3) Documentation and credentials that shall include but are not limited to the following:

[(A) A recent unmounted photograph of the applicant;

(B) (A) A complete transcript of the academic and clinical dental school record of the applicant, authenticated by either the president, secretary, dean, or registrar of the educational institution[. The transcript shall be accompanied by an affidavit showing to the satisfaction of the board that the applicant is the person named in each transcript submitted, that the transcript is a true recital of the full number of academic years of undergraduate courses required for graduation, and that the courses of profes-

## ACT 90

sional instruction in dentistry were accomplished in a resident course of instruction];

- [(C)] (B) A legible, true copy of the dental diploma or dental degree conferred upon the applicant as evidence of the completion of the courses of dental instruction required for graduation, authenticated by either the president, secretary, dean, or registrar of the educational institution[. The diploma or degree shall be accompanied by an affidavit showing to the satisfaction of the board that the applicant is the person named in the document, that the applicant is the lawful holder, and that it was procured in the regular resident course of instruction and examination without fraud or misrepresentation];
- [(D)] (C) Certification by the licensing authority of the governmental jurisdiction, wherein is located the foreign institution from which the applicant was graduated that the applicant has been admitted or licensed to practice dentistry in that foreign state, country, or political subdivision;
- [(E)] (D) A certificate or other evidence satisfactory to the board of having passed parts I and II of the examination of the National Board of Dental Examiners; and
- [(F)] (E) Other documentation and credentials as may be required by the board.”

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, 1997.)

## ACT 90

S.B. NO. 1556

A Bill for an Act Relating to Homelessness.

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

SECTION 1. Section 358D-9, Hawaii Revised Statutes, is amended to read as follows:

“**§358D-9 Time limits.** To the extent that appropriations are made available, a provider agency shall provide shelter or any other program assistance authorized by this chapter to eligible homeless families and homeless individuals not later than two days, or such time as is set by rule which shall not be later than seven days, after they apply and qualify for the shelter or other program assistance, pursuant to rule. Such time limits may be waived at the discretion of the authority for a maximum period of fourteen days for the purpose of implementing repairs to the subject shelter, which repairs the authority deems major or extensive.”

SECTION 2. New statutory material is underscored.

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

(Approved April 29, 1997.)

## ACT 91

S.B. NO. 1565

A Bill for an Act Relating to Genetic Information.

*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 part I of article 10A to be appropriately designated and to read as follows:

**“§431:10A- Genetic information nondiscrimination in health insurance coverage.** (a) No insurer may:

- (1) Use an individual’s or a family member’s genetic information, or request for genetic services, to deny or limit any coverage or establish eligibility, continuation, enrollment, or premium payments;
- (2) Request or require collection or disclosure of an individual’s or a family member’s genetic information; or
- (3) Disclose an individual’s or a family member’s genetic information without the written consent of the person affected, the person’s legal guardian, or a person with power of attorney for health care for the person affected. This consent shall be required for each disclosure and shall include the name of each person or organization to whom the disclosure will be made.

(b) As used in this section:

“Family member” means, with respect to the individual, another individual related by blood to that individual.

“Genetic information” means information about genes, gene products, hereditary susceptibility to disease, or inherited characteristics that may derive from the individual or family member.

“Genetic services” means health services to obtain, assess, or interpret genetic information for diagnosis, therapy, or genetic counseling.

(c) This section shall not apply to any action taken in connection with policies of life insurance, disability income insurance, and long-term care insurance delivered or issued for delivery in this State.”

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

**“§432:1- Genetic information nondiscrimination in health insurance coverage.** (a) No mutual benefit society may:

- (1) Use an individual’s or a family member’s genetic information, or request for genetic services, to deny or limit any coverage or establish eligibility, continuation, enrollment, or premium payments;
- (2) Request or require collection or disclosure of an individual’s or a family member’s genetic information; or
- (3) Disclose an individual’s or a family member’s genetic information without the written consent of the person affected, the person’s legal guardian, or a person with power of attorney for health care for the person affected. This consent shall be required for each disclosure and shall include the name of each person or organization to whom the disclosure will be made.

(b) As used in this section:

“Family member” means, with respect to the individual, another individual related by blood to that individual.

“Genetic information” means information about genes, gene products, hereditary susceptibility to disease, or inherited characteristics that may derive from the individual or family member.

“Genetic services” means health services to obtain, assess, or interpret genetic information for diagnosis, therapy, or genetic counseling.”

SECTION 3. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§432D- Genetic information nondiscrimination in health insurance coverage. (a) No health maintenance organization may:

- (1) Use an individual’s or a family member’s genetic information, or request for genetic services, to deny or limit any coverage or establish eligibility, continuation, enrollment, or premium payments;
- (2) Request or require collection or disclosure of an individual’s or a family member’s genetic information; or
- (3) Disclose an individual’s or a family member’s genetic information without the written consent of the person affected, the person’s legal guardian, or a person with power of attorney for health care for the person affected. This consent shall be required for each disclosure and shall include the name of each person or organization to whom the disclosure will be made.

(b) As used in this section:

“Family member” means, with respect to the individual, another individual related by blood to that individual.

“Genetic information” means information about genes, gene products, hereditary susceptibility to disease, or inherited characteristics that may derive from the individual or family member.

“Genetic services” means health services to obtain, assess, or interpret genetic information for diagnosis, therapy, and genetic counseling.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

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

(Approved April 29, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 92**

S.B. NO. 1578

A Bill for an Act Relating to Glass Recycling.

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

SECTION 1. The legislature finds that it is environmentally and economically beneficial to promote the diversion of glass from the traditional waste stream.

The purpose of this Act is to allow the department of transportation to set specifications for the size of crushed glass in the aggregate to be used in the State of Hawaii.

SECTION 2. Section 103D-407, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All highway and road construction and improvement projects funded by the State or a county or roadways that are to be accepted by the State or a county as public roads shall utilize a minimum of ten per cent crushed glass aggregate[, with one hundred per cent passing a one-fourth inch sieve,] as specified by the department of transportation in all basecourse (treated or untreated) and subbase when the glass is available to the quarry or contractor at a price no greater than that of the equivalent aggregate.”

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, 1997.)

## ACT 93

S.B. NO. 1715

A Bill for an Act Relating to Secured Transactions.

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

SECTION 1. During the regular session of 1996, revised article 5, uniform commercial code (UCC), concerning letters of credit, was adopted and conforming changes were made to section 490:9-104, Hawaii Revised Statutes (HRS). The conforming changes inappropriately excluded from article 9, relating to secured transactions, a transfer of an interest in any depository account. Hawaii, along with California and a few other states, has long provided for the taking of security interests in deposit accounts under article 9. The change that excluded deposit accounts from article 9 slipped by essentially unnoticed and, it is believed, was not intended. This is indicated by the fact that article 9 continues to contain other provisions concerning perfection of security interests in deposit accounts. This Act would return Hawaii law to the status quo, pending complete revision of article 9. It is anticipated that the revised article 9, when proposed in a year or two, will adopt the California-Hawaii approach of including transfers of deposit accounts within the coverage of that article.

The purpose of this Act is to make a technical amendment to section 490:9-104, HRS, to make article 9 of the UCC, applicable to a transfer of an interest in a deposit account, to correct a drafting error made in that section last session.

SECTION 2. Section 490:9-104, Hawaii Revised Statutes, is amended to read as follows:

“**§490:9-104 Transactions excluded from article.** This Article does not apply:

- (a) To a security interest subject to any statute of the United States to the extent that [such] the statute governs the rights of parties to and third parties affected by transactions in particular types of property; [or]
- (b) To a landlord’s lien; [or]
- (c) To a lien given by statute or other rule of law for services or materials, except as provided in section 490:9-310 on priority of [such] liens; [or]
- (d) To a transfer of a claim for wages, salary, or other compensation of an employee; [or]



## ACT 94

- (e) To a transfer by government or governmental subdivision or agency; [or]
- (f) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper [which] that is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; [or]
- (g) To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (section 490:9-306) and priorities in proceeds (section 490:9-312); [or]
- (h) To a right represented by a judgment (other than a judgment taken on a right to payment [which] that was collateral); [or]
- (i) To any right of set-off; [or]
- (j) Except to the extent that provision is made for fixtures in section 490:9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder;
- (k) To a transfer in whole or in part of any claim arising out of tort; or
- (l) To a transfer of an interest in any deposit account (subsection (1) of section 490:9-105), except as provided with respect to proceeds (section 490:9-306) and priorities in proceeds (section 490:9-312); or
- (m) (l) To a transfer of an interest in a letter of credit, other than the rights to proceeds of a written letter of credit.”

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, 1997.)

## ACT 94

S.B. NO. 1814

A Bill for an Act Relating to Emergency Telephone Service.

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

SECTION 1. Section 269-16.95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A public utility providing local exchange telecommunications services [shall be permitted to] may recover the capital cost and associated operating expenses [for the first year] of providing a statewide enhanced 911 emergency telephone service in the public switched telephone network, through [a]:

- (1) A telephone line surcharge; or [the next]
- (2) Its rate case[, whichever occurs first. Thereafter, the remaining capital costs and any additional capital costs shall be added to the rate base and recovered along with the associated operating expenses through local telephone rates of that public utility].”

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, 1997.)

## ACT 95

H.B. NO. 2239

A Bill for an Act Relating to Utility Lines.

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

SECTION 1. The legislature finds that because of Hawaii's increasing population, the continued evolution in electric utility services delivery technology, and other factors, public utilities in the State rely on the continued construction and operation of high voltage transmission lines. However, the proposed placement or placement of these transmission lines is often through densely populated areas or through conservation and other lands that are valued for their natural beauty and recreational attributes. Unless directed otherwise, utilities generally seek the construction of transmission lines overhead—on pylons sometimes in excess of one hundred feet high—because such construction is less expensive than underground construction.

The legislature further finds that there are significant, direct, adverse effects associated with the construction, maintenance, and utilization of overhead transmission lines, including:

- (1) The detrimental effects of these lines on Hawaii's natural beauty and the environment;
- (2) The exposure of transmission lines to the natural elements, such as high winds and hurricanes; and
- (3) Safety hazards to low-flying aircraft and to persons on the ground.

There are also significant, indirect effects associated with the construction, maintenance, and utilization of overhead transmission lines as well. These effects may include:

- (1) The negative effects on vital industries that are dependent on the maintenance of Hawaii's natural beauty, particularly, tourism; and
- (2) The erosion in the quality of life of residents resulting from the impacts of overhead transmission lines.

Notwithstanding these direct and indirect adverse effects from overhead transmission lines, as compared to underground transmission lines, public utilities believe that unless otherwise directed by law or ordered by government regulatory agencies, primarily the state public utilities commission (PUC), these utilities must advocate the least cost alternative, which generally is an overhead configuration.

In evaluating whether to place transmission lines overhead versus underground, utilities generally do not consider factors such as the potential impacts of overhead lines on the environment, public health and safety, quality of life, and the general public sentiment favoring underground transmission lines.

In considering and deciding on utility applications for approval of transmission lines designed to carry forty-six kilovolt or greater voltages, the PUC is required to apply section 269-27.6, Hawaii Revised Statutes (HRS), which relates to the overhead or underground construction of high-voltage electric transmission lines, in determining whether to place these lines above or below ground. However, the legislature finds that currently, in the PUC's application of section 269-27.6, HRS, and in otherwise applying the law relative to utility transmission line applications, the PUC is not sufficiently directed to:

- (1) Weigh public sentiment favoring undergrounding wherever possible; and
- (2) Account adequately for factors other than short-term direct construction costs.

The public policy of the State is to evaluate the placement of transmission lines underground or overhead, taking into full consideration direct and indirect financial, economic, and social factors. To effectuate this public policy fully, the statutory criteria that the PUC is required to apply in evaluating and ruling on whether to place high-voltage electric transmission lines underground or overhead must be amended.

The purpose of this Act is to address the legislature’s findings and effectuate public policy with regard to the placement and construction of transmission lines.

SECTION 2. Section 269-27.6, Hawaii Revised Statutes, is amended to read as follows:

**“[[§269-27.6]] Construction of high-voltage electric transmission lines; overhead or underground construction.** (a) Notwithstanding any law to the contrary, whenever a public utility applies to the public utilities commission for approval to place, construct, erect, or otherwise build a new forty-six kilovolt or greater high-voltage electric transmission system, either above or below the surface of the ground, the public utilities commission shall determine whether the electric transmission system shall be placed, constructed, erected, or built above or below the surface of the ground; provided that in its determination, the public utilities commission [may in its determination] shall consider the following factors:

- (1) Whether there is a benefit that outweighs the costs to place the electric transmission system underground;
- (2) Whether there is a governmental public policy requiring the electric transmission system to be placed, constructed, erected, or built underground and the governmental agency establishing the policy commits funds for the additional costs of undergrounding;
- (3) Whether any governmental agency or other parties are willing to pay for the additional costs of undergrounding; and
- (4) Any other relevant factors.

(b) In making the determination set forth in subsection (a), for new 138 kilovolt or greater high-voltage transmission systems, the public utilities commission shall evaluate and make specific findings on all of the following factors:

- (1) The amortized cost of construction over the respective usable life of an above-ground versus underground system;
- (2) The amortized cost of repair over the respective usable life of an above-ground versus underground system;
- (3) The risk of damage or destruction over the respective usable life of an above-ground versus an underground system;
- (4) The relative safety and liability risks of an above-ground versus underground system;
- (5) The electromagnetic field emission exposure from an above-ground versus underground system;
- (6) The proximity and visibility of an above-ground system to:
  - (A) High density population areas;
  - (B) Conservation and other valuable natural resource and public recreation areas;
  - (C) Areas of special importance to the tourism industry; and
  - (D) Other industries particularly dependent on Hawaii’s natural beauty;

- (7) The length of the system;  
 (8) The breadth and depth of public sentiment with respect to an above-ground versus underground system; and  
 (9) Any other factors that the public utilities commission deems relevant.  
 (c) A public utility making an application to the public utilities commission under this section shall clearly and fully state and support its evaluation of each factor set forth in subsection (b)."

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, 1997.)

## ACT 96

H.B. NO. 1613

A Bill for an Act Making an Emergency Appropriation for Automated Systems Development for the Department of the Attorney General.

*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 section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 289, Session Laws of Hawaii 1993, appropriated \$2,561,860 in trust funds to be used for the State share of the contract with Network Six, Inc. (NSI) for the design and installation of an automated child support enforcement system (KEIKI) meeting and exceeding federal specifications. The trust funds were revenues which the Child Support Enforcement Agency (CSEA) received from the federal government as incentive payments based on CSEA's rate of collection of child support. No general funds were appropriated for the contract with NSI.

A critical funding emergency exists. In 1993, CSEA contracted with NSI for \$20,656,155 to design and install an automated child support enforcement system meeting and exceeding federal specifications. The deadline for performance was originally September 30, 1995, but was subsequently extended to September 30, 1996. However, due to NSI's non-performance of the \$25,306,650 contract, as amended, the Department of the Attorney General terminated the contract on September 23, 1996. The Department of the Attorney General is pursuing legal remedies to exact damages and penalties to recover the costs associated with the completion of the KEIKI project from NSI.

By September 30, 1997, CSEA must have an automated child support enforcement system meeting federal specifications. Failure to meet this federal deadline exposes the State to financial penalties and loss of federal funding. Up until September 30, 1997, the State qualifies for ninety per cent federal funding of the new system. For work performed after that deadline, the State's share increases from ten per cent to thirty-four per cent, which means the State has to spend twenty-four per cent more. In addition, unless the State has a certifiable system by the deadline, the State's child support enforcement program will be out of compliance with federal requirements, which subjects the State to the risk of other financial penalties. Furthermore, the State needs to be able to proceed expeditiously with the

computer system enhancements required by the Welfare Reform Act of 1996, for which eighty per cent federal funding is available. Finally, without the new computer system, CSEA will not be able to increase child support collections, reduce delays in getting child support payments to children and custodial parents, and track delinquent parents more effectively. CSEA is already the defendant in a suit by parents who are seeking damages for CSEA's alleged failure to perform its child support collection duties adequately. Such suits also have been brought in other states, and the U.S. Department of Justice has recently decided to file a brief supporting parents' rights to bring such an action against child support enforcement agencies.

A new contractor, Lockheed Martin IMS, Inc., has been contacted to complete the KEIKI project. However, the negotiated cost for completion (\$19,125,028 of which \$2,944,000 is state matching funds) exceeds the remaining balance of contract funds from the initial contract with NSI. The State has already invested over \$11 million (\$1,100,000 state matching funds) in project development and implementation.

The purpose of this Act is to appropriate general fund moneys to allow Lockheed Martin IMS, Inc. to complete the development, installation, and implementation of the KEIKI system. Lockheed Martin will install a certifiable KEIKI system by September 30, 1997, and subsequently will install the complete system, including certain requirements of the new federal welfare reform act, by September 30, 1998.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,100,000 or so much thereof that may be necessary for fiscal year 1996-1997 for the purpose of this Act.

SECTION 4. The sum appropriated shall be expended by the department of the attorney general.

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

(Approved May 2, 1997.)

**ACT 97**

H.B. NO. 1646

A Bill for an Act Making an Emergency Appropriation for an Automated Tax Systems Acquisition by the Department of Taxation.

*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 Section 9 of Article VII of the Constitution of the State of Hawaii.

SECTION 2. Section 89 of Act 218, Session Laws of Hawaii 1995, designated an amount of funds appropriated to the department of taxation to partially fund the department's new integrated tax information management systems. The funds were appropriated for fiscal year 1995-1996. The department did not expend all of the appropriation and was advised to carry over part of the unexpended balance through fiscal year 1996-1997.

Act 273, Session Laws of Hawaii 1996, amended the proviso to make the proviso applicable to funds appropriated for fiscal year 1996-1997, but did not

amend the corresponding budget line item in section 3 of Act 218, Session Laws of Hawaii 1995, as amended by Act 287, Session Laws of Hawaii 1996. Thus, the unexpended balance of the appropriation lapsed at the end of fiscal year 1995-1996.

This Act makes an emergency appropriation equal to the unexpended balance of the fiscal year 1995-1996 appropriation that would have been carried over to fiscal year 1996-1997 if the appropriation had been amended.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,314,739 or so much thereof as may be necessary for fiscal year 1996-1997 to be used for the automated tax systems acquisition by the department of taxation.

SECTION 4. The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

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

(Approved May 2, 1997.)

## ACT 98

H.B. NO. 1719

A Bill for an Act Making Emergency Appropriations for the Randolph-Sheppard Revolving Account and for the Blind Shop Revolving and Handicraft Fund.

*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 Section 9 of Article VII of the Constitution of the State of Hawaii.

SECTION 2. Item B-12 of section 3 of Act 218, Session Laws of Hawaii 1995, as amended by Act 287, Session Laws of Hawaii 1996, appropriated a certain designated sum to the department of human services for HMS 802 to be used for the Randolph-Sheppard blind vendor program and to the Blind Shop program beginning July 1, 1995, and ending June 30, 1997. The amounts appropriated are not adequate to operate the vending and blind shop programs for fiscal year 1996-1997. The amounts appropriated from the Randolph-Sheppard revolving account and the blind shop revolving and handicraft fund must be increased in order to meet the obligations under sections 347-12 and 347-12.5, Hawaii Revised Statutes. These obligations include providing benefits for blind vendors and paying clients of the blind shop wages commensurate with the requirements of the United States Department of Labor.

SECTION 3. In addition to other appropriations made for this same fiscal year, there are appropriated out of the Randolph-Sheppard revolving account the sum of \$54,000, or so much thereof as may be necessary, for fiscal year 1996-1997, and out of the blind shop revolving and handicraft fund the sum of \$38,690, or so much thereof as may be necessary, for fiscal year 1996-1997.

SECTION 4. The sums appropriated shall be expended by the department of human services for the purposes of this Act.

**ACT 99**

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

(Approved May 2, 1997.)

**ACT 99**

H.B. NO. 1840

A Bill for an Act Relating to an Emergency Appropriation for the Hawaii Health Systems Corporation.

*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 section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The legislature did not appropriate any general funds for the operation of community hospitals for the fiscal period beginning July 1, 1995, and ending June 30, 1997.

A critical funding emergency exists. The program will expend all special funds before the end of the fiscal year and will be unable to meet its fiscal obligation to provide services to members of the general public who need hospital-based services provided by the community hospital system. The primary reason for this fiscal situation is the legislative mandate that services not be reduced at any of the facilities combined with the fact that no general funds were available and no cost saving changes were made by Act 262, Session Laws of Hawaii 1996, to the personnel system, which constitutes a large proportion of the expenditures of the community hospitals.

The purpose of this Act is to appropriate moneys to prevent the reduction or discontinuance of services provided by the community hospitals.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,000,000 or so much thereof as may be necessary for fiscal year 1996-1997 to carry out the purposes set forth in Act 262, Session Laws of Hawaii 1996. The sum appropriated shall be expended by the Hawaii health systems corporation.

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

(Approved May 2, 1997.)

**ACT 100**

H.B. NO. 1581

A Bill for an Act Making an Emergency Appropriation for Agricultural Resource Management.

*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 section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, as amended by Act 287, Session Laws of Hawaii 1996, appropriated certain designated sums from the agricultural park special fund and the irrigation system revolving fund for agricultural resource management (AGR 141) for the fiscal year 1996-1997.

A critical funding emergency exists. During the heavy rains and flooding of November 1996, the Waianae Agricultural Park sustained damage to its roadways and drainage systems, and the Waimanalo Irrigation System sustained damage to sections of its Maunawili Ditch requiring cleanup and repairs. Further, additional expenses will be incurred to operate and maintain the newly opened Kekaha Agricultural Park Irrigation System. The expenditures for the cleanup and repairs due to the flooding and the operation and maintenance of the irrigation system at the Kekaha Agricultural Park will exceed the sums appropriated under Act 218, Session Laws of Hawaii 1995, as amended by Act 287, Session Laws of Hawaii 1996, for agricultural resource management (AGR 141).

The purpose of this Act is to appropriate additional special and revolving funds in order to select and engage consultants to develop appropriate plans and specifications to facilitate the necessary cleanup and repair work at the Waianae Agricultural Park and the Waimanalo Irrigation System and to cover additional operation and maintenance expenses at the Kekaha Agricultural Park Irrigation System.

SECTION 3. There is appropriated out of the agricultural park special fund the sum of \$20,000, or so much thereof as may be necessary, for fiscal year 1996-1997, to select and engage consultants to develop plans and specifications for the cleaning and repairing of the Waianae Agricultural Park damaged by the November 1996 heavy rains and flooding.

SECTION 4. There is appropriated out of the irrigation system revolving fund the sum of \$41,000, or so much thereof as may be necessary, for fiscal year 1996-97, to select and engage consultants to develop plans and specifications for the cleaning and repairing of the Waimanalo Irrigation System damaged by the November 1996 heavy rains and flooding and to cover operation and maintenance expenses for the Kekaha Agricultural Park Irrigation System.

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

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

(Approved May 7, 1997.)

## ACT 101

S.B. NO. 377

A Bill for an Act Relating to Impaired Drivers.

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

SECTION 1. Section 286-163, Hawaii Revised Statutes, is amended to read as follows:

**“§286-163 Applicable scope of part; mandatory testing in the event of a collision resulting in injury or death. (a)** Nothing in this part shall be construed to prevent the police from obtaining a sample of breath or blood as evidence of



intoxication from the driver of any vehicle involved in a collision resulting in injury to or the death of any person.

(b) If a health care provider who is providing medical care in a health care facility to any person involved in a motor vehicle accident, becomes aware, as a result of any blood test performed in the course of medical treatment, that the alcohol content in the person's blood meets or exceeds the amount specified in section 291-4, and has a reasonable belief that the person was the driver of a motor vehicle involved in the accident, the health care provider shall notify, as soon as reasonably possible, any law enforcement officer present at the health care facility to investigate the accident or, if no such officer is present, the county police department in the county where the accident occurred. Where the health care provider is aware of any blood test result as provided in the preceding sentence, but lacks information to form a reasonable belief as to the identity of the driver involved in a motor vehicle accident, then the health care provider shall give notice as provided in the preceding sentence for all persons involved in a motor vehicle accident whose alcohol content in the person's blood meets or exceeds the amount specified in section 291-4. The notice by the health care provider shall consist of the name of the person being treated, the blood alcohol level disclosed by the test, and the date and time of the administration of the test. Such notice shall be deemed to satisfy the intoxication element necessary to establish the probable cause requirement set forth in subsection (c).

(c) In the event of a collision resulting in injury or death, and the police have probable cause to believe that a person involved in the incident has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291-4, or 291-7, the police shall request that a sample of blood be recovered from the driver or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291-4, or 291-7. The police shall make this request to the hospital or medical facility treating the person from whom the police request that the blood be recovered. Upon the request of the police that blood be recovered pursuant to this section, and except where the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood from the person represents an imminent threat to the health of the medical personnel or others, the hospital or medical facility shall provide the police with the blood sample requested, recover the sample in compliance with section 321-161, and assign a person authorized under section 286-152 to withdraw the blood sample.

(d) Any person complying with [a request to withdraw blood under the direction of a police officer pursuant to] this section shall be exempt from liability pursuant to section 663-1.9 as a result thereof.

(e) As used in this section, unless the context otherwise requires: "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, rehabilitative, or preventive care to any person. The term includes but is not limited to health care facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

"Health care provider" means a person who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or practice of a profession."

SECTION 2. Section 663-1.9, Hawaii Revised Statutes, is amended to read as follows:

“[§663-1.9] Exception to liability for health care provider, authorized person withdrawing blood at the direction of a police officer. (a) Any health care provider who, in good faith in compliance with section 286-163, provides notice concerning the alcohol content of a person’s blood shall be immune from any civil liability in any action based upon the compliance. The health care provider shall also be immune from any civil liability for participating in any subsequent judicial proceeding relating to the person’s compliance.

(b) Any authorized person who properly withdraws blood from another person at the written request of a police officer for testing of the blood’s alcoholic content, and any hospital, laboratory, or clinic, employing or utilizing the services of such person, and owning or leasing the premises on which such tests are performed, shall not be liable for civil damages resulting from the authorized person’s acts or omissions in withdrawing the blood, except for such damages as may result from the authorized person’s gross negligence or wanton acts or omissions.

(c) For the purpose of this section[, “authorized person”]:

“Authorized person” means a person authorized under section 286-152 to withdraw blood at the direction of a police officer.

“Health care provider” has the same meaning as in section 286-163.”

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 2, 1997.)

## ACT 102

H.B. NO. 116

A Bill for an Act Relating to Driving Under the Influence of Intoxicating Liquor.

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

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

“~~§286-~~ <sup>21E-65</sup> **Refusal to submit to testing for measurable amount of alcohol; district court hearing; sanctions; appeals; admissibility.** (a) If a person under arrest for driving after consuming a measurable amount of alcohol, pursuant to section 291- , refuses to submit to a breath or blood test, none shall be given, except as provided in section 286-163, but the arresting 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 arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a motor vehicle or moped upon the public highways with a measurable amount of alcohol concentration;
- (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 within twenty days. The district judge shall hear and determine:

- (1) Whether the arresting officer ~~had~~ probable cause to believe that the person was under the age of twenty-one and had been operating a motor

vehicle or moped upon the public highway with a measurable amount of alcohol concentration;

- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of this section; and
- (4) Whether the person refused to submit to a test of the person's breath or blood.

(c) If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's operating privilege as follows:

- (1) For a first suspension, or any suspension not preceded within a five-year period by a suspension under this section, for a period of twelve months; and
- (2) For any subsequent suspension under this section, for a period not less than two years and not more than five years.

(d) An order of a district court issued under this section may be appealed to the supreme court.

(e) If a legally arrested person under the age of twenty-one refuses to submit to a test of the person's breath or blood, proof of refusal shall be admissible only in a hearing under this section or part XIV of this chapter and shall not be admissible in any other action or proceeding, whether civil or criminal.

(f) The term "measurable amount of alcohol" shall have the same meaning as provided in section 291- .'

SECTION 2. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

291E-07

**"§291- Driving after consuming a measurable amount of alcohol; persons under the age of twenty-one.**

(a) It shall be unlawful for any person under the age of ~~twenty-one years to drive~~, operate, or assume actual physical control of the operation of any vehicle with a measurable amount of alcohol concentration. A law enforcement officer may arrest a person under this section when the officer has probable cause to believe the arrested person is under the age of twenty-one and had been driving or was in actual physical control of a motor vehicle or moped upon the public highways with a measurable amount of alcohol. For purposes of this section, "measurable amount of alcohol" means a test result equal to or greater than .02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood or equal to or greater than .02 but less than .08 grams of alcohol per two hundred ten liters of breath.

- (b) A person who violates this section shall be sentenced as follows:
  - (1) For a first violation or any violation not preceded within a five-year period by a prior alcohol enforcement contact:

- (A) The court shall impose:
  - (i) A requirement that the person and, if the person is under the age of eighteen, the person's parent or guardian attend an alcohol abuse education and counseling program for not more than ten hours; and
  - (ii) One hundred eighty-day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license, or in the case of a person eighteen years of age or older, the court may impose, in lieu of the one hundred eighty-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the one hundred eighty-day period, a re-

- restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcohol abuse education and treatment programs;
- and
- (B) In addition, the court may impose any one or more of the following:
- (i) Not more than thirty-six hours of community service work; or
  - (ii) A fine of not less than \$150 but not more than \$500.
- (2) For a violation that occurs within five years of a prior alcohol enforcement contact:
- (A) The court shall impose prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license; and
  - (B) In addition, the court may impose any of the following:
    - (i) Not more than fifty hours of community service work; or
    - (ii) A fine of not less than \$300 but not more than \$1,000.
- (3) For a violation that occurs within five years of two prior alcohol enforcement contacts:
- (A) The court shall impose revocation of license for a period of two years; and
  - (B) In addition, the court may impose any of the following:
    - (i) Not more than one hundred hours of community service work; or
    - (ii) A fine of not less than \$300 but not more than \$1,000.
- (4) Notwithstanding any other law to the contrary, any conviction or plea under this section shall be considered a prior alcohol enforcement contact.

(c) Whenever a court sentences a person pursuant to subsection (b)(2) or (3), it also shall 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 abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the person to obtain appropriate treatment if the counselor's assessment establishes the person's alcohol abuse or dependence. All costs for assessment or treatment or both shall be borne by the person or by the person's parent or guardian, if the person is under the age of eighteen.

(d) Notwithstanding section 831-3.2 or any other law to the contrary, a person convicted of a first-time violation under subsection (b)(1), who had no prior alcohol enforcement contacts, may apply to the court for an expungement order upon attaining the age of twenty-one, or thereafter, if the person has fulfilled the terms of the sentence imposed by the court and has had no subsequent alcohol or drug-related enforcement contacts.

(e) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person an application for a new driver's license for a period to be determined by the court.

(f) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood tests conducted pursuant to section 286-152. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood test.

(g) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

## ACT 102

(h) Any person who violates this section shall be guilty of a violation.

(i) As used in this section, the terms “driver”, “driver’s license”, and “examiner of drivers”, shall have the same meanings as provided in section 286-2, the term “alcohol enforcement contact” shall have the same meaning as in section 286-251, and the term “vehicle” shall have the same meaning as provided in section 291C-1.”

SECTION 3. Section 286-151, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The test or tests shall be administered at the request of a police officer having probable cause to believe the person driving or in actual physical control of a motor vehicle or moped upon the public highways is under the influence of intoxicating liquor or drugs, or is under the age of twenty-one and has a measurable amount of alcohol concentration, only after:

(1) [a] A lawful arrest[.]; and

(2) [the] The person has been informed by a police officer of the sanctions under section 286- or part XIV [of this chapter].

(c) If there is probable cause to believe that a person is in violation of section 291-4[.] or section 291-, then the person shall have the option to take a breath or blood test, or both, for the purpose of determining the [alcoholic] alcohol content of that person’s blood.”

SECTION 4. 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:

(1) Pursuant to section 286- or part XIV of chapter 286, except as provided in section 291-4(f)[.];

(2) Upon a conviction of any offense pursuant to law; or

(3) In the case of minors, 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; provided that this section shall not apply to a license suspended pursuant to section 291- (b)(1), any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid no-fault policy.”

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.<sup>1</sup>

SECTION 7. This Act shall take effect on December 1, 1997.

(Approved June 2, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 103

S.B. NO. 991

A Bill for an Act Relating to Highway Safety.

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

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

291E-15  
**“§286-A Revocation of privilege to drive a motor vehicle upon refusal to submit to drug testing.** (a) If a person under arrest refuses to submit to a blood or urine test for the presence of drugs under section 286-151(d) or (e), none shall be given except as otherwise provided, but the arresting officer, as soon as practicable, shall submit an affidavit to a district court judge of the circuit in which the arrest was made, stating:

- (1) That at the time of arrest, the arresting officer had probable cause to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways while under the influence of drugs;
- (2) That the arrested person was informed of the sanctions of this section; and
- (3) That the arrested person had refused to submit to a blood or urine test.

(b) Upon receipt of the affidavit, the district court judge shall hold a hearing, as provided in section 286-B, and shall determine whether the statements contained in the affidavit are true and correct. If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's license, permit, or any nonresident operating privilege as follows:

- (1) One year, if the arrestee's driving record shows no prior revocations under this section during the five years preceding the date of arrest;
- (2) Two years, if the arrestee's driving record shows one prior drug enforcement contact under this section during the five years preceding the date of arrest;
- (3) Four years, if the arrestee's driving record shows two prior drug enforcement contacts under this section during the seven years preceding the date of arrest; or
- (4) For life, if the arrestee's driving record shows three or more prior drug enforcement contacts under this section during the ten years preceding the date of arrest.

(c) Whenever a license is revoked under this section, the offender shall be referred to a certified substance abuse counselor for an assessment of the offender's drug abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the court. If the counselor's assessment establishes that the extent of the offender's drug abuse or dependence warrants treatment, the court may order treatment. All costs for assessment and treatment shall be paid by the offender.

(d) Drug enforcement contacts that occurred prior to the effective date of this Act shall be counted in determining the revocation period.

(e) This section shall not preclude a finding under part XIV for failure to comply with section 286-151(b).

**§286-B Hearing before a district judge.** (a) A hearing to determine the truth and correctness of an affidavit submitted to a district judge shall be held within twenty days after the district judge has received the affidavit.

- (b) The district judge shall hear and determine:

- (1) Whether the arresting officer had reasonable grounds to believe that the person had been operating a vehicle while under the influence of drugs;
- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of section 286-A; and
- (4) Whether the person refused to submit to a test of the person's blood or urine.

(c) For purposes of a hearing under this section, there shall be no limit on the introduction of any other competent evidence bearing on the question of whether the person was under the influence of drugs, including but not limited to personal observation by a law enforcement officer of the defendant's manner, disposition, speech, muscular movement, general appearance, or behavior.

**§286-C Appeal to supreme court.** An order of a district court issued under section 286-A may be appealed to the supreme court.

**§286-D Interpretation of drug tests; competent evidence.** In any criminal prosecution or civil proceeding relating to section 291-7, the presence of any drug that impairs a person's ability to operate a vehicle in a careful and prudent manner within three hours after the time of the alleged offense, as shown by chemical analysis or other approved analytical techniques of the defendant's blood or urine, shall be competent evidence that the defendant was under the influence of drugs at the time of the alleged violation. Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291-7 or in any proceeding under section 286-B, of relevant evidence of a person's drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence.

**§286-E Proof of refusal of drug testing; admissibility.** If a legally arrested person refuses to submit to a test of the person's blood or urine, proof of refusal shall be admissible only in a hearing under section 286-B or part XIV and shall not be admissible in any other action or proceeding, whether civil or criminal.

**§286-F Presence of drugs or metabolic products; admissibility.** Any results reflecting the presence of drugs or metabolic products obtained from a blood or urine specimen obtained under chapter 286 shall not be admissible in any proceeding brought under chapter 329 or 712."

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by amending the title to part VII to read as follows:

**"PART VII. ALCOHOL, DRUGS, AND HIGHWAY SAFETY"**

SECTION 3. Section 286-151, Hawaii Revised Statutes, is amended to read as follows:

**“§286-151 Implied consent of driver of motor vehicle or moped to submit to testing to determine [alcoholic] alcohol concentration and drug content [of blood].** (a) Any person who operates a motor vehicle or moped on the public highways of the State shall be deemed to have given consent, subject to this part, to a test or tests approved by the director of health of the person's breath [or, blood, or urine for the purpose of determining [the alcoholic content of the person's blood.] alcohol concentration or drug content of the person's breath, blood, or urine, as applicable.

(b) The test or tests shall be administered at the request of a police officer having probable cause to believe the person driving or in actual physical control of a motor vehicle or moped upon the public highways is under the influence of intoxicating liquor or drugs only after:

- (1) [a] A lawful arrest[.]; and
- (2) [the] The person has been informed by a police officer of the sanctions under part XIV [of this chapter.] and section 286-A.

(c) If there is probable cause to believe that a person is in violation of section 291-4, then the person shall have the option to take a breath or blood test, or both, for the purpose of determining the [alcoholic content of that person's blood.] alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section 291-7, then the person shall have the option to take a blood or urine test, or both, for the purpose of determining the drug content. Drug content shall be measured by the presence of any scheduled drug as provided in section 291-7 or its metabolic products or both. The person shall be informed of the sanctions of section 286-A for failure to take either test.

(e) A person who chooses to submit to a breath test under subsection (c) also may be requested to submit to a blood or urine test, if the officer has probable cause to believe that the person was driving under the influence of any drug under section 291-7 or the combined influence of alcohol and drugs and the officer has probable cause to believe that a blood or urine test will reveal evidence of the person being under the influence of drugs. The officer shall state in the officer's report the facts upon which that belief is based. The person shall have the option to take a blood or urine test, or both, for the purpose of determining the person's drug content. Results of a blood or urine test conducted to determine drug content also shall be admissible for the purpose of determining the person's alcohol content. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c)."

SECTION 4. Section 286-152, Hawaii Revised Statutes, is amended to read as follows:

**“§286-152 Persons qualified to take blood specimen.** No person, other than a physician, registered nurse, phlebotomist deemed qualified by the director of a clinical laboratory that is licensed by the State, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the [alcoholic] alcohol concentration or drug content therein. This limitation shall not apply to the taking of a breath or urine specimen.”

SECTION 5. Section 286-153, Hawaii Revised Statutes, is amended to read as follows:

**“§286-153 Additional tests.** The person tested may [have] choose any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 [of the person's own choosing] to withdraw blood and also may choose any qualified person [of the person's own choosing] to administer a test or tests in addition to any administered at the direction of a police officer. The result of the test or tests may be used as provided in section 291-5[.] or 286-D. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests taken at the direction of a police officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the police officer shall be made available to that person.”



SECTION 6. Section 286-162.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§286-162.5]** **Authorization to establish intoxication and drug control roadblock programs.** The police departments of the respective counties are authorized to establish and implement intoxication and drug control roadblock programs in accordance with the minimum standards and guidelines provided in section 286-162.6. The chief of police in any county establishing an intoxication and drug control roadblock program pursuant to this section shall specify the procedures to be followed in carrying out the program in rules adopted under chapter 91; provided that the procedures shall be in conformity with and not more intrusive than the standards and guidelines described in section 286-162.6.”

SECTION 7. Section 286-162.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Every intoxication and drug control roadblock program shall:
- (1) Require either that all motor vehicles, or mopeds, or both, approaching roadblocks be stopped, or that certain motor vehicles, or mopeds, or both, be stopped by selecting motor vehicles, or mopeds, or both, in a specified numerical sequence or pattern.
  - (2) Require that roadblocks be located at fixed locations for a maximum three-hour period.
  - (3) Provide for the following minimum safety precautions at every roadblock:
    - (A) Proper illumination;
    - (B) Off-road or otherwise safe and secure holding areas for motor vehicles, or mopeds, or both, involved in any roadblock stop;
    - (C) Uniformed police officers carrying proper identification;
    - (D) Adequate advance warning of the fact and purpose of the roadblocks, either by sign posts, flares, or other alternative methods; and
    - (E) Termination of roadblocks at the discretion of the police officer in charge where traffic congestion would otherwise result.
  - (4) Provide for a sufficient quantity and visibility of uniformed officers and official vehicles to assure speedy compliance with the purpose of the roadblocks and to move traffic with a minimum of inconvenience.”

SECTION 8. Section 286-163, Hawaii Revised Statutes, is amended to read as follows:

“**§286-163 Applicable scope of part; mandatory testing in the event of a collision resulting in injury or death.** (a) Nothing in this part shall be construed to prevent the police from obtaining a sample of breath [or], blood, or urine as evidence of intoxication or influence of drugs from the driver of any vehicle involved in a collision resulting in injury to or death of any person.

(b) In the event of a collision resulting in injury or death, and the police have probable cause to believe that a person involved in the incident has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291-4, or 291-7, the police shall request that a sample of blood or urine be recovered from the driver or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291-4, or 291-7.

(c) The police shall make [this] the request under subsection (b) to the hospital or medical facility treating the person from whom the police request that the

blood or urine be recovered. Upon the request of the police that blood or urine be recovered pursuant to this section, and except where the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood or urine from the person represents an imminent threat to the health of the medical personnel or others, the hospital or medical facility shall provide the police with the blood or urine sample requested, recover the sample in compliance with section 321-161, and assign a person authorized under section 286-152 to withdraw the blood sample or obtain the urine. Any person complying with a request to withdraw the blood or obtain the urine under the direction of a police officer pursuant to this section shall be exempt from liability pursuant to section 663-1.9 as a result thereof.”

SECTION 9. Section 291-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person whose driver’s license has been revoked, suspended, or otherwise restricted pursuant to [part XIV of] chapter 286 or section 291-4 or 291-7 shall operate a motor vehicle [either] upon the highways of this State either while the person’s license remains suspended or revoked or in violation of the restrictions placed on the person’s license. The period of suspension or revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.”

SECTION 10. Section 321-161, Hawaii Revised Statutes, is amended to read as follows:

“**§321-161 Chemical testing for [blood-alcohol] alcohol concentration[.] or drug content.** (a) The department of health shall establish and administer a statewide program relating to chemical testing of [blood-alcohol] alcohol concentrations or drug content for the purposes of [chapter] chapters 286, [part XIV, and chapters] 291, and 291C, with the consultation of the state director of transportation. Under the program, appropriate procedures shall be established for specifying:

- (1) The qualifications of personnel who administer chemical tests used to determine [blood-alcohol] alcohol concentrations[;] or drug content;
- (2) The procedures for specimen selection, collection, handling, and analysis; and
- (3) The manner of reporting and [tabulation of] tabulating the results.

(b) The director of health may adopt rules [and regulations] pursuant to chapter 91 necessary for the purposes of this section.”

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. In codifying the new sections added to chapter 286, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections’ designations in this Act.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

## ACT 104

SECTION 14. This Act shall take effect on January 1, 1998.

(Approved June 2, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 104

H.B. NO. 20

A Bill for an Act Relating to Motor Vehicle Driver Licensing.

*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 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) Except as provided in subsection (c), the examiner of drivers shall not examine any applicant for a driver’s license who is fifteen through seventeen years of age unless the applicant holds a valid instruction permit under section 286-110, for a period of no fewer than ninety days.

~~[(b)]~~ (c) 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)]~~ (d) 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 431:10C-107 and section 431:10G-106, when the applicant demonstrates the ability to 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 286-110, Hawaii Revised Statutes, is amended to read as follows:

**“§286-110 Instruction permits.** (a) Any person who, except for the person’s lack of instruction in operating a motor vehicle, would be qualified to obtain a

driver's license issued under this part may apply for a temporary instruction permit at the office of the examiner of drivers in the county in which the applicant resides.

(b) The examiner of drivers shall examine every applicant for an instruction permit. The examination shall include tests of the applicant's:

- (1) Eyesight and other physical or mental capabilities to determine if the applicant is capable of operating a motor vehicle;
- (2) Understanding of highway signs regulating, warning, and directing traffic; and
- (3) Knowledge of the traffic laws, ordinances, or regulations of the State and the county where the applicant resides or intends to operate a motor vehicle.

(c) If the examiner of drivers is satisfied that the applicant is qualified to receive an instruction permit, the examiner of drivers shall issue the permit entitling the applicant, while having the permit in the applicant's immediate possession, to drive a motor vehicle upon the highways for a period of one hundred eighty days; provided that an applicant who is registered in a driver training course shall be issued a temporary instruction permit for the duration of the course and the termination date of the course shall be entered on the permit.

(d) Except when operating a motor scooter or motorcycle, the holder of a temporary instruction permit shall be accompanied by a person who is eighteen years of age or older and licensed to operate the category of motor vehicles in which the motor vehicle which is being operated belongs. The licensed person shall occupy a seat as near the permit holder as is practical while the motor vehicle is being so operated.

(e) No holder of a temporary instruction permit shall operate a motorcycle or a motor scooter during hours of darkness or carry any passengers.

(f) No holder of a temporary instruction permit for the operation of a motorcycle or motor scooter shall have the permit renewed more than once, nor shall the holder be issued another temporary instruction permit for the same purpose, unless the holder has taken the examination for a motorcycle or motor scooter license at least once prior to the expiration of the second temporary instruction permit and at least once prior to the expiration of each subsequent temporary instruction permit issued thereafter. If the holder of a temporary instruction permit fails to meet the requirements of this section, the holder shall not be permitted to apply for another temporary instruction permit for a motor scooter or motorcycle for a period of three months. Nothing in this subsection shall affect the rights and privileges of any holder of a temporary instruction permit for the operation of a motorcycle or motor scooter from obtaining a temporary instruction permit or driver's license for the operation of any other type of motor vehicle."

SECTION 3. The director of transportation, with the cooperation and assistance of the examiner of drivers, as defined in section 286-101, Hawaii Revised Statutes, shall review and study the drivers' licensing procedures under chapter 286, Hawaii Revised Statutes, for the purpose of recommending any legislative measures to update those procedures, including new procedures to conform with new technology and safety development, including but not limited to night driving.

The director of transportation shall report on findings and recommendations, and submit proposed legislation if appropriate, not later than twenty days before the convening of the regular session of 1998.

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

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved June 2, 1997.)

ACT 105

S.B. NO. 870

A Bill for an Act Relating to Pickup Trucks.

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

SECTION 1. Section 291-14, Hawaii Revised Statutes, is amended to read as follows:

**“§291-14 Pickup trucks; passenger restrictions.** (a) No person shall stand in the bed or load-carrying area of any motor vehicle commonly known as a pickup truck while the vehicle is in operation. No operator of any pickup truck shall operate the vehicle with a passenger seated in the bed or load-carrying area of the vehicle unless:

- (1) There is no seating available in the cab of the vehicle;
- (2) The side racks of the vehicle are securely attached and the tailboard or tailgate is securely closed;
- (3) Every passenger in the bed or load-carrying area of the vehicle is seated on the floor and does not attempt to control unlashd cargo.

(b) This section shall not apply to persons or corporations operating a business or businesses that serve the public, who or which are subject to the jurisdiction, supervision, and regulations prescribed by state agencies or departments nor to their agents or employees when engaged in the business of such persons or corporations.

~~(c) No operator of any pickup truck may operate the vehicle with any passenger twelve years of age or under in the bed or load-carrying area of the vehicle, unless one of the following applies:~~

- (1) An emergency exists that threatens the life of the passenger being transported in the bed or load-carrying area of the vehicle; or
- (2) The vehicle is being operated in parades, caravans, or exhibitions which are officially authorized or otherwise permitted by law.

~~[(c)] (d) Any person who violates this section shall be subject to a fine of \$25 for each violation but shall not be guilty of a violation for which points shall be assessed pursuant to section 286-128[.]; provided that any person who violates subsection (c) shall be subject to a fine of \$50 for each separate violation.~~

~~[(d)] (e) As used in this section, “pickup truck” means a light truck [with] that has a cab on the front part of the vehicle covering the driver’s seat[,] and an open bed behind the cab designed primarily to transport property or cargo, with sides and a tailgate to retain the contents within the confines of the bed, and has a maximum gross vehicle weight rating (GVWR) of [10,000] 11,000 pounds or less.”~~

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 on January 1, 1998.

(Approved June 2, 1997.)

## ACT 106

H.B. NO. 417

A Bill for an Act Relating to the Statewide Trail and Access Program.

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

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

“(a) There is created in the department a special fund to be designated as the “special land and development fund”. Subject to [the provisions contained in] the Hawaiian Homes Commission Act of 1920, as amended, and [in] section 5(f) of the Admission Act of 1959, and except as provided under section 171-138 for the industrial park special fund, all proceeds of sale of public lands, including interest on deferred payments[, and]; all rents from leases, licenses, and permits derived from public lands; a portion of the highway fuel tax collected under chapter 243; fees charged by the department for the commercial use of public trails and trail accesses under the jurisdiction of the department; and private contributions for the management, maintenance, and development of trails and accesses shall be set apart in the fund and shall be used only as authorized by the legislature[, except that, without prior legislative authority, the board may use the fund] for the following purposes:

- (1) To reimburse the general fund of the State for advances made [which] that are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;
- (2) For the maintenance of all lands under the control and management of the board, including repairs or improvements[,] thereon; provided that the department shall not expend in excess of \$500,000 in any fiscal year without the prior approval of the governor;
- (3) To repurchase any land, including improvements, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
- (4) For the payment of all appraisal fees; provided that all fees reimbursed to the board shall be deposited in the fund;
- (5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by the board;
- (6) For the [planning and construction of roads and trails along state rights-of-way] management, maintenance, and development of trails and trail accesses under the jurisdiction of the department not to exceed [\$5,000] \$500,000 in any fiscal year; and
- (7) For the payment to private land developers who have contracted with the board for development of public lands under section 171-60.”

SECTION 2. Section 198D-2, Hawaii Revised Statutes, is amended to read as follows:

**“§198D-2 Establishment of Hawaii statewide trail and access program.**

(a) There is established the Hawaii statewide trail and access program, to be known

as Na Ala Hele. The department of land and natural resources shall plan, develop, acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the program in accordance with this chapter.

(b) The trail and access program shall [prepare an annual report for the legislature concerning the amount of moneys accruing to the credit of the general fund] use funding for the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department from the following sources:

- (1) [All] A portion of the highway fuel taxes collected under chapter 243 [on non-highway recreational fuel, or in the alternative, 0.3 per cent of the proceeds under chapter 243 deposited into the state highway fund established under section 248-8];
- (2) Federal government grants [for the management, maintenance, and development of trails and accesses];
- (3) Private contributions [for the management, maintenance, and development of trails and accesses]; and
- [(4) Earnings on the investment of the moneys specified in paragraphs (1) to (3), which became a part of the general fund.

The trail and access program shall submit the report to the legislature not fewer than twenty days prior to the convening of each regular session of the legislature.]

- (4) Fees, established pursuant to administrative rules and charged by the department for the commercial and other use of trails and trail accesses under the jurisdiction of the department.

(c) The moneys specified in subsection (b)(2) shall be deposited in the state treasury; provided that moneys received as deposits or contributions from the federal government [or private sources] shall be accounted for in accordance with the conditions established by the agencies [or persons] making the contribution. [Earnings on the investment of these moneys shall become a part of the general fund.]

(d) [All moneys to meet the general operating needs and expenses of the trail and access program shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate this chapter.] The moneys specified in subsection (b)(1), (3), and (4) shall be deposited in the special land and development fund under section 171-19 for the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department."

SECTION 3. 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 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:

- (1) All taxes collected under chapter 243 with 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
- (2) 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.

As used in this section, "small boats" means all vessels and other watercraft except those operated in overseas transportation beyond the State, and ocean-going

tugs and dredges. The chairperson of the board of land and natural resources, from July 1, 1992, and every three years thereafter, shall establish standards or formulas that will as equitably as possible establish the 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.

An amount equal to [all moneys] 0.3 per cent of the highway fuel tax but not more than \$250,000 collected under chapter 243 [through the assessment of taxes on the sale of non-highway recreational fuel] shall be [reported] allocated each fiscal year to the [trail and access program] special land and development fund for purposes of the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department of land and natural resources established under section 198D-2. [Until such time as the department of transportation develops a system to calculate the tax revenues generated from non-highway recreational fuel, or until July 1, 1997, whichever is later, 0.3 per cent of all proceeds deposited into the highway fund shall be the amount reported to the trail and access program of the department of land and natural resources.]”

SECTION 4. There is appropriated out of the special land and development fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 1997-1998 for the Na Ala Hele program. The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

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

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved June 4, 1997.)

## ACT 107

S.B. NO. 1951

A Bill for an Act Relating to Taxation.

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

### PART I.

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§235- Motion picture and film production; income tax credit.** (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit 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. The amount of the credit shall be up to four per cent of the costs incurred in the State in the production of motion picture or television films. The director of taxation shall specify by rule a schedule of allowable tax credits based on the principle that greater tax credits shall be allowed for greater benefits to the state economy.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for production costs incurred by the entity for the taxable year. The cost



upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rule.

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code of 1986, as amended, no tax credit shall be allowed for those costs for which the deduction is taken.

The basis for eligible property for depreciation of accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed.

(b) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit 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. The amount of the credit shall be up to six per cent of the costs incurred in the State in the production of motion picture or television films for actual expenditures for transient accommodations. The director of taxation shall specify by rule a schedule of allowable tax credits based on the principle that greater tax credits shall be allowed for greater benefits to the state economy.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for production costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level.

(c) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purpose of this section, "net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

(d) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of credits over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than \$1. All claims, including any amended claims, for tax credits under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(e) The director of taxation shall prepare forms as may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91."

SECTION 2. Section 235-9, Hawaii Revised Statutes, is amended to read as follows:

**“§235-9 Exemptions; generally.** Except as provided in sections 235-61 to 235-67 relating to withholding and collection of tax at source, and section 235-2.4 relating to “unrelated business taxable income”, the following persons and organizations shall not be taxable under this chapter: [Banks,] banks, building and loan associations, financial services loan companies, financial corporations, small business investment companies, trust companies, mortgage loan companies, financial holding companies, subsidiaries of financial holding companies as defined in chapter 241, and development companies taxable under chapter 241; [and] insurance companies, agricultural cooperative associations, and fish marketing associations exclusively taxable under other laws[.]; and persons engaged in the business of motion picture and television film production as defined by the director of taxation.”

## PART II.

SECTION 3. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§237- **Aircraft service and maintenance facility.** (a) This chapter shall not apply to amounts received from the servicing and maintenance of aircraft or from the construction of an aircraft service and maintenance facility in the State.

(b) As used in this section:

“Aircraft” means any craft or artificial contrivance of whatever description engaged in intrastate, interstate, or international scheduled commercial use as defined in chapter 263, that operates with two or more jet engines.

“Aircraft service and maintenance” includes all scheduled and unscheduled tasks, inspections, modifications, maintenance and repair of aircraft and related components, engines, hydraulic and electrical systems, and all other components which are an integral part of an aircraft.

“Aircraft service and maintenance facility” means a facility for aircraft service and maintenance that is not less than eighty thousand square feet in area, and which may include ancillary space which is integral to the facility, such as parts and inventory warehouse space, tool rooms, and related administrative and employee space.

“Construction of an aircraft service and maintenance facility” includes all design, engineering, labor, and material costs associated with the construction of facilities the principle purpose of which is the provision of facilities for aircraft service and maintenance.”

SECTION 4. Section 238-1, Hawaii Revised Statutes, is amended by amending the definition of “use” to read as follows:

““Use” (and any nounal, verbal, adjective, adverbial, and other equivalent form of the term) herein used interchangeably means any use, whether the use is of such nature as to cause the property to be appreciably consumed or not, or the keeping of the property for such use or for sale, and shall include the exercise of any right or power over tangible personal property incident to the ownership of that property, but the term “use” shall not include:

- (1) Temporary use of property, not of a perishable or quickly consumable nature, where the property is imported into the State for temporary use (not sale) therein by the person importing the same and is not intended to be, and is not, kept permanently in the State (as for example without limiting the generality of the foregoing language: (A) in the case of a contractor importing permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, the equipment out of the State upon completing the contract; (B) in the case of moving picture films imported for use in theaters in the State with intent or under contract to transport the same out of the State after completion of such use; (C) in the case of a transient visitor importing an automobile or other belongings into the State to be used by the transient visitor while therein but which are to be used and are removed upon the transient visitor’s departure from the State)[.];
- (2) Use by the taxpayer of property acquired by the taxpayer solely by way of gift[.];
- (3) Use which is limited to the receipt of articles and the return thereof, to the person from whom acquired, immediately or within a reasonable time either after temporary trial or without trial[.];

- (4) Use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for the vessels[.];
- (5) The use or keeping for use of household goods, personal effects, and private automobiles imported into the State for nonbusiness use by a person who (A) acquired them in another state, territory, district, or country, (B) at the time of the acquisition was a bona fide resident of another state, territory, district, or country, (C) acquired the property for use outside the State, and (D) made actual and substantial use thereof outside this State; provided that as to an article acquired less than three months prior to the time of its importation into the State it shall be presumed, until and unless clearly proved to the contrary, that it was acquired for use in the State and that its use outside the State was not actual and substantial[.];
- (6) The leasing or renting of any aircraft or the keeping of any aircraft solely for leasing or renting to lessees or renters using the aircraft for commercial transportation of passengers and goods[.];
- (7) The use of oceangoing vehicles for passenger or passenger and goods transportation from one point to another within the State as a public utility as defined in chapter 269[.]; and
- (8) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237 which are used for aircraft service and maintenance, or the construction of an aircraft service and maintenance facility as those terms are defined in section 237-

With regard to purchases made and distributed under the authority of chapter 421 [or under the authority of the Fish Marketing Act under chapter 422], a cooperative association shall be deemed the user thereof.

PART III.

SECTION 5. Section 237-24.5, Hawaii Revised Statutes, is amended to read as follows:

“**§237-24.5 Additional exemptions.** (a) In addition to the amounts exempt under section 237-24, this chapter shall not apply to amounts received by:

- (1) An exchange from:
  - (A) Transaction fees charged exchange members by the exchange for:
    - (i) The sale or purchase of securities or products, or both, bought or sold on an exchange by exchange members for their own account or an account for which they have responsibility as an agent, broker, or fiduciary;
    - (ii) Order book executions made for purposes of effecting transactions; and
    - (iii) Trade processing performed by an exchange in matching trades, keypunching, record keeping, post cashing, and notarization;
  - (B) Membership dues, fees, charges, assessments, and fines from individuals or firms, including charges for firm symbols (member identification), application processing, registration, initiation, membership transfers, floor or post privileges, transaction time extensions, expediting transactions, crossover trades (trading out of assigned functions) and rule infractions;

- (C) Service fees charged to members including fees for communications, badges, forms, documents, and reports;
  - (D) Listing fees and listing maintenance fees charged to companies that wish to be listed and have their securities or products traded on the exchange; and
  - (E) Participation in the communication network consortium operated collectively by United States exchanges or other markets recognized by the Securities and Exchange Commission, the Commodities Futures Trading Commission, or similar regulatory authorities outside the United States that provides last sale and quote securities information to subscribers or that connects such markets or exchanges for purposes of data transmission;
- (2) Exchange members by reason of executing a securities or product transaction on an exchange; provided that this exemption shall apply only to amounts received by exchange members from brokers or dealers registered with the Securities and Exchange Commission, from futures commission merchants, brokers, or associates registered with the Commodities Futures Trading Commission, or from similar individuals or firms registered with similar regulatory authorities outside the United States; and
  - (3) Exchange members as proceeds from the sale of their exchange memberships.

(b) As used in this section:

“Exchange” means an exchange or board of trade as defined in 15 United States Code section 78c(a)(1) or in 7 United States Code section 7, respectively, which is subject to regulation by the Securities and Exchange Commission or the Commodities Futures Trading Commission or an organization subject to similar regulation under the laws of a jurisdiction outside the United States.

“Exchange member” means an individual or firm that is qualified by an exchange as a member and pays membership dues to an exchange in order to trade securities or products on an exchange.

“Securities” means securities as defined in 15 United States Code section 78c and “products” means contracts of sale of commodities for future delivery, futures contracts, options, calls, puts, and similar rights as defined in 7 United States Code section 2, which securities or products are permitted to be traded on an exchange.

[(c) This section is repealed on June 30, 2000.]”

#### PART IV.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1997; provided that:

- (1) Part I shall apply to taxable years beginning after December 31, 1996; and
- (2) Part III shall take effect upon its approval.

(Approved June 5, 1997.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that Hawaii's economy depends upon the health of the visitor industry, which needs a considerable amount of revitalization. In addition, the legislature finds that seventy per cent or more of Hawaii's visitor accommodations are in dire need of refurbishing, repair, or renovation. Many are more than twenty or thirty years old.

One step toward improving the State's fiscal health that will increase long-term revenue while providing jobs in the construction industry is to encourage visitor accommodations to remodel their facilities. A tax credit aimed at visitor accommodation upgrades will encourage the owners of these facilities to refurbish, repair, and renovate their facilities. In turn, these newly remodeled facilities will generate additional tax revenues providing a sound return on the State's initial investment.

The purpose of this Act is to establish a tax credit for remodeling of visitor accommodations.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§235- Hotel remodeling tax credit.** (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter and chapter 237D an income tax credit 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.

The amount of the credit shall be four per cent of the renovation costs incurred during the taxable year for each qualified hotel facility located in Hawaii, and shall not include the renovation costs for which another credit was claimed under this chapter for the taxable year. The total amount of the credit shall be further limited by an amount that shall not exceed ten per cent of the transient accommodations tax paid by the taxpayer in the preceding taxable year that is attributable to the qualified hotel facility.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for renovation costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code of 1986, as amended, no tax credit shall be allowed for that portion of the renovation cost for which the deduction is taken.

The basis of eligible property for depreciation or ACRS purposes for state income taxes shall be reduced by the amount of credit allowable and claimed.

(b) As used in this section:

“Qualified hotel facility” means a hotel/hotel-condo as defined in section 486K-1 and which was placed in service before the effective date of this Act.

“Renovation cost” means any costs for plans, design, construction, and equipment related to alterations and modifications to an existing qualified hotel facility.

(c) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purpose of this tax credit, "net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

(d) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than \$1. All claims for a tax credit under this section must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(e) The director of taxation shall prepare such forms as may be necessary to claim a credit under this section. The director also may require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(f) The tax credit allowed under this section shall be available for taxable years beginning after December 31, 1996, and shall not be available for taxable years beginning after December 31, 1998."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon approval and shall be repealed on December 31, 1999.

(Approved June 5, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 109**

H.B. NO. 1771

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, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, all collective bargaining cost items in the agreement negotiated in fiscal biennium 1995-97 with the exclusive bargaining representative of collective bargaining unit 2:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$1,147,301	\$642,190
Special Funds	\$481,586	\$260,663
Federal Funds	\$19,990	\$10,961
Other Funds	\$19,919	\$11,054

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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 fiscal biennium 1997-99, all collective bargaining cost items in the agreement negotiated in fiscal biennium 1995-97 with the exclusive bargaining representative of collective bargaining unit 2:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$7,692	\$4,508

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, 1998, and June 30, 1999, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved June 5, 1997.)

ACT 110

H.B. NO. 1774

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, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, all collective bargaining cost items in the agreement negotiated in fiscal biennium 1995-97 with the exclusive bargaining representative of collective bargaining unit 5:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$40,488,139	\$64,609,808
Federal Funds	\$777,123	\$1,280,389

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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 Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the salary increases and other cost adjustments negotiated in fiscal biennium 1995-97 and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$1,101,915	\$1,354,128

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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, 1998, and June 30, 1999, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved June 5, 1997.)

**ACT 111**

H.B. NO. 1775

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, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, all collective bargaining cost items in the agreement negotiated in fiscal biennium 1995-97 with the exclusive bargaining representative of collective bargaining unit 6:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$5,023,206	\$3,136,225
Federal Funds	\$93,567	\$53,599

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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 Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the salary increases and other cost adjustments negotiated in fiscal biennium 1995-97 and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$414,587	\$237,836
Federal Funds	\$8,102	\$4,642

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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, 1998, and June 30, 1999, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved June 5, 1997.)

ACT 112

H.B. NO. 1776

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, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, all collective bargaining cost items in the agreement negotiated in fiscal biennium 1995-97 with the exclusive bargaining representative of collective bargaining unit 7:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$6,860,090	\$13,983,886
Special Funds	\$54,745	\$111,626
Federal Funds	\$80,710	\$164,635
Other Funds	\$3,085	\$6,284

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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 Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the salary increases and other cost adjustments negotiated in fiscal biennium 1995-97 and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$933,084	\$1,901,464
Special Funds	\$9,383	\$19,146
Other Funds	\$7,942	\$16,147

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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, 1998, and June 30, 1999, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved June 5, 1997.)

ACT 113

H.B. NO. 1777

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, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, all collective bargaining cost items in the agreement negotiated in fiscal biennium 1995-97 with the exclusive bargaining representative of collective bargaining unit 8:

**ACT 114**

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$3,268,145	\$1,870,601
Special Funds	\$228,373	\$130,691
Federal Funds	\$40,856	\$23,389
Other Funds	\$462,892	\$264,972

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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 Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the salary increases and other cost adjustments negotiated in fiscal biennium 1995-97 and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$122,312	\$69,996
Special Funds	\$2,139	\$1,224
Other Funds	\$2,495	\$1,428

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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, 1998, and June 30, 1999, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved June 5, 1997.)

**ACT 114**

H.B. NO. 1778

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, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium

1997-99, all collective bargaining cost items in the agreement arbitrated in fiscal biennium 1995-97 with the exclusive bargaining representative of collective bargaining unit 9:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$1,946,464	\$1,083,461
Special Funds	\$3,052,440	\$1,730,992
Federal Funds	\$162,768	\$93,117
Other Funds	\$81,430	\$46,610

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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 fiscal biennium 1997-99, all collective bargaining cost items in the agreement arbitrated in fiscal biennium 1995-97 with the exclusive bargaining representative of collective bargaining unit 9:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$7,791	\$4,457

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. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the salary increases and other cost adjustments arbitrated in fiscal biennium 1995-97 and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$6,000	\$2,894
Special Funds	\$4,209	\$2,408

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. 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 8. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 1998, and June 30, 1999, of the respective fiscal years, shall lapse as of those dates.

SECTION 9. This Act shall take effect on July 1, 1997.

(Approved June 5, 1997.)

ACT 115

H.B. NO. 1781

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, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, all collective bargaining cost items in the agreement negotiated in fiscal biennium 1995-97 with the exclusive bargaining representatives of collective bargaining units 3, 4, and 13:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$25,961,742	\$14,913,108
Special Funds	\$4,536,535	\$2,579,104
Federal Funds	\$5,000,160	\$2,898,495
Other Funds	\$891,480	\$507,781

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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 fiscal biennium 1997-99, all collective bargaining cost items in the agreement negotiated in fiscal biennium 1995-97 with the exclusive bargaining representatives of collective bargaining units 3, 4, and 13:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$4,458,408	\$2,579,716
Special Funds	\$138,320	\$80,298

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. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the salary increases and other cost adjustments negotiated in fiscal biennium 1995-97 and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$6,411,250	\$3,785,125
Special Funds	\$1,172,198	\$688,918
Federal Funds	\$479,107	\$286,968
Other Funds	\$326,732	\$188,648

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There is appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the salary increases and other cost adjustments negotiated in fiscal biennium 1995-97 and authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$606,483	\$348,855

SECTION 8. The sums 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 V

SECTION 9. There is appropriated or authorized from the sources of funding indicated below to Policy and Administration (OHA 100) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the employee benefits negotiated in fiscal biennium 1995-97 and authorized by chapter 89C, Hawaii Revised Statutes, by the chairperson of the board of trustees of the Office of Hawaiian Affairs for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$35,605	\$18,485
Special Funds	\$113,255	\$58,782

SECTION 10. The sums appropriated or authorized by this part shall be allotted by the chairperson of the board of trustees of the Office of Hawaiian Affairs in the respective fiscal year for the purposes of this part.

PART VI

SECTION 11. 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 12. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 1998, and June 30, 1999, of the respective fiscal years, shall lapse as of those dates.

SECTION 13. This Act shall take effect on July 1, 1997.

(Approved June 5, 1997.)

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, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 11:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Funds	\$84,041	\$184,518
Special Funds	\$161,335	\$320,223

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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 Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 1997-99, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
Special Funds	\$8,564	\$17,126

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments 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, 1998, and June 30, 1999, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved June 5, 1997.)

## ACT 117

H.B. NO. 1105

A Bill for an Act Relating to Dental Health.

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

SECTION 1. There is established a two-year demonstration project to be conducted by the department of health and the department of education. As a demonstration project for schools in the county of Kauai during the 1997-1998 and 1998-1999 school years, each child admitted to any school in the county of Kauai for the first time should submit a dental health certificate or certification from a licensed dentist stating that the child will undergo a dental examination and will have all necessary treatment. A child who submits certification of the intent to undergo dental examination and have treatment performed will submit to the appropriate school officials further certification no later than three months after the child first entered the school. All necessary treatment services are to be completed within a year of the date of entry into the school. However, no child shall be excluded from school due to noncompliance with this project.

The department of health and the department of education shall:

- (1) Coordinate their efforts in the implementation and administration of the demonstration project; and
- (2) Establish an educational program informing parents and the medical and dental communities of the requirements and purpose of the demonstration project.

No additional funding is necessary for the implementation of this project.

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

(Approved June 10, 1997.)<sup>1</sup>

**Note**

1. This Act was approved on June 10, 1997, which is after the approval date (June 9, 1997) of Act 118.

## ACT 118

H.B. NO. 1575

A Bill for an Act Relating to Milk.

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

SECTION 1. Section 157-1, Hawaii Revised Statutes, is amended by amending the definition of "order" to read:

““Order” means an order or agreement issued by the board under this chapter [prescribing] implementing rules and [regulations] formulas adopted pursuant to chapter 91, pertaining to the production, transportation, processing, storage, distribution, and delivery of milk, and the establishment of quotas and the setting of minimum prices of milk within any milk shed in the State during any specified period or periods.”

SECTION 2. Section 157-31, Hawaii Revised Statutes, is amended to read as follows:



**“§157-31 Petition to establish, revise, or terminate minimum prices, salvage values, and quotas.** (a) Upon petition by the producers and producer-distributors who produce fifty-five per cent of the milk in a milk shed, or by fifty-five per cent of all producers in a milk shed, or upon the board’s own motion, the board shall [hold a public hearing] adopt rules pursuant to chapter 91 to [establish,];

- (1) Establish, revise, or terminate the minimum prices or salvage values for milk to be paid to producers and producer-distributors or the quotas for the production of milk in a milk shed, or [both.] any of them; or
- (2) Establish specific formulas or criteria for determining the minimum prices or salvage values for milk to be paid to producers and producer-distributors or the quotas for the production of milk in a milk shed, or any of them.

For the purposes of this section, each producer-member of an agricultural cooperative shall be counted as a producer, and an agricultural cooperative shall not be counted as a producer or as a producer-distributor.

(b) Public hearings to establish, revise, or terminate minimum prices, salvage values, and quotas or to establish specific formulas or criteria for setting minimum prices, salvage values, or quotas, shall not constitute a contested case as defined by chapter 91.”

SECTION 3. Section 157-33, Hawaii Revised Statutes, is amended to read as follows:

**“§157-33 Order fixing minimum price[.], salvage value.** (a) Without regard to the notice and public hearing requirements of chapter 91 and based on the specific formulas or criteria adopted under section 157-31(a)(2), [The] the board [shall] may establish by order the minimum prices and salvage values for milk to be paid to producers by producer-distributors and distributors. An order establishing minimum prices or salvage values for milk, or both, shall be subject to approval by the governor prior to such order taking effect.

- (1) Prior to the effective date of any such order, the department shall publish in a newspaper of general circulation a notice that includes:
  - (A) Either a statement of the substance of the proposed order; or a statement of the minimum prices or salvage value for milk to be established, and
  - (B) A statement that a copy of the proposed order will be mailed to any interested person who requests a copy, together with a description of where and how the requests may be made.
- (2) The notice shall be mailed to all persons who have made a timely written request of the department for advance notice of these orders or of the department’s rulemaking proceedings. The department may require reimbursement for the cost of preparing and mailing the copies.

(b) The minimum prices and salvage values within each milk shed may vary according to the classes or classifications established by the board; provided that the minimum prices and salvage values for each such class or classification within a milk shed shall be uniform. The minimum prices and salvage values may vary [according to counties.] from county to county. The [order] board may adopt rules to prescribe how producers shall be paid for milk sold by them to distributors and producer-distributors.”

SECTION 4. Section 157-34, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) From time to time when required to meet changes in conditions, the board may alter, revise, or adjust the [quotas] total quota in any milk shed [when required to meet changes in conditions, such as change in demand or inability of certain producers or producer-distributors to meet their assigned quotas.] by rule, pursuant to section 157-31(a)(1), or by order, without regard for the notice and public hearing requirements of chapter 91, based on the specific formulas or criteria adopted under section 157-31(a)(2). An order to alter, revise, or adjust the total quota for the production of milk in a milk shed shall be subject to the notice requirements set forth in sections 157-33(a)(1) and 157-33(a)(2) for an order fixing minimum prices or salvage values.”

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

SECTION 6. This Act shall take effect upon its approval and be repealed on June 30, 1998; provided that sections 157-1, 157-31, 157-33, and 157-34, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 9, 1997.)

## ACT 119

H.B. NO. 1

A Bill for an Act Relating to Motor Carrier Safety Law.

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

SECTION 1. The purpose of this Act is to establish marking requirements for all motor carrier vehicles.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to part XI to be appropriately designated and to read as follows:

“**§286- Marking of motor carrier vehicles.** (a) Notwithstanding the requirements in 49 Code of Federal Regulations, Part 390.21, every motor carrier vehicle shall be marked as specified in subsections (b), (c), and (d).

(b) The marking shall display the following information:

- (1) The name or trade name of the motor carrier or company operating the motor carrier vehicle;
- (2) If the name of any person other than the operating motor carrier or company appears on the motor carrier vehicle, the information required by paragraph (1) shall be displayed and preceded by the words “operated by”;
- (3) The gross vehicle weight, gross vehicle weight rating, or gross combination weight rating; and
- (4) Other identifying information may be displayed on the motor carrier vehicle if it is not inconsistent with the information required by this subsection.

(c) The marking shall:

- (1) Appear on both sides of the motor carrier vehicle;
- (2) Be in letters that contrast sharply in color with the background on which the letters are placed;

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- (3) Be readily legible with letters and figures not less than two and one-half inches in height with a one-quarter inch stroke or width; and
- (4) Be kept and maintained in a manner that retains the legibility required by paragraph (3).
- (d) The marking may be painted or permanently affixed on the motor carrier vehicle.
- (e) A motor carrier or company operating a motor carrier vehicle under a rental agreement having a term in excess of thirty calendar days shall meet the requirements of this section.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved June 16, 1997.)

Note

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

ACT 120

H.B. NO. 2

A Bill for an Act Relating to Motor Carriers.

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

SECTION 1. The purpose of this Act is to amend the state motor carrier law by:

- (1) Extending civil and criminal penalty provisions to include shippers and consignees located in this State, as well as their officers, agents, employees, and representatives;
- (2) Exempting persons transporting seed corn to or from a processing facility from the motor carrier law until June 30, 2002; and
- (3) Repealing the June 8, 1998, sunset date of Act 105, Session Laws of Hawaii 1995, which allows the department of transportation motor vehicle safety officers to enforce motor carrier violations.

SECTION 2. Section 271-5, Hawaii Revised Statutes, is amended to read as follows:

“§271-5 Exemptions, generally. Notwithstanding any other provisions of this chapter, its contents shall not apply to:

- (1) Persons transporting their own property where the transportation is in furtherance of a primary business purpose or enterprise of that person, except where the transportation is undertaken by a motor carrier to evade the regulatory purposes of this chapter;
- (2) Persons operating motor vehicles when engaged in the transportation of school children and teachers to and from school, and to and from school functions; provided that these persons may engage in providing transportation at special rates for groups of persons belonging to an eleemosynary or benevolent organization or association domiciled in this State where the organization or association sponsors or is conducting a nonregular excursion[.]; provided that whenever the persons engage in the transportation of persons other than those exempted in this paragraph, that portion of their operation shall not be exempt from

this chapter. Nothing in this paragraph shall be construed to authorize any person to engage in the transportation of persons, other than the transportation of persons exempted by the terms of this paragraph, without a permit or certificate issued by the commission authorizing such transportation;

- (3) Persons operating taxicabs or other motor vehicles utilized in performing a bona fide taxicab service. "Taxicab" includes:
  - (A) Any motor vehicle used in the movement of passengers on the public highways under the following circumstances, namely the passenger hires the vehicle on call or at a fixed stand, with or without baggage for transportation, and controls the vehicle to the passenger's destination;
  - (B) Any motor vehicle for hire having seating accommodations for eight or fewer passengers used in the movement of passengers on the public highways that may, as part of a continuous trip, pick up or discharge passengers from various unrelated locations; provided that they shall be regulated by the counties in accordance with section 46-16.5(c); and provided further that this subparagraph shall not apply to any exclusive rights granted by the department of transportation for taxicab services at facilities under the department's control; and
  - (C) Any motor vehicle having seating accommodations for eight or fewer passengers used in the movement of passengers on the public highways between a terminal, i.e. a fixed stand, in the Honolulu district, as defined in section 4-1 and a terminal in a geographical district outside the limits of the Honolulu district, and vice versa, without picking up passengers other than at the terminals or fixed stands; provided that the passengers may be picked up by telephone call from their homes in the rural area or may be unloaded at any point between the fixed stands or may be delivered to their homes in the rural area;
- (4) Persons operating motor vehicles in the transportation of persons pursuant to a franchise from the legislature and whose operations are presently regulated under chapter 269;
- (5) Nonprofit agricultural cooperative associations to the extent that they engage in the transportation of their own property or the property of their members;
- (6) Persons operating motor vehicles specially constructed for the towing of disabled or wrecked vehicles but not otherwise used in the transportation of property for compensation or hire;
- (7) Persons operating motor vehicles in the transportation of mail, newspapers, periodicals, magazines, messages, documents, letters, or blueprints;
- (8) Persons operating funeral cars or ambulances;
- (9) Persons operating motor vehicles in the transportation of garbage or refuse;
- (10) Persons operating the type of passenger carrying motor vehicles known as "sampan buses" within the radius of twenty miles from the city of Hilo, Hawaii;
- (11) Persons transporting unprocessed pineapple to a cannery [and], seed corn to a processing facility, or returning any containers used in such transportation to the fields;

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- (12) Sugar plantations transporting sugarcane, raw sugar, molasses, sugar by-products, and farming supplies for neighboring farmers pursuant to contracts administered by the United States Department of Agriculture;
- (13) Persons engaged in the ranching or meat or feed business who transport cattle to slaughterhouses for hire where such transportation is their sole transportation for hire and where their earnings from the transportation constitute less than fifty per cent of their gross income from their business and the transportation for hire;
- (14) Persons transporting unprocessed raw milk to processing plants and returning any containers used in such transportation to dairy farms for reloading;
- (15) Persons transporting animal feeds to animal husbandry farmers and farming supplies directly to animal husbandry farmers and returning any containers used in such transportation to these sources of such feeds and supplies for reloading;
- (16) Persons engaged in transporting not more than fifteen passengers between their places of abode, or termini near such places, and their places of employment in a single daily round trip where the driver is also on the driver's way to or from the driver's place of employment;
- (17) Persons transporting passengers without charge in motor vehicles owned or operated by such person, where such transportation is provided in conjunction with and in furtherance of a related primary business purpose or enterprise of that person, and such transportation is provided only directly to and from the place of business of such person, except that this exemption shall not apply to persons making any contract, agreement, or arrangement to provide, procure, furnish, or arrange for transportation as a travel agent or broker or a person engaged in tour or sightseeing activities, nor shall this exemption apply where the transportation is undertaken by a person to evade the regulatory purposes of this chapter; and
- (18) Persons conducting the type of county-regulated passenger carrying operation known as "jitney services". For the purposes of this paragraph, "jitney services" means public transportation services utilizing motor vehicles that have seating accommodations for six to twenty-five passengers, operate along specific routes during defined service hours, and levy a flat fare schedule."

SECTION 3. Section 271-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person knowingly and wilfully violating any provision of this chapter, or any rule, 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. In addition, any shipper or consignee located in this State, or any officer, employee, agent, or representative thereof, who knowingly and wilfully engages in the services of any person violating any provision of this chapter, or any rule, requirement, or order, or any term or condition of any certificate or permit for which a penalty is not otherwise provided, shall be guilty of a misdemeanor."

SECTION 4. Section 271-27, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who [shall fail or refuse] fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order thereunder, and any shipper or consignee located in this State, or any officer, agent, employee, or representative of any such shipper or consignee, who engages in the services of any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order, may be assessed a civil penalty payable to the State in a sum:

- (1) Up to \$1,000 for each [such] offense; and
- (2) In the case of a continuing violation, not less than \$50 and not [to exceed] more than \$500 for each additional day during which the failure or refusal continues.”

SECTION 5. Section 5(2) of Act 105, Session Laws of Hawaii 1995, is amended by amending subsection (j) of section 271-27, Hawaii Revised Statutes, to read as follows:

“(j) In addition to any other remedy available, the commission or its enforcement officer, including a motor vehicle safety officer employed and assigned[,] by the department of transportation pursuant to section 271-38, [by the department of transportation] may issue citations to persons acting in the capacity of or engaging in the business of a motor carrier within [the] this State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and rules adopted [thereunder.], or to any shipper or consignee located in this State, or any officer, employee, agent, or representative thereof who engages in the services of those persons.

- (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 notifies the commission of the request for a hearing in time, the commission shall afford the person 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 in time, 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 final order, the commission need only produce a certified copy of the final order and show that the notice was given, and that a hearing was held or the time granted for requesting the hearing has run without such a request.
- (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 by law. The commission may adopt any rules under chapter 91 that may be necessary to fully effectuate this subsection.”

SECTION 6. Section 7 of Act 105, Session Laws of Hawaii 1995, as amended by Act 102, Session Laws of Hawaii 1996, is amended to read as follows:

“SECTION 7. This Act shall take effect upon its approval [and shall be repealed on June 8, 1998; provided that upon the repeal of this Act:

- (1) The definition of “enforcement officer” in section 269-1, Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995;
- (2) Section 271-4, Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995; and
- (3) Section 271-27(g) and (j), Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995, as amended by section 1 of Act 101, Session Laws of Hawaii 1995].”

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

SECTION 8. This Act shall take effect upon its approval; provided that on June 30, 2002, section 2 of this Act shall be repealed and section 271-5, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 16, 1997.)

**ACT 121**

H.B. NO. 65

A Bill for an Act Relating to Pawnbrokers.

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

SECTION 1. The purpose of this Act is to discourage sales and pledges of stolen property to pawnbrokers.

SECTION 2. Section 445-134.13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) No pawnbroker shall:
  - (1) Charge or receive any pawn finance charge exceeding twenty per cent a month;
  - (2) Contract for or receive any amounts other than the pawn finance charge in connection with a pawn transaction;
  - (3) Accept a pledge or purchase of property from a person under the age of eighteen years;
  - (4) Accept any waiver, in writing or otherwise, of any right or protection accorded a customer under this part;

- (5) Fail to exercise reasonable care to protect pledged goods from loss or damage;
- (6) Fail to return pledged goods to a customer within three business days of payment of the full amount due the pawnbroker on the pawn transaction;
- (7) Make any charge for insurance, storage, or handling in connection with a pawn transaction;
- (8) Enter into a pawn transaction which has a maturity date more than one month after the date the pawn transaction agreement is signed;
- (9) Accept pledged goods or buy merchandise from a person unable to supply verification of identity by photo identification card, a state-issued identification card, driver's license, or federal government-issued identification card; provided that in addition to such verification, the pawnbroker shall take the person's thumbprint, and retain the thumbprint on file;
- (10) Make any agreement requiring the personal liability of a customer in connection with a pawn transaction or creating any obligation on the part of the customer to redeem pledged goods or make any payment on a pawn transaction; or
- (11) Allow a customer's pawn account to exceed \$10,000. For purposes of this paragraph, "pawn account" means the total accumulation of unpaid pawn finance charges for any single customer."

SECTION 3. New statutory material is underscored.

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

(Approved June 16, 1997.)

## ACT 122

H.B. NO. 214

A Bill for an Act Relating to Keahole Airport.

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

SECTION 1. Section 261-26, Hawaii Revised Statutes, is amended to read as follows:

**“[[[§261-26] Keahole-Kona] Kona International Airport[.] at Keahole.** The official name of the airport situated at Keahole-Kona, Hawaii shall be the [Keahole-Kona International Airport.] Kona International Airport at Keahole.”

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 16, 1997.)



A Bill for an Act Relating to Higher Education.

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

SECTION 1. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the community colleges and the department of education;
- (3) Special funds of the student housing, summer session, college of continuing education and community service, campus center, Kau’iokahaloa Iki faculty housing development, and bookstores of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Spouse and child abuse special account under section 346-7.5;
- (11) Spouse and child abuse special account under section 601-3.6;
- (12) Funds of the employees’ retirement system created by section 88-109;
- (13) Unemployment compensation fund established under section 383-121;
- (14) Hawaii hurricane relief fund established under chapter 431P;
- (15) The University of Hawaii tuition and fees special fund; and
- (16) Division of community hospitals’ special fund[.];

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 2. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school and intersession fund under section 302A-1310;
- (3) School cafeteria special funds of the community colleges and the department of education;

- (4) Special funds of the student housing, summer session<sup>1</sup> college of continuing education and community service, campus center, Kau'iokahaloa Iki faculty housing development and bookstores of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Spouse and child abuse special account under section 346-7.5;
- (9) Spouse and child abuse special account under section 601-3.6;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Convention center capital and operations special fund established under section 206X-10.5;
- (14) The University of Hawaii tuition and fees special fund; and
- (15) Division of community hospitals' special fund[,];

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

SECTION 3. The board of regents of the University of Hawaii, with the approval of the governor, may issue revenue bonds in an aggregate principal amount not to exceed \$3,600,000 for the purpose of repaying the outstanding construction loan for a portion of the University of Hawaii Kau'iokahaloa Iki faculty housing development advanced by the housing finance and development corporation from the dwelling unit revolving fund created in section 201E-204, Hawaii Revised Statutes. For purposes of this Act, the term "project" means that portion of the University of Hawaii Kau'iokahaloa Iki faculty housing development consisting of the "for sale" units which do not constitute a part of the university system heretofore created by the board of regents. The revenue bonds shall be issued pursuant to chapter 306, Hawaii Revised Statutes, except as follows:

- (1) The term "university project" includes the project;
- (2) The term "revenue of the university" includes any moneys derived from the rental or sale of the project or moneys on deposit in the housing assistance revolving fund created in section 304-8.96, Hawaii Revised Statutes;
- (3) The term "revenue of the university project or university system" includes any moneys derived from the rental or sale of the project or moneys on deposit in the housing assistance revolving fund created in section 304-8.96, Hawaii Revised Statutes;
- (4) Section 306-5(3), section 306-9, and the first paragraph of section 306-10, Hawaii Revised Statutes, shall not apply to the revenue bonds authorized by this Act;
- (5) The director of finance shall establish as a special deposit in the treasury of the State, a separate special fund into which all revenues received from the rental or sale of the project shall be paid, which special fund is hereby created and shall be known as the Kau'iokahaloa Iki faculty housing development special fund;
- (6) All moneys in the Kau'iokahaloa Iki faculty housing development special fund shall be appropriated and applied in accordance with the provisions of the resolution or resolutions of the board of regents providing for the issuance of the revenue bonds authorized by this Act:
  - (A) To provide for the costs of operation, repair, and maintenance of the project;

- (B) To pay, when due, all revenue bonds and interest thereon, for the payment of which all revenues derived from the rental or sale of the project is or has been pledged, charged, or otherwise encumbered, including reserves thereof; and
- (C) To pay items as are specified in the resolution or resolutions providing for the issuance of the revenue bonds authorized by this Act;
- (7) In addition and supplemental to the moneys in the Kau'iokahaloa Iki faculty housing development special fund, the board of regents may apply moneys on deposit in the housing assistance revolving fund created in section 304-8.96, Hawaii Revised Statutes, to any of the purposes specified in paragraph 6 above; and
- (8) The revenue bonds authorized by this Act may be evidenced in the form of a loan agreement or other contract and be sold pursuant to loan contracts with lenders authorized to do business in the State.

SECTION 4. The proceeds of the revenue bonds authorized by this Act are appropriated for fiscal year 1997-1998, and to the extent the proceeds or any part thereof is not encumbered or expended in fiscal year 1997-1998, the amount of the proceeds not so expended is appropriated for fiscal year 1998-1999, for the purpose of repaying the outstanding construction loan for the project advanced by the housing finance and development corporation from the dwelling unit revolving fund created in section 201E-204, Hawaii Revised Statutes.

SECTION 5. There is hereby appropriated from moneys on deposit in the Kau'iokahaloa Iki faculty housing development special fund the sum of \$612,442 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$540,442 or so much thereof as may be necessary for fiscal year 1998-1999 to pay the costs of operation, repair, and maintenance of the project and to pay the principal of and interest on the revenue bonds authorized by this Act. In the event that moneys on deposit in the Kau'iokahaloa Iki faculty housing development special fund are insufficient for the purpose, the board of regents may apply and there is hereby appropriated from the housing assistance revolving fund created in section 304-8.96, Hawaii Revised Statutes, to the extent the appropriation is required by law, for fiscal year 1997-1998, an amount equal to the difference between \$612,442 and the amount actually made available during the fiscal year pursuant to the appropriation contained in the preceding sentence from the Kau'iokahaloa Iki faculty housing development special fund, and for fiscal year 1998-1999, an amount equal to the difference between \$540,442, and the amount actually made available during the fiscal year pursuant to the appropriation contained in the preceding sentence from the Kau'iokahaloa Iki faculty housing development special fund, for the purposes of this Act.

SECTION 6. The appropriation of moneys under this Act shall be expended by the board of regents of the University of Hawaii for the purposes of this Act.

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

SECTION 8. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

## Note

1. Prior to amendment “,” appeared here.

## ACT 124

H.B. NO. 258

A Bill for an Act Relating to the Convention Center.

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

SECTION 1. The legislature finds that the convention center capital and operations special fund under section 206X-10.5, was established to serve as the depository of funds for the payment of debt service on construction as well as funds for operation. Moneys for the two uses are currently commingled in a single account. Although section 237D-6.5 earmarks a portion of the transient accommodations tax for the payment of debt service and construction, the capital and operations special fund currently lacks sufficient reserves to pay for the operating costs of the center. Because of the potential to spend funds earmarked for other uses, the legislature finds that the special fund should be separated into two funds. This Act separates the capital and operations special fund into two distinct funds—one for capital expenses and the other for operational costs.

The legislature further finds that the Hawaii convention center is scheduled to open in mid-1998. While the facility promises to provide economic benefits to the State as a whole, the project also poses many special financial challenges. The financial future of the State dictates that revenue generating options must be proactively and vigorously explored. To this end, the legislature believes that a privatization plan should be formulated for the State to consider prior to the opening of the convention center.

SECTION 2. Chapter 206X, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§206X- Convention center operations special fund.** (a) There is established in the state treasury the convention center operations special fund, into which shall be deposited:

- (1) All revenues or moneys derived from the operations or use of the convention center;
- (2) All or a portion of all revenues derived from the operation of parking and garage facilities and other concessions at the convention center; and
- (3) Appropriations by the legislature.

(b) In addition to the powers of the authority specified in section 206X-4, the authority may:

- (1) Adopt rules in accordance with chapter 91, to define the term “revenues or moneys derived from the operations or use of the convention center”; and
- (2) Do any and all things deemed necessary to administer the convention center operations special fund.

(c) Moneys in the convention center operations special fund may be placed in interest-bearing accounts or otherwise invested by the authority until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the convention center operations special fund.

(d) Moneys in the convention center operations special fund shall be used by the authority for the operation, maintenance, and improvement of the convention center and any public facilities related thereto.”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.**

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the community colleges and the department of education;
- (3) Special funds of the student housing, summer session, college of continuing education and community service, campus center, and bookstores of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund[;] under section 206X- ;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Spouse and child abuse special account under section 346-7.5;
- (11) Spouse and child abuse special account under section 601-3.6;
- (12) Funds of the employees’ retirement system created by section 88-109;
- (13) Unemployment compensation fund established under section 383-121;
- (14) Hawaii hurricane relief fund established under chapter 431P;
- (15) The University of Hawaii tuition and fees special fund; and
- (16) Division of community hospitals’ special funds,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school and intersession fund under section 302A-1310;
- (3) School cafeteria special funds of the community colleges and the department of education;
- (4) Special funds of the student housing, summer session, college of continuing education and community service, campus center, and bookstores of the University of Hawaii;

- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Spouse and child abuse special account under section 346-7.5;
- (9) Spouse and child abuse special account under section 601-3.6;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Convention center capital [and operations] special fund established under section 206X-10.5[;] and the convention center operations special fund established under section 206X- ;
- (14) The University of Hawaii tuition and fees special fund; and
- (15) Division of community hospitals' special funds,

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

SECTION 5. Section 206X-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) As a further condition and consideration of the right to develop the real property within the convention center district under the agreement and pursuant to this chapter, the developer shall pay a reasonable sum determined by the authority as contribution for the payment of costs relating to:

- (1) The temporary or permanent relocation of existing licensees and lessees, if any, who are displaced because of the development within the convention center district pursuant to the convention center development plan by the developer; or
- (2) Settlement payments in lieu of payments provided under paragraph (1) to existing licensees and lessees, if any, who are displaced by the developer because of the development within the convention center district pursuant to the convention center development plan;

provided that each displaced licensee or lessee shall have the option to select either relocation or a settlement payment.

Upon the approval by the authority of the relocation plan, which shall be prepared and submitted by the developer to the authority, the developer shall deliver to the authority for deposit into the convention center capital [and operations] special fund the sum determined by the authority in the form of a certified check, an irrevocable letter of credit, or surety bond. The sum determined by the authority shall be used for the implementation of the relocation plan; provided that the sum and all interest accrued thereon shall be refunded to the developer in the event this chapter expires and becomes void.

The relocation plan shall include an agreement by the developer to give every displaced licensee or lessee who does not elect to receive a settlement payment under paragraph (2) an unassignable right of first refusal of any license or lease of space within the convention center district developed and offered for those activities similar in size and nature to the business conducted by the licensee or lessee at the time of displacement, unless this right is waived by any licensee or lessee.

The authority shall establish a task force to assist in the implementation of the relocation plan. The task force shall include persons representing agencies, organizations, government, and private interests.”

SECTION 6. Section 206X-10.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§206X-10.5]]~~ **Convention center capital [and operations] special fund.** (a) There is established in the state treasury the convention center capital [and operations] special fund, into which shall be deposited:

- (1) A portion of the revenues from the transient accommodations tax, as provided by section 237D-6.5;
- (2) All revenues derived from the operations of the convention center;
- (3) All or a portion of all revenues derived from the operation of parking and garage facilities and other concessions at the convention center;
- (4) ~~(2)~~ All proceeds from revenue bonds issued by the authority; and
- (5) ~~(3)~~ Appropriations by the legislature to the convention center capital [and operations] special fund.

(b) In addition to the powers of the authority specified in section 206X-4, the authority may[:

- (1) Define, through rules adopted in accordance with chapter 91, the term “revenues derived from the operations of the convention center” or like terms; and
- (2) Do] do any and all things deemed necessary to administer the convention center capital [and operations] special fund.

(c) Moneys in the convention center capital [and operations] special fund may be placed in interest-bearing accounts or otherwise invested by the authority until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the convention center capital [and operations] special fund.

(d) Moneys in the convention center capital [and operations] special fund shall be used by the authority for the following purposes:

- (1) Planning, design, improvement, construction, land acquisition, equipment, and furnishing necessary for the development or maintenance of a convention center;
- (2) Constructing[, operating, maintaining, and improving] the convention center and any public facilities related thereto;
- (3) Payment of debt service on revenue bonds issued by the authority for purposes of the convention center, establishment of debt service and other reserves deemed necessary by the authority or the State, and reimbursement of the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of the convention center; and
- (4) Any other purpose deemed necessary by the authority for the purpose of planning, improving, and developing[, operating, and maintaining] the convention center facility.”

SECTION 7. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [For the fiscal year beginning July 1, 1990, and for each fiscal year thereafter, until June 30, 1994, revenues collected under this chapter shall be distributed as follows: five per cent of the revenues collected under this chapter shall be retained by the State. Of the remainder, Kauai county shall receive 14.5 per cent; Hawaii county shall receive 18.6 per cent; city and county of Honolulu shall receive 44.1 per cent; and Maui county shall receive 22.8 per cent.]

For the fiscal year beginning July 1, 1994, and for each fiscal year thereafter, revenues collected under this chapter shall be distributed as follows:

- (1) One-sixth of the revenues collected under this chapter shall be deposited into the convention center capital [and operations] special fund[;] established under section 206X-10.5;

- (2) Of the remaining revenues, five per cent shall be retained by the State; and
- (3) Of the remainder, Kauai county shall receive 14.5 per cent; Hawaii county shall receive 18.6 per cent; city and county of Honolulu shall receive 44.1 per cent; and Maui county shall receive 22.8 per cent.

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection, and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.”

SECTION 8. The director of finance shall transfer to the credit of the convention center operations special fund on the effective date of this Act, an unexpended or unencumbered amount to be determined by the director of finance in the convention center capital and operations special fund scheduled for repeal on the effective date of this Act. The director of finance shall subsequently transfer to the credit of the convention center capital special fund, the remaining unexpended or unencumbered balances remaining in the convention center capital and operations special fund.

SECTION 9. The director of finance shall determine and assign or transfer to either the convention center operations special fund or the convention center capital special fund any encumbrances or liabilities currently accrued by the convention center capital and operations special fund scheduled for repeal on the effective date of this Act.

SECTION 10. The department of business, economic development, and tourism shall work in cooperation with the department of budget and finance and the convention center authority to formulate a convention center privatization plan that shall address issues including but not be limited to:

- (1) Identifying all financial obligations of the State relating to the convention center;
- (2) The impact on the State’s bond obligations for the construction of the convention center;
- (3) A determination as to whether the privatization of the convention center is in the best interest of the State; and
- (4) Any other legal or financial requirements necessary to to effectuate the privatization of the convention center.

The department of business, economic development, and tourism shall submit a report to the legislature containing its findings and recommendations on the convention center privatization plan no later than twenty days prior to the convening of the 1998 regular session.

For the purposes of this Act, “privatization” means the transfer of ownership, control, use, or management of a public facility, in whole or in part, from the State to a private person by means of sale, lease, lease with option to purchase, or by public concession.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

#### Note

1. Edited pursuant to HRS §23G-16.5.



A Bill for an Act Relating to Special Purpose Revenue Bonds for the Wilcox Health System.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, 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 a total amount not to exceed \$15,000,000, in one or more series, for the purpose of assisting the Wilcox Health System and one or more of its nonprofit affiliates in financing the acquisition of a building owned by Kauai Medical Group, Inc., and to finance or refinance the costs related to a new health care facility construction, renovation, equipment, and the purchase of tangible assets (including land and improvements) for the Wilcox Health System and any one or more of its nonprofit affiliates.

The legislature finds and determines that the activities and facilities of the Wilcox Health System and its affiliates constitute projects as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a health care facility provided to the general public by a nonprofit corporation.

SECTION 3. The 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 nonprofit corporations that provide health care facilities to the general public.

SECTION 4. 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 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 under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2000.

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

(Approved June 16, 1997.)

A Bill for an Act Relating to Pupil Transportation.

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

SECTION 1. Section 286-181, Hawaii Revised Statutes, is amended to read as follows:

“§286-181 Pupil transportation safety. (a) As used in this section “school vehicle” means any publicly or privately owned motor vehicle used to transport pupils to and from a school, as defined in section 302A-901, school functions, or school-related events, except:

- (1) A motor vehicle used for the transportation of pupils attending schools above the twelfth grade or pupils over eighteen years of age;
- (2) A privately-owned passenger vehicle when the transportation is provided without compensation of any kind;
- (3) A motor vehicle used for the transportation of pupils together with other passengers as a part of the regularly scheduled operation of a mass transit system; or
- (4) A privately-owned motor vehicle when the transportation is provided by a community association or a nonprofit corporation, duly incorporated with the department of commerce and consumer affairs, which operates for the purpose of promoting recreation, health, safety, ridesharing, or social group functions.

(b) The department of transportation may grant exemptions for the use of vehicles other than school vehicles when the department finds that compliance with this section is [impossible or impractical]:

- (1) Impossible due to [factors, such as] the unavailability of school vehicles[, which are beyond the control of the school; provided that no]; or
- (2) Impractical due to economic factors.

No exemption shall be granted for the qualifications of individuals driving a bus as defined in section 286-2 and such individuals shall meet school vehicle driver qualifications.

(c) The exemptions in subsection (b) shall be granted:

- (1) To the department of education[, ] to administer to public schools based on criteria developed by the departments of transportation and education[, ]; provided that the department of education shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were utilized;
- (2) To a board of independent schools, which is registered with the department of commerce and consumer affairs, to administer to private schools utilizing criteria developed by the departments of transportation and education[, ]; provided that the board shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were utilized;
- (3) Only for the transport of pupils to and from school functions or school-related activities but not for transportation to and from a school;
- (4) Only when each pupil being transported has obtained a written statement from the pupil’s parent or legal guardian waiving the State’s liability; and
- (5) In accordance with the procedures and criteria established by rules of the department of transportation.

[(c)] (d) The department of transportation may grant exemptions for the use of vehicles other than school vehicles for the transportation of students requiring special education and services when the department finds that compliance with this section is impossible or impractical; provided that no exemption shall be granted for the qualifications of individuals driving a bus as defined in section 286-2 and such individuals shall meet school vehicle driver qualifications.

[(d)] (e) The department of transportation shall adopt safety rules and standards relating to school vehicles, equipment, and drivers, including but not limited to:

- (1) School vehicle and school vehicle equipment design, construction, and identification;
- (2) School vehicle driver qualification and training as required by law;
- (3) School vehicle operation;
- (4) School vehicle maintenance and maintenance records;
- (5) Special school vehicle safety inspections;
- (6) Criteria for passenger loading and unloading safety areas; and
- (7) Procedures and criteria for the granting of exemptions permitted under subsections (b), [and] (c)[;], and (d);

provided that the rules and standards shall permit the use of small buses or vans weighing less than ten thousand pounds for the transportation of pupils of a day care center, child care facility, headstart program, and preschool, or of school pupils and school staffs to and from school-related activities.

[(e)] (f) The department of education shall adopt necessary rules governing passenger conduct, passenger safety instruction, and disciplinary procedures for the enforcement of the rules applicable to passengers on school vehicles operated by or under contract with the State. Any pupil who fails to comply with any rule adopted pursuant to this subsection shall not be subject to section 286-10 but shall be subject to discipline in accordance with rules adopted by the department.

[(f)] (g) Any person operating a school vehicle who fails to comply with any rule adopted pursuant to this section shall be fined not more than \$500 or imprisoned not more than six months, or both.

[(g)] (h) The director of transportation, or any officer, employee, or representative of the department of transportation appointed by the director shall be responsible for the enforcement of any safety rules and standards adopted pursuant to subsection [(d).] (e). The director of transportation may request that the executive officers of each county and any other state agency having responsibility relative to pupil transportation provide additional enforcement of any rule adopted by the department of transportation.

(i) As used in subsection (b), a school vehicle is unavailable only when it:

- (1) Is being used during a specific time for contracted school-related transportation to and from school or related destinations;
- (2) Fails that day's inspection and has not been repaired;
- (3) Is already in transportation service; or
- (4) Is committed for transportation service."

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 16, 1997.)

## ACT 127

H.B. NO. 351

A Bill for an Act Relating to Economic Development.

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

## PART I.

SECTION 1. The legislature recognizes that a vigorous construction industry is essential to the overall economic health of the State. Any effort to stimulate Hawaii's construction industry would invigorate the state economy.

There are several ways government can facilitate construction growth, such as reducing the paperwork, red tape, and time required to obtain the licenses, permits, and approvals required by the State for county building projects. Greater coordination of state and county regulatory procedures is also necessary to reduce the time it takes for applicants to obtain the required approvals from state and county agencies to begin construction.

The purpose of this part is to expedite and facilitate the approval process within each state agency for county building permit applications requiring state agency approval. Nothing in this part amends the underlying requirements for a building permit.

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

**“§201- Permit process task force.** (a) To assist the department of business, economic development, and tourism in the consolidated application process, there is established a permit process task force within the department for administrative purposes to streamline and facilitate the state permit approval process.

(b) The task force shall consist of eleven members, who shall be appointed by the governor. The task force shall consist of:

- (1) The comptroller or the comptroller's designated representative;
- (2) The director of business, economic development, and tourism or the director's designated representative;
- (3) The director of health or the director's designated representative;
- (4) The director of labor and industrial relations or the director's designated representative;
- (5) The chairperson of the board of land and natural resources or the chairperson's designated representative;
- (6) The director of transportation or the director's designated representative;
- (7) Representatives of construction labor unions;
- (8) Representatives consisting of developers, licensed building contractors, and members of the American Institute of Architects Hawaii State Council and the Consulting Engineers Council of Hawaii; and
- (9) A representative from the public at large.

Each member of the task force shall serve for a two-year term. The members of the task force shall serve without compensation, but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(c) The task force, in conjunction with each affected state agency, shall:

- (1) Examine the consolidated application process and review all state agency rules pertaining to the state permit approval process to deter-

mine the source of inefficiencies, delays, and duplications, and the status of permits in progress;

- (2) Identify all permits and approvals that the State currently requires from applicants seeking approvals for projects that require county permit applications;
  - (3) Recommend to the governor which permits shall be approved by rule and which permits shall be approved by review, including the justification for approving each permit by rule or by review;
  - (4) Adopt a plan and make recommendations to enable all applicants seeking state agency approval for permits, to undergo the permit by rule procedure, rather than the permit by review procedure; and
  - (5) Provide recommendations to expedite and facilitate the permit approval process within each state agency for applicants seeking state permit approvals to start construction.
- (d) For purposes of this section:

“Permit by review” means permits approved by the appropriate state departments.

“Permit by rule” means permits approved by administrative rule.”

SECTION 3. Section 201-62, Hawaii Revised Statutes, is amended to read as follows:

“**[§201-62] Consolidated application process.** (a) State agencies are required, and county agencies are authorized and encouraged, to participate in the consolidated application process set forth herein.

(b) The department shall serve as a lead agency for the consolidated application procedure[,] and shall be the lead agency to administer and facilitate the consolidated application procedure for any project that requires both county permit applications and state agency approval.

(c) The procedure shall be as follows:

- (1) [The] An applicant for two or more state permits may apply in writing to the department requesting a consolidated application process for the consideration of the application. The written request shall include sufficient data about the proposed project for the department to determine which other agencies or authorities may have jurisdiction[.];
- (2) Upon receiving a written request for the consolidated application process, the department shall notify all federal, state, and county agencies or authorities which the department determines may have jurisdiction over part or all of the proposed project, and require those state agencies or authorities and invite those county and federal agencies or authorities to participate in the consolidated application process[.];
- (3) The applicant and each agency or authority required or agreeing to participate in the consolidated application process shall designate a representative to serve on the consolidated application review team[.];
- (4) Any state agency or authority designated by the department as a party to an application review that is not able to participate, shall submit an explanation, in writing, to the department as to the reasons and circumstances for noncompliance[.];
- (5) The representatives of the agencies, authorities, and the applicant may develop and sign a joint agreement among themselves identifying the members of the consolidated application review team, specifying the regulatory and review responsibilities of each government agency and setting forth the responsibilities of the applicant, and establishing a timetable for regulatory review, the conduct of necessary hearings,

- preparation of an environmental impact statement if necessary, and other actions required to minimize duplication and coordinate the activities of the applicant, agencies, and authorities[.];
- (6) Each agency or authority shall issue its own permit or approval based upon its own jurisdiction. The consolidated application process shall not affect or invalidate the jurisdiction or authority of any agency under existing law[.]; and
- (7) The applicant [must] shall apply directly to each federal or county agency [which] that does not participate in the consolidated application process.

(d) If a state regulatory permit is necessary to obtain a county permit, then a county agreeing to participate in the consolidated application process may advise the applicant of the consolidated application procedure. To apply for the consolidated application procedure, applicants for county permits involving state permit approvals shall submit a form, which shall be issued by the department; provided that this procedure shall apply only to state permits that need to be approved by a state agency following a review of the plans and certifications submitted by the applicant. State permits that are approved by rule require only that the licensed design professional certify that the plans and specifications are in compliance with state rules. No review by a state agency is required for state approval. Plans and specifications requiring state agency review shall be submitted with the consolidated application procedure to the appropriate state agency, with a copy to the department. If a state permit is approved by rule, then the participating county shall provide a set of drawings and specifications submitted by the applicant to the state agency that developed the rules.

In developing the procedures for approval by rule and by review, permit requirements shall be clearly stated. Performance standards, rather than specific technologies or procedures, shall be specified when appropriate.

(e) For purposes of this section:

“Permit by review” means permits approved by the appropriate state departments.

“Permit by rule” means permits approved by administrative rule.”

## PART II.

SECTION 4. The legislature finds that the Hawaii film studio is an important asset that enhances Hawaii’s attractiveness to filmmakers from around the world. Movies and television productions made at the Hawaii film studio provide invaluable advertising for Hawaii and often result in other economic benefits to the State as a whole.

The purpose of this part is to authorize the department of business, economic development, and tourism to enter into a long-term lease for the Hawaii film studio if the director of business, economic development, and tourism determines that it would be in the best interests of the State to enter into such a lease for the Hawaii film studio with a private entity or entities.

SECTION 5. (a) The department of business, economic development, and tourism is authorized to lease the Hawaii film studio up to the maximum term allowable by law through a general request for proposals consistent with chapter 103D, Hawaii Revised Statutes, if the director of business, economic development, and tourism determines that it would be in the best interests of the State to lease the Hawaii film studio to a private entity or entities; provided that the lease shall require that the Hawaii film studio and property upon which it is situated continue to be used as a support facility for the production of film and television productions.

## ACT 128

(b) An award may be made and a contract may be entered into with the qualified and responsible proposer whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and evaluation factors set forth in the request for proposals.

SECTION 6. Notwithstanding the lease of the Hawaii film studio as provided in this Act, the film industry branch within the department of business, economic development, and tourism shall continue to be maintained and all officers and employees in the branch shall continue to perform their functions and duties but shall be relocated to appropriate office space within the department of business, economic development, and tourism.

### PART III.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 128

H.B. NO. 480

A Bill for an Act Relating to Public Assistance.

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

SECTION 1. The legislature finds that with recently enacted federal welfare reform legislation, individuals with a felony conviction after August 22, 1996, which has as an element the possession, use, or distribution of a controlled substance, will no longer be eligible for participation in the Temporary Assistance for Needy Families and Food Stamp programs unless the State enacts state law opting out of the federal disqualification. Withholding temporary assistance for needy families funds and food stamps could push individuals who have served their time deeper into poverty and could overburden already limited local resources leading to: increased homelessness; hunger; family breakup, abuse and neglect; deteriorating educational achievement for children; poorer overall health and an increase in health-related expenditures; and increased costs for criminal justice programs and agencies. Further, withholding public assistance will greatly increase the likelihood that these individuals will commit further offenses. Therefore, the legislature finds that it is in the public interest to conditionally continue the current cash assistance and food stamp safety net for individuals with a felony conviction which has as an element the possession, use, or distribution of a controlled substance.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§346- Temporary assistance for needy families and food stamps for individuals with a felony conviction which has as an element the possession, use, or distribution of a controlled substance. Section 115(a) of Public Law 104-193**

shall not apply in Hawaii to persons who are complying with treatment or who have not refused or failed to comply with treatment.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval; provided that this Act shall be repealed two years after its effective date.

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 129**

H.B. NO. 581

A Bill for an Act Relating to Tort Liability.

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

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§663- Recreational activity liability.** (a) Any person who owns or operates a business providing recreational activities to the public, such as, without limitation, scuba or skin diving, sky diving, bicycle tours, and mountain climbing, shall exercise reasonable care to ensure the safety of patrons and the public, and shall be liable for damages resulting from negligent acts or omissions of the person which cause injury.

(b) Notwithstanding subsection (a), owners and operators of recreational activities shall not be liable for damages for injuries to a patron resulting from inherent risks associated with the recreational activity if the patron participating in the recreational activity voluntarily signs a written release waiving the owner or operator’s liability for damages for injuries resulting from the inherent risks. No waiver shall be valid unless:

- (1) The owner or operator first provides full disclosure of the inherent risks associated with the recreational activity; and
- (2) The owner or operator takes reasonable steps to ensure that each patron is physically able to participate in the activity and is given the necessary instruction to participate in the activity safely.

(c) The determination of whether a risk is inherent or not is for the trier of fact. As used in this section an “inherent risk”:

- (1) Is a danger that a reasonable person would understand to be associated with the activity by the very nature of the activity engaged in;
- (2) Is a danger that a reasonable person would understand to exist despite the owner or operator’s exercise of reasonable care to eliminate or minimize the danger, and is generally beyond the control of the owner or operator; and
- (3) Does not result from the negligence, gross negligence, or wanton act or omission of the owner or operator.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall apply only to causes of action based upon acts or omissions occurring after June 30, 1997.



## ACT 130

SECTION 4. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 130

H.B. NO. 582

A Bill for an Act Relating to Combat.

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

SECTION 1. The legislature finds that the entertainment spectacle variously known as no rules combat, extreme or ultimate fighting, or similar contests are violent exhibitions that are excessively and unacceptably dangerous to the participants.

Unlike the sports of boxing and wrestling, in which serious or permanent injury is largely preventable and occurs only occasionally as an incidental result of the athletic contest, no rules combat, extreme or ultimate fighting, or similar contests are intended by their promoters to produce serious injury in every exhibition and are widely and specifically advertised and promoted as being the most dangerous of all fighting exhibitions. The legislature is particularly concerned about the impact of the contests on Hawaii's children and youth, and believes they are extremely detrimental to young viewers.

The lack of appropriate restrictions on dangerous blows or life-threatening maneuvers and the matching of participants with incompatible styles of fighting make it difficult or impossible for the State to regulate such contests in a way that can reasonably protect the safety of the participants.

The legislature finds it is therefore appropriate and necessary for the public safety and the common good to prohibit the exhibitions known as no rules combat, extreme or ultimate fighting, or similar contests. It is not the intent of this Act to regulate or prohibit legitimate boxing matches or martial arts contests, including kickboxing, boxing, and wrestling.

SECTION 2. Chapter 440, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§440- No rules combat, extreme or ultimate fighting, or similar contests prohibited.** (a) No person shall hold, promote, or participate as a contestant in no rules combat, extreme or ultimate fighting, or similar contests.

(b) In addition to any other applicable judicial remedy, a person who violates this section shall be subject to section 436B-26.5 and a fine of not more than \$10,000 for each offense. Each day's violation or failure to comply shall be deemed a separate offense. The fines shall be levied and collected by the department.

(c) As used in this section, “no rules combat, extreme or ultimate fighting, or similar contest” means a match or exhibition performed in this State, in which the contestants:

- (1) Are permitted to use a combination of combative contact techniques, including punches, kicks, chokes, joint locks, and other maneuvers, with or without the use of weapons, that place contestants at an unreasonably high risk of bodily injury or death; and

- (2) Have received, directly or indirectly, any money, prize, reward, purse, or other compensation, or promise thereof, for the expenses of training, for taking part in the contest, or for winning the contest.

The term does not include a contest involving the exclusive use of boxing, wrestling, kickboxing, or martial arts.

(d) In any proceeding before the department involving a violation of this section, there shall be a rebuttable presumption that a violation has occurred and a promoter or contestant shall have the burden of overcoming the presumption.

(e) For the purposes of this section, "department" means the department of commerce and consumer affairs."

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. 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 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 131

H.B. NO. 636

A Bill for an Act Relating to Real Property.

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

SECTION 1. In recent years, sophisticated surveying technology has created significant increases in measurement accuracy. As a result, licensed land surveyors have found that many improvements were built according to older construction and surveying standards of accuracy. These older surveys were accurate in accordance to earlier standards and were reasonably relied on by the owners of the real property to build homes, fences, walls, and other improvements, resulting in minor encroachments onto neighboring properties. Shifting of improvements also occurs with minor land subsidence and growth of vegetation. Even where the discrepancies are minute, the encroachment has been troublesome. Unwritten wall agreements between real property owners also add to the problem. Thus, real property owners have had to spend significant amounts of money to move fences or walls by less than an inch, or retain the services of an attorney to obtain an encroachment agreement.

The purpose of this Act is to establish de minimus tolerances for classes of real property to avoid the need for encroachment agreements or for costly rectification when these minor structure position discrepancies are found.

SECTION 2. Chapter 669, Hawaii Revised Statutes, is amended by adding a new part II to be appropriately designated and to read as follows:

**“PART II. STRUCTURE POSITION DISCREPANCIES**

**§669-A De minimus structure position discrepancies, defined.** For the purposes of this part, “de minimus structure position discrepancy” means:

- (1) For commercial property and multi-unit residential property, 0.25 feet;
- (2) For all other residential property, 0.5 feet;
- (3) For agricultural and rural property, 0.75 feet; and
- (4) For conservation property, 1.5 feet;

between the location of an improvement legally constructed along what was reasonably believed to be the boundary line and the actual location of the boundary line based on a modern survey.

**§669-B Consequences.**

- (1) A de minimus structure position discrepancy shall not be considered an encroachment or a basis for a zoning violation;
- (2) No de minimus structure position discrepancy authorized under this part shall be considered as a basis for any claim of adverse possession of land. If the wall or other improvement that is affected by the discrepancy is removed or substantially damaged or destroyed, the replacement improvement shall be constructed to comply with the most recent survey available at the time of construction of the improvement;
- (3) Responsibility for maintenance and repair of an improvement within a de minimus structure position discrepancy shall be borne by the property owner who constructed the improvement, or the property owner’s successor in interest; and
- (4) Liability for any claims for injuries or damages to persons or property arising out of, or in connection with an improvement within a de minimus structure position discrepancy shall be borne by the property owner who constructed the improvement, or the property owner’s successor in interest.

**§669-C Restrictions as to owner of property.** This part shall not apply to any de minimus structure position discrepancy on public lands, as defined in section 171-2, or to such encroaching improvements incident to shoreline boundaries. If real property subject to this section is owned by a county, any improvement within a de minimus structure position discrepancy shall be removed at the expense of the property owner who constructed the improvement, or the property owner’s successor in interest, upon notice, in accordance with the respective county procedures or ordinances.

SECTION 3. Chapter 669, Hawaii Revised Statutes, is amended by designating sections 669-1 to 669-8 as part I and inserting a title before section 669-1 to read as follows:

**“PART I. GENERAL PROVISIONS”**

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall apply to all structure position discrepancies in effect on its effective date without regard to when the facts or actions giving rise to the discrepancy occurred.

SECTION 6. In codifying the new part added to chapter 669, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of the new sections in this Act.

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

(Approved June 16, 1997.)

## ACT 132

H.B. NO. 777

A Bill for an Act Relating to Planned Community Associations.

*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 PLANNED COMMUNITY ASSOCIATIONS

§ -1 **Scope.** This chapter shall apply to all planned community associations existing as of the effective date of this chapter and all planned community associations created thereafter.

§ -2 **Definitions.** As used in this chapter, unless otherwise indicated by the context:

“Association” means a nonprofit, incorporated, or unincorporated organization upon which responsibilities are imposed and to which authority is granted in a declaration which governs a planned community.

“Association documents” means the articles of incorporation or other document creating the association, if any, the bylaws of the association, the declaration or similar organizational documents and any exhibits thereto, any rules related to use of common areas, to architectural control, to maintenance of units, or to restrictions on use of units as well as any amendments made to the foregoing documents.

“Board of directors” or “board” means the executive board or other body, regardless of name, designated in the association documents to act on behalf of the association.

“Common area” means real property within a planned community which is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

“Declaration” means any recorded instrument, however denominated, that imposes on an association maintenance or operational responsibilities for the common area and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas. A declaration includes any amendment or supplement to the instruments described in this definition.

“Member” means the person or persons owning a unit or having the right of occupancy of a unit under a recorded lease having a term of twenty or more years from its commencement date; or anyone included in the definition of a member under the association documents, including the developer, whether or not the developer owns a unit.

“Person” means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

“Planned community” means a common interest community, other than a condominium or a cooperative housing corporation, which includes all of the following characteristics:

- (1) Real property subject to a recorded declaration placing restrictions and obligations on the owners of the real property and providing for rights and responsibilities of a separate entity, the association:
  - (A) Which owns and maintains certain property within the planned community for the common use or benefit, or both, of the owners of units within the planned community;
  - (B) Which is obligated to maintain certain property it does not own within the planned community for the common use or benefit, or both, of the owners of units within the planned community; or
  - (C) Which is obligated to provide services to any such owners or units;
- (2) Individual owners own separate units which are part of a planned community at least some of which are improved by or are to be improved by residential dwellings;
- (3) Owners have automatic and non-severable membership in an association by virtue of ownership of units within the planned community; and
- (4) Owners, other than a master developer or declarant, are obligated to pay mandatory assessments by virtue of ownership of a unit within the planned community.

“Recorded” means recorded or filed in the bureau of conveyances of the State or in the office of the assistant registrar of the land court of the State, as appropriate.

“Unit” means a physical portion of the planned community designated for separate ownership or occupancy.

§ -3 **Board of directors.** (a) Every member of the board of directors shall be a member of the association. However, a developer may appoint or elect directors pursuant to any special voting rights or power of appointment reserved to the master developer.

(b) The board of directors shall be composed of the number and group of persons specified in the association documents. There shall not be more than one representative on the board of directors from any one unit that is owned by any person other than the master developer or declarant.

§ -4 **Proxies.** (a) A proxy shall be in writing and shall be valid for only a specified meeting of the association and any adjournments of that meeting.

(b) A member of the association may give a proxy to any person or the board of directors as an entity, and the proxy may be limited as indicated by the member. No proxy shall be irrevocable unless:

- (1) The proxy is coupled with a financial interest in the unit; or
  - (2) The proxy is held pursuant to a first mortgage of record encumbering a unit or an agreement of sale affecting a unit.
- (c) A proxy, to be valid, must:
- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;
  - (2) Contain at least the name of the association, the date of the meeting of the association, the printed name and signature of the person or persons

- giving the proxy, the unit or units for which the proxy is given, and the date that the proxy is given; and
- (3) Contain boxes wherein the owner has indicated that the proxy is given:
    - (A) For quorum purposes only;
    - (B) To the individual whose name is printed on a line next to this box;
    - (C) To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or
    - (D) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

§ **-5 Meetings of the board of directors.** (a) Whenever practicable, all meetings of the board of directors, other than executive sessions, shall be open to all members. Members who are not on the board of directors may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the board of directors votes otherwise.

(b) The board of directors shall meet at least once each year.

(c) Minutes of the meetings of the board of directors shall include the recorded vote of each board member on all motions except motions voted upon in executive session.

(d) The board of directors, with the approval of a majority of a quorum of its members, may adjourn any meeting and reconvene in executive session to discuss and vote upon matters concerning personnel, litigation in which the association is or may become involved, or as may be necessary to protect the attorney-client privilege of the association. The general nature of any business to be considered in executive session shall be first announced in the regular session.

(e) No board member shall vote by proxy at board meetings.

(f) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

§ **-6 Robert's Rules of Order.** All association and board of directors meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order, Newly Revised.

§ **-7 Documents of the association.** (a) Upon approval by the board, the most current financial statement of the association and the minutes of the most recent meeting of the board of directors (other than minutes of executive sessions) shall be made available for examination by any member at no cost, during reasonable hours, at a location designated by the board.

(b) The approved minutes of other meetings of the board, other than executive sessions, and the approved meetings of the association for the current and prior year, shall be made available for examination by members during reasonable hours at a location designated by the board. Copies of those meeting minutes shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(c) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the association for the current and prior year, and any documents regarding delinquencies of ninety days or more, shall be made available for examination by members at reasonable hours at a location designated by the board; provided that members shall pay for all costs associated with the examination of documents. The

board may require members to furnish the association with an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Copies of these documents shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(d) Members may view proxies, tally sheets, ballots, members' check-in lists, and the certificates of election, if any, for a period of thirty days following any association meeting; provided that members shall pay for all costs associated with the examination of the documents. The board may require members to furnish to the association an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, members' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(e) Members may file a written request with the board to examine other documents of the association. The board shall give written authorization, or written refusal with an explanation of the refusal, for the examination within sixty calendar days of receipt of the request. The board may condition its approval of any such request upon payment of reasonable fees. Without limitation, books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

- (1) Personnel records;
- (2) An individual's medical records;
- (3) Records relating to business transactions that are currently in negotiation;
- (4) Communications which are privileged because of attorney-client privilege or any other applicable privilege of the association;
- (5) Complaints against an individual member of the association;
- (6) Any records, the release of which could be a violation of any law, ordinance, rule, or regulation; or
- (7) Similar records.

§ **-8 Membership list.** The association shall use good faith efforts to keep an accurate and current list of the names and addresses of association members. If the list is not provided directly to members, the association shall develop a reasonable procedure by which owners may solicit votes or proxies or provide information to other owners with respect to association matters. The board may require members to furnish the association with an affidavit stating that the use of the list is requested in good faith for the protection of the association, its members, or both.

§ **-9 Notification of assessment increases.** The board of directors shall notify members in writing of any increase in regular assessments at least thirty days prior to the increase.

§ **-10 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 unit or the owner of any unit;
- (2) Foreclosing any lien on any unit; or
- (3) Enforcing any provision of the association documents or this chapter;

against a member, occupant, tenant, employee of a member, or any other person who in any manner may use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the association is not the prevailing party, 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 the person by the association. The reasonableness of any attorney's fees paid by a person or by an association as a result of an action pursuant to paragraph (2) shall be determined by the court.

(b) If any member is the prevailing party in any action against an association, any of its officers or directors, or its board of directors to enforce any provision of the association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the member shall be awarded to the member; provided that no such award shall be made in any derivative action unless:

- (1) The member first shall have demanded and allowed reasonable time for the board of directors to pursue an enforcement action; or
- (2) The member demonstrates to the satisfaction of the court that a demand for enforcement made to the board of directors would have been fruitless.

If a member is not the prevailing party in any court action against an association, any of its officers or directors, or its board of directors, to enforce any provision of the association documents or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by the 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 pursuant to section -13, and made a good faith effort to resolve the dispute under any of those procedures.

(c) Nothing in this section shall be construed to prohibit the board of directors from authorizing the use of a collection agency.

**§ -11 Applicability of other laws.** Nothing in this chapter shall be construed to exempt any association or person from compliance with any applicable law, or subject any association or person to any other applicable law; provided that in the event of a conflict between any such law and this chapter, this chapter shall govern.

**§ -12 Amendment of association documents when no procedure provided.** Whenever neither an association document nor any applicable law provide procedures for amendment of that document, the association document may be amended by the vote or written consent of association members representing three-fourths of the votes which association members are entitled to cast with respect to a declaration and two-thirds of the votes which association members are entitled to cast with respect to other association documents; provided that this section shall not apply to articles of incorporation or any association documents which by their terms or as a matter of law may be adopted or amended by the board of directors. Nothing in this section shall be deemed to supersede or override any provision of any association documents related to amendments, or any provision of any law pertaining to associations or corporations.

**§ -13 Mediation of disputes.** (a) At the request of any party, any dispute concerning or involving one or more members and an association, its board of directors, managing agent, manager, or one or more other members relating to the interpretation, application, or enforcement of this chapter or the association documents, shall first be submitted to mediation.



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

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or
- (4) Actions against an association, a board of directors, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board of directors would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the association and the member.

§ -14 **First annual meeting of association.** The first annual meeting of the association shall take place as provided in the association documents, but not later than one year after the closing of the first conveyance of a unit to a person other than a developer.”

SECTION 2. Section 607-14, Hawaii Revised Statutes, is amended to read as follows:

“**§607-14 Attorneys’ fees in actions in the nature of assumpsit, etc.** In all the courts, in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney’s fee, there shall be taxed as attorneys’ fees, to be paid by the losing party and to be included in the sum for which execution may issue, a fee that the court determines to be reasonable; provided that the attorney representing the prevailing party shall submit to the court an affidavit stating the amount of time the attorney spent on the action and the amount of time the attorney is likely to spend to obtain a final written judgment, or, if the fee is not based on an hourly rate, the amount of the agreed upon fee. The court shall then tax attorneys’ fees, which the court determines to be reasonable, to be paid by the losing party; provided that this amount shall not exceed twenty-five per cent of the judgment.

Where the note or other contract in writing provides for a fee of twenty-five per cent or more, or provides for a reasonable attorney’s fee, not more than twenty-five per cent shall be allowed.

Where the note or other contract in writing provides for a rate less than twenty-five per cent, not more than the specified rate shall be allowed.

Where the note or other contract in writing provides for the recovery of attorneys’ fees incurred in connection with a prior debt, those attorneys’ fees shall not be allowed in the immediate action unless there was a writing authorizing those attorneys’ fees before the prior debt was incurred. “Prior debt” for the purposes of this section is the principal amount of a debt not included in the immediate action.

The above fees provided for by this section shall be assessed on the amount of the judgment exclusive of costs and all attorneys’ fees obtained by the plaintiff, and upon the amount sued for if the defendant obtains judgment.

Nothing in this section shall limit the recovery of reasonable attorneys’ fees and costs by a planned community association and its members in actions for the collection of delinquent assessments, the foreclosure of any lien, or the enforcement of any provision of the association’s governing documents, or affect any right of a prevailing party to recover attorneys’ fees in excess of twenty-five per cent of the judgment pursuant to any statute that specifically provides that a prevailing party

may recover all of its reasonable attorneys' fees. "Planned community association" for the purposes of this section means a nonprofit homeowners or community association existing pursuant to covenants running with the land."

SECTION 3. New statutory material is underscored.

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

(Approved June 16, 1997.)

## ACT 133

H.B. NO. 780

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Section 514A-83.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(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 replacement reserves of the association as of the date of the budget;
- (4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;
- (5) A general explanation of how the estimated replacement reserves are computed; [and]
- (6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves[.]; and
- (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

(b) The association shall assess the apartment owners to either fund a minimum of fifty per cent of the estimated replacement reserves[.] or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan; provided that a new association created after January 1, 1993, need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year, the association shall collect [a minimum of fifty per cent of the full] the amount [required] assessed to fund the estimated replacement for that fiscal year reserves, as determined by the association's plan, except:

- (1) The commission shall adopt rules to permit an existing association to fund its estimated replacement reserves in increments after January 1, 1993 and prior to January 1, 2000; and

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- (2) The commission shall adopt rules to permit an association to fund in increments, over three years, estimated replacement reserves [which] that have been substantially depleted by an emergency.”

2. By amending subsection (j) by adding a new definition to be appropriately inserted and to read:

““Cash flow plan” means a minimum twenty-year projection of an association’s future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.”

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 16, 1997.)

## ACT 134

H.B. NO. 787

A Bill for an Act Relating to Deposits of Public Funds.

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

SECTION 1. Section 38-3, Hawaii Revised Statutes, is amended to read as follows:

“**§38-3 Securities for protection of funds deposited.** For the protection of funds deposited by the director under this chapter, the following securities shall be deposited with the director, or with banks in the continental United States, or with financial institutions with trust powers authorized to do business in the State, as the director may select, to be held therein for safekeeping subject to the order of the director, any other provisions of the laws of the State to the contrary notwithstanding:

- (1) Bonds, notes, debentures, or other evidences of indebtedness of the State or of any county of the State, for which the payment of the interest and principal is a direct obligation of the State or the county, as the case may be, in an amount at least equal in their par value to the amount of the deposit with the depository;
- (2) Bonds, notes, debentures, or other evidences of indebtedness of agencies of the State or of agencies of any county of the State, for which the payment of the interest and principal is from the revenues of the issuing agency, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;
- (3) Bonds, notes, debentures, or other evidences of indebtedness of any improvement district or frontage improvement of any county of the State, for which the payment of the interest and principal is from the assessments made for the improvement, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;
- (4) Bonds, notes, bills, or certificates of indebtedness of the United States or of agencies of the United States, for which the payment of the interest and principal is a direct obligation of the United States, in an

- amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;
- (5) Bonds, notes, federal home loan bank letters of credit, or debentures of agencies of the United States, in an amount at least equal to ninety-five per cent of their market value, but not to exceed their par value, to the amount of the deposit with the depository;
  - (6) Warrants or warrant notes of the State in an amount at least equal in their face value to the amount of the deposit with the depository;
  - (7) Bonds, notes, debentures, or other evidences of indebtedness of any other state of the United States, for which the payment of the interest and principal is a direct obligation of such state, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;
  - (8) Bonds, notes, debentures, or other evidences of indebtedness of any city or of any county in the continental United States, for which the payment of the interest and principal is a direct obligation of the city or county, as the case may be, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository; or
  - (9) Other assets on the books of the depository [which] that are eligible to secure advances from the Federal Reserve Banks under regulations of the Federal Reserve Board, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository; provided that not more than fifty per cent of the deposits held by a depository may be secured by assets of this class.

Security shall not be required for that portion of any deposit that is insured under any law of the United States.

Securities deposited under this section may be withdrawn from time to time; provided that the required amount of securities shall at all times be kept on deposit. The director at any time may require additional securities to be deposited under this section.

In the event that the depository shall fail to pay such deposits, or any part thereof, upon presentation of a check or a certificate of deposit, then the director shall forthwith convert the securities deposited under this section into money for and on behalf of the State; provided that no such securities shall be sold except at public auction, after giving at least ten days' notice by publication in a newspaper of general circulation in the State."

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

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

(Approved June 16, 1997.)

## ACT 135

H.B. NO. 793

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. (a) The legislature makes the following findings:

- (1) Condominium development has increased home ownership and fueled a significant portion of the State's construction industry. Because land available for single-family home development is becoming increasingly scarce for a number of reasons, condominium development is emerging as a growing component of the new housing market in the State, particularly within the urban core of the city and county of Honolulu;
- (2) To ensure that all condominium purchasers are adequately informed regarding a condominium project, chapter 514A, Hawaii Revised Statutes (HRS), prohibits a developer from marketing apartments in a condominium project until the State real estate commission (commission) has issued an effective date for the developer's condominium public report. This report must describe and disclose material information regarding the project, and may be either in the form of a preliminary or final public report;
- (3) A preliminary public report is issued before all material elements of the development of a project have been finalized. Developers have traditionally used preliminary public reports to test market feasibility before deciding to proceed with a development. Because a preliminary public report is subject to change, chapter 514A, HRS, provides that contracts to purchase condominium apartments are not binding, and that purchasers' deposits must be held in escrow;
- (4) Chapter 514A, HRS, allows the commission to issue an effective date for a proposed project's final public report only when the developer has:
  - (A) Finalized and recorded the project's plans and organizational documents;
  - (B) Acquired the land on which the project is to be developed;
  - (C) Completed construction documents, including specifications;
  - (D) Secured construction financing and building permits for the project;
  - (E) Executed a contract for the construction of the project; and
  - (F) Obtained a one hundred per cent performance and payment bond;
- (5) Because a purchaser is deemed to be adequately protected when a developer has satisfied all of these requirements, chapter 514A, HRS, provides that a contract to purchase a condominium apartment in a project for which a final public report has been issued only becomes binding once the purchaser has received the final public report and had a thirty-day period to review it and cancel the purchase contract. Once a contract becomes binding, purchasers' deposits may be disbursed to pay for construction and other approved costs, and the purchaser has no further right under chapter 514A, HRS, to cancel the purchase contract unless there is a material change to the project;
- (6) Chapter 514A, HRS, also requires the developer of any condominium project that contains residential apartments to designate at least fifty per cent of those apartments for sale to qualified "owner-occupants" before the project is offered for sale under either a preliminary or final public report;
- (7) Chapter 514A, HRS, requires developers to incur virtually all of the costs and risk of development such as design, land acquisition, financing (debt and equity), construction contracts, bonds, building permits, and other development costs, before being able to bind purchasers under a final public report. This requirement ignores the fact that, in the current economic climate, banks and other construction lenders gener-

ally will not provide financing for a condominium project until after a final public report has been issued, the developer has “presold” most of the apartments in the project, and the purchase contracts for those apartments have become legally binding;

- (8) This requirement forces developers to put significant amounts of their own funds at risk —or to secure expensive financing from investors willing to bear these risks —before the developers know whether a project is feasible and can go forward. This creates a significant financial and development hurdle that many condominium developers are unwilling or unable to overcome, especially for small development companies with less capital to put at risk. It also has created an environment that makes it very difficult for small local development companies to successfully compete with foreign or out of state companies that are well capitalized;
- (9) Because of the costs that must be incurred to obtain a final public report, developers have traditionally tested market feasibility by initially offering their projects for sale under a preliminary public report. This results in developers of new, residential condominium projects marketing their projects in three distinct phases: first to owner-occupants only; then to the general public under a preliminary public report; and then to the general public under a final public report. Under the current statutory scheme, each of these marketing phases requires its own extensive documentation and filings with the commission;
- (10) Requiring the owner-occupant sales to occur before the issuance of a public report unnecessarily complicates the owner-occupant process because a developer cannot offer sales contracts on the apartments that owner-occupants select prior to the issuance of a public report, thus adding additional steps and costs to the sales process; and
- (11) The ban on marketing to nonowner occupants before the issuance of a preliminary or final public report also makes it more difficult to effectively test-market a project to the general public, a critical step to determine a project’s market feasibility.

(b) This Act proposes amendments to chapter 514A, HRS, to ease these hurdles to the development of condominium housing, while preserving the existing buyer protections contained in chapter 514A, HRS. This Act amends chapter 514A, HRS, to:

- (1) Permit a developer’s contingent final public report for a project before a developer has acquired the land, obtained financing commitments, and, in the case of a new development, executed construction contracts, and obtained building permits. As with a final public report, purchasers could be bound under their purchase contracts based on a contingent final public report. However, where the commission has issued an effective date for a developer’s contingent final public report, there would not be any disbursement of purchasers’ deposits from escrow unless and until the developer has satisfied those requirements within a maximum of nine months after issuance of the contingent final public report. If the developer has not satisfied those conditions and obtained a final public report within this period, then the developer and the purchasers would have the right to rescind their contracts and the purchasers would get their money back from escrow with interest and would be reimbursed by the developer for any escrow fees and financing commitment fees that they incurred. This change would allow developers to minimize some of the significant up-front costs and risks that presently increase the cost of condominium housing or prevent

condominium development altogether. Because purchasers' deposits would be protected until the developer satisfies these requirements, this change would not affect the buyer protections that are already contained in chapter 514A, HRS; and

- (2) Allow developers to satisfy the owner-occupant requirements in part VI of chapter 514A, HRS, after the developers obtain from the commission an effective date for the first public report on a project, at which time the developer would begin marketing the project simultaneously to both prospective owner-occupants and the general public. Simplifying the marketing process under chapter 514A, HRS, as set forth in this Act would reduce marketing costs and allow early, more effective, test marketing of a project in order to determine market feasibility and fulfill lenders' presale requirements. It would also streamline and simplify what is, from both a buyer's and developer's perspective, a very complex and confusing process. Combining the owner-occupant and general public marketing phases in this way will not affect existing rights of qualified owner-occupant purchasers to buy up to fifty per cent of the residential units in a project.

This Act also proposes certain amendments to Act 106, Session Laws of Hawaii 1996, to conform that Act with chapter 514A, HRS.

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§514A- Contingent final public report.** (a) Prior to the issuance of an effective date for a final public report, the developer may request that the commission issue an effective date for a contingent final public report. The contingent final public report shall be in the form and content as prescribed by the commission.

(b) No effective date shall be issued by the commission for a developer's contingent final public report unless there is submitted to the commission:

- (1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (2) The proposed developer's contingent final public report;
- (3) All documents, information, and other requirements under section 514A-37 if the commission has not issued an effective date for a preliminary public report;
- (4) An executed and recorded option agreement, agreement of sale, deed, or master lease for the property;
- (5) The executed and recorded declaration, bylaws, and floor plans as filed with 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;
- (6) 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 project;
- (7) A verified estimate of the time of completion of construction of the total project;
- (8) An executed copy of the escrow agreement which complies with the requirements of section 514A- and, if purchaser's funds are to be used for construction, the requirements of sections 514A-40(a)(6) and 514A-67;

- (9) 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; and
- (10) A letter of interest in financing construction of the project from a lender authorized to do business in the State.

(c) No effective date shall be issued by the commission for a contingent final public report for a project that includes one or more existing structures being converted to condominium status unless there is filed with the commission all items required under subsection (b) and:

- (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 compliance; and
  - (B) Whether the project contains any legal nonconforming uses or structures as a result of the adoption or amendment of any ordinances or codes.
- (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 project; and
- (3) A statement by the declarant of the expected useful life of each item reported on in paragraph (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.

(d) A contingent final public report shall expire nine months after the effective date of the report and, notwithstanding anything to the contrary in section 514A-43, may not be extended or renewed.

(e) A contingent final public report is subject to sections 514A-41 and 514A-63.

**§514A- Protection of purchasers' funds.** (a) If the commission issues an effective date for a contingent final public report for a project, the escrow agent shall deposit all purchasers' funds in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. The escrow agent shall not disburse the purchasers' funds from the account until the commission issues an effective date for a final public report for the project.

(b) If the commission does not issue an effective date for a final public report for a project by the date on which the project's contingent final public report expires, then the developer shall promptly notify all purchasers thereof by certified mail and the developer or the purchaser, after the expiration of the contingent final public report, may rescind the purchaser's sales contract by giving written notice thereof to the other. In the event of rescission pursuant to this subsection a purchaser shall be entitled to a prompt and full refund of the purchaser's entire deposit together with all interest earned thereon, reimbursement of any required escrow fees, and, if the developer required the purchaser to secure a financing commitment, the purchaser shall also be entitled to reimbursement by the developer of any fees the purchaser incurred in securing that financing commitment.

(c) If the commission issues an effective date for a contingent final public report for a project, the following notice shall be included in the contingent final public report and the receipt and notice required under section 514A-62(d):



“The effective date for the Developer’s Contingent Final Public Report was issued before the Developer submitted to the Real Estate Commission: the executed and recorded deed or master lease for the project site; the executed construction contract for the project; the building permit; satisfactory evidence of sufficient funds to cover the total project cost; or 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. Until the Developer submits each of the foregoing items to the Commission, all Purchaser deposits will be held by the escrow agent in a federally-insured, interest-bearing account at a bank, savings and loan association, or trust company authorized to do business in the State. If the Developer does not submit each of the foregoing items to the Commission and the Commission does not issue an effective date for the Final Public Report before the expiration of the Contingent Final Public Report, then:

- (1) The Developer will notify the Purchaser thereof by certified mail; and
- (2) Either the Developer or the Purchaser shall thereafter have the right under Hawaii law to rescind the Purchaser’s sales contract. In the event of a rescission, the Developer shall return all of the Purchaser’s deposits together with all interest earned thereon, reimbursement of any required escrow fees, and, if the Developer required the Purchaser to secure a financing commitment, reimburse any fees the Purchaser incurred to secure that financing commitment.””

SECTION 3. Section 514A-12, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-12 Copy of the floor plans to be filed.** Simultaneously with the recording of the declaration, there shall be filed in the office of the recording officer a set of the floor plans and elevations of the building or buildings, showing the layout, location, apartment numbers, and dimensions of the apartments, stating the name of the property or that it has no name, and bearing the verified statement of a registered architect or professional engineer certifying that it is an accurate copy of portions of the plans of the building or buildings as filed with [and approved by] the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings[.] and, if construction of the building or buildings is completed, as approved by the county or city and county officer. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, there shall be recorded within thirty days from the date of completion of the building or buildings as “date of completion” is defined in section 507-43, or from the date of occupancy of the building or buildings, whichever shall first occur, an amendment to the declaration to which shall be attached a verified statement of a registered architect or professional engineer certifying that the final plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers, and dimensions of the apartments as approved by the county or city and county officer having jurisdiction over the issuance of permits for the construction of buildings and as built, which amendment shall require only the vote or written consent of the declarant or such other person or persons as are provided in the declaration. The plans shall be kept by the recording officer as provided by rules adopted by the department of land and natural resources, pursuant to chapter 91, indexed in the same manner as a conveyance entitled to

record, numbered serially in the order of receipt, each designated “apartment ownership,” with the name of the property, if any, and each containing an appropriate reference to the recording of the declaration. Correspondingly, the record of the declaration shall contain a reference to the file number of the floor plans of the building or buildings on the property affected thereby.”

SECTION 4. 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 are to be offered for sale in this State, the developer shall register the project with the commission by notifying the commission in writing of the developer’s intention to sell such apartments. No offer of sale or sale shall be made until the project has been registered with the commission and the commission has issued an effective date for the project’s preliminary, contingent final, or final public report.”

SECTION 5. 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 sections 514A-31, 514A-32, 514A-40, 514A-\_\_\_, or 514A-41, an inspection of the condominium project may be made by the commission.”

SECTION 6. Section 514A-35, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-35 Waiver of inspection.** The commission may waive an inspection when in its opinion, a preliminary, contingent final, final, or supplementary public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries.”

SECTION 7. Section 514A-36, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) 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 shall be issued until execution and recordation of the deed or master lease, the declaration, the bylaws, 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.”

2. By amending subsection (c) to read:

“(c) The developer shall be assessed [a nonrefundable fee] nonrefundable fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, for each effective date requested for a public report, including extensions, if any.”

SECTION 8. Section 514A-40, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) 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 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 attorney’s fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the 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 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 [.] and
- (8) A copy of the disclosure statement required by section 514A-62(f)(3) if an effective date for a contingent final public report has been issued by the commission and the report has not expired.”

SECTION 9. Section 514A-43, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [A] Except as provided in section 514A- , a public report shall expire thirteen months after the effective date of the report. The commission, upon submission of a written request for an extension by the developer at least thirty calendar days prior to the expiration date, together with such supporting information as may

be required by the commission, a review of the registration, and after payment of a nonrefundable fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, may issue an order extending the effective date of the preliminary, final, or supplemental public report.”

SECTION 10. Section 514A-62, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-62 Copy of public report to be given to prospective purchaser.**

(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) The commission has issued an effective date for either a contingent final public report or 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 either the contingent final public report or the final public report together with a true copy of all prior public reports on the project, if any, which have not been previously delivered to such prospective purchaser; except that such prior public reports need not be delivered to the prospective purchaser if the contingent final public report or 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 contingent final public report or 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 contingent final public report or 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.
- (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 receipted for the reports and to have waived the prospective purchaser’s right to cancel.

(b) The receipts and notices taken hereunder shall be kept on file in possession of the developer (or such other person as may offer any apartment in a condominium project prior to completion of its construction), and shall be subject to inspection at a reasonable time by the commission or its deputies, for a period of three years from the date the receipt and notice was taken.

(c) Unless such right has previously been waived pursuant to subsection (a), a prospective purchaser shall have the right to cancel any agreement for the purchaser<sup>1</sup> or reservation of an apartment at any time prior to the earlier of:

- (1) [the] The conveyance of the apartment to the prospective purchaser; or

- (2) [midnight] Midnight of the thirtieth day following the date of delivery of the first of either the contingent final public report or the final public report to such purchaser,

and, upon any such cancellation, shall be entitled to a prompt and full refund of all moneys paid, less any escrow cancellation fee and other costs associated with the purchaser,<sup>1</sup> up to a maximum of \$250.

(d) Whenever a contingent final public report, 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 Developer’s (Preliminary, Contingent Final, 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 down payment 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 DEVELOPER’S (PRELIMINARY, CONTINGENT FINAL, 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

\_\_\_\_\_  
AND I HAVE HAD AN OPPORTUNITY TO READ THE PUBLIC REPORT(S)

[  ] 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 purchaser's receipt of either a contingent final public report or a final public report is enforceable against the purchaser under such agreement.

(f) Where a developer has delivered to a purchaser a contingent final public report and the purchaser has previously waived the purchaser's right to cancel the purchaser's agreement for the purchase or reservation of an apartment pursuant to this section:

- (1) The issuance of an effective date for a final public report prior to the expiration of the contingent final public report shall not affect the enforceability of the purchaser's obligations under the purchaser's agreement for the purchase of an apartment;
- (2) The developer shall not be required to deliver to the purchaser the final public report for the project and receipt and notice set forth in subsection (d); and
- (3) The developer shall promptly deliver to the purchaser a disclosure statement informing them that the commission has issued an effective date for the final public report and containing all information contained in the final public report that is not contained in the contingent final public report."

SECTION 11. Section 514A-65, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-65 Escrow requirement.** All moneys paid by purchasers prior to the purchaser's receipt of the contingent final public report or 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 binding, and the requirements of sections 514A-40, 514A-\_\_\_\_, and 514A-63 have been met."

SECTION 12. Section 514A-101, Hawaii Revised Statutes, is amended by amending the definitions of "chronological system" and "lottery system" to read as follows:

**"Chronological system"** means a system in which the [final reservation list is determined by the chronological order in which the developer or the designated real estate broker receives both completed owner-occupant affidavits and earnest money deposits from prospective owner-occupants.] residential units designated for sale to prospective owner-occupants are offered for sale to prospective owner-occupants in the chronological order in which the prospective owner-occupants deliver to the developer or the designated real estate broker completed owner-occupant affidavits, executed sales contracts, and earnest money deposits.

**"Lottery system"** means a system in which no prospective owner-occupant has an unfair advantage in the determination of [that owner-occupant's place on the final reservation list since the place on the list] the order in which residential units designated for sale to prospective owner-occupants are offered for sale because the order is determined by a lottery."

SECTION 13. Section 514A-102, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-102 Announcement, publication.** (a) [No earlier than sixty calendar days prior to the date any developer notifies the commission pursuant to sections 514A-31 and 514A-32 of the developer’s intention to sell a project which is subject to this chapter.] At least once in each of the two successive weeks following the issuance of an effective date of the first public report for the condominium project, the developer shall cause to be published in the classified section of at least one newspaper published daily in the State with a general circulation in the county in which the project is to be located, and, if the project is located other than on the island of Oahu, in at least one newspaper which is published at least twice weekly in the county in which the project is to be located, [not less than once in each of two successive weeks,] an announcement containing a summary of at least the following information:

- (1) The location of the project;
- (2) A statement of:
  - (A) The total number of apartments to be included in the project;
  - (B) The number of apartments designated as residential units;
  - (C) The price range of the units;
  - (D) The approximate size of the units; and
  - (E) A designation whether the units are fee simple or leasehold;
- [(3)] A statement that the apartments shall be offered for sale upon the issuance of an effective date by the commission for the first public report, and the estimated effective date;
- (4) (3) A statement of the intended use, such as, but not limited to, commercial, time sharing, or vacation rental, of any apartment in the project other than a residential unit designated for use by an owner-occupant;
- [(5)] (4) A statement of the residential units by apartment numbers that [has] have been designated by the developer pursuant to section 514A-103, and that such apartments shall initially be offered for a [ten-day] thirty-day period after the [issuance of an effective date for the first public report] first publication of the announcement to only prospective owner-occupants [on the final reservation list,] who will use the residential units as their principal residences for a period of not less than three hundred [and] sixty-five consecutive days;
- [(6)] (5) A statement of the availability and number of residential units in the project that are “accessible” and “adaptable,” as those terms are defined and interpreted in 24 Code of Federal Regulations §100 et seq., for persons with disabilities;
- [(7)] (6) A statement that the [final reservation list for the subject residential units shall be determined by either a chronological system or a public lottery, and that any person interested in participating in either system shall submit a completed owner-occupant affidavit and earnest money deposit] residential units that have been designated by the developer pursuant to section 514A-103 shall be offered to prospective purchasers:
  - (A) Chronologically in the order in which the purchasers submit to the developer a completed owner-occupant affidavit, an executed sales contract, and an earnest money deposit in a reasonable amount designated by the developer; or
  - (B) In an order determined by a public lottery, to be held at a date, time, and place specified in the announcement; provided that any person interested in participating in the lottery shall submit a completed owner-occupant affidavit to the developer or desig-

nated real estate broker by a date designated by the developer;  
and

[(8)] (7) The name, telephone number, and address of the developer or the real estate broker, who shall be designated by the developer, whom any interested individual may contact to secure an owner-occupant affidavit [and to be placed on a reservation list or in the public lottery,], public report, and to obtain further information on the project[; and].

[(9) A statement that a public report has not been issued for the project.]

(b) [The commission shall not issue an effective date for any public report for a project unless the developer files with the commission:

- (1) A copy of the announcement at least thirty days prior to its initial publication; and
- (2) Proof of publication of the announcement required under subsection (a) and a copy of the actual announcement when the developer files the notice of intention pursuant to sections 514A-31 and 514A-32.]

Within thirty days of the issuance of an effective date of the first public report for the condominium project, the developer shall file with the commission proof of publication of the announcement required under subsection (a).

(c) The developer or the developer's broker shall also provide a copy of the announcement and the [following information:

- (1) The number of floors in the project;
- (2) The number of bedrooms, bathrooms, and square feet of each residential unit;
- (3) The price and amount of monthly maintenance fees for each residential unit;
- (4) The amount of lease rent for each residential unit and the applicable time periods;]

first public report for the condominium project to each prospective purchaser and by certified mail, delivered to the addressee only, return receipt requested, to any individual occupying such unit immediately prior to any conversion. [The developer or the developer's real estate broker may provide prospective purchasers with a true copy of the project's public report in lieu of the disclosures required by this subsection if the public report contains all the information required under this section.]'

SECTION 14. Section 514A-104, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-104 [Reservation list,] Unit selection, requirements.** (a) When the chronological system is used, the developer or the developer's real estate broker, as the case may be, shall [determine the final reservation list as follows:] offer the residential units that have been designated pursuant to section 514A-103 as follows:

- (1) [From] For thirty days from the date of the first published announcement required under section 514A-102 [until the date of issuance of the first public report on the project], the developer or developer's real estate broker shall [compile a reservation list of prospective owner-occupants] offer the residential units that have been designated pursuant to section 514A-103 to prospective purchasers chronologically in the order in which they [have submitted both] submit to the developer or the developer's real estate broker, a completed owner-occupant affidavit, [the form of which shall have been previously approved by the commission,] an executed sales contract, and an earnest money deposit in a reasonable amount designated by the developer. The developer or the developer's real estate broker shall maintain at all



times a sufficient number of sales contracts and affidavits for prospective owner-occupants to execute. Prospective purchasers who do not have the opportunity to select a residential unit during the thirty-day period shall be placed on a back-up reservation list in the order in which they submit a completed owner-occupant affidavit and earnest money deposit in a reasonable amount designated by the developer.

- (2) If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one residential unit designated pursuant to section 514A-103 shall be offered to them or only one of them shall be placed on the back-up reservation list.
- (3) No developer, employee or agent of the developer, or any real estate licensee shall, either directly or through any other person, release any information or inform any prospective owner-occupant about the publication announcement referred to in section 514A-102, including the date it is to appear and when the chronological system will be initiated, until after the announcement is published.
- (4) The reservation list referred to in subsection (a)(1) shall be the final reservation list. Prospective owner-occupants shall be given the opportunity to select one of the owner-occupant residential units in the order in which their names appear on the list. Prospective owner-occupants who do not select, or do not have the opportunity to select, an owner-occupant apartment shall be part of the final reservation list as back-up prospective owner-occupants in the order in which they submitted both a completed owner-occupant affidavit and an earnest money deposit.
- (5) If no sales contract is offered to a prospective owner-occupant within six months of the issuance of the first public report, or upon the request of a person who requests to be removed from the final reservation list or who has elected not to execute a sales contract, the entire earnest money deposit shall be returned to the prospective owner-occupant and the developer shall not be required to pay any interest thereon.
- (6) The developer or developer's real estate broker shall submit to the commission a certified copy of the final reservation list within fifteen calendar days after the date of issuance of the first public report on the project.]
- (4) The developer shall compile and maintain a list of all prospective purchasers that submitted a completed owner-occupant affidavit, an executed sales contract, and an earnest money deposit, and maintain the back-up reservation list, if any. Upon the request of the commission, the developer shall provide a copy of the list of all prospective purchasers and the back-up reservation list.

(b) When the public lottery system is used, the developer or the developer's broker, as the case may be, shall [determine the final reservation list] offer the residential units that have been designated pursuant to section 514A-103 as follows:

- (1) From the date of the first published announcement required under section 514A-102, until five calendar days after the last published announcement, the developer or developer's real estate broker shall compile and maintain a list of all prospective owner-occupants who have submitted to the developer or the developer's real estate broker a duly executed owner-occupant affidavit[, the form of which affidavit shall have been previously approved by the commission]. All prospective owner-occupants on this list shall be included in the public lottery described below. The developers and the developer's real estate broker shall maintain at all times sufficient copies of such affidavits for prospective owner-occupants to execute. [A certified copy of the] Upon

- the request of the commission, the developer shall provide a copy of the lottery list of those prospective owner-occupants [shall be submitted to the commission within ten calendar days after the last publication of the announcement].
- (2) The developer or developer's real estate broker shall conduct a public lottery no later than [fifteen<sup>2</sup>] thirty calendar days after the first published announcement, but no earlier than six calendar days after the last published announcement. The public lottery shall be held on the date, time, and location as set forth in the published announcement. Any person, including all prospective owner-occupants eligible for the lottery, shall be allowed to attend the lottery.
  - (3) The public lottery shall be conducted in such a manner that no prospective owner-occupant shall have an unfair advantage, and shall, as to all owner-occupants whose affidavits were submitted to the developer or the developer's real estate broker within the time period referred to in the first sentence of subsection (b)(1) above, be conducted without regard to the order in which the affidavits were submitted. If two or more prospective owner-occupants intend to reside jointly in the same residential unit, only one of them shall be entitled to enter the public lottery.
  - (4) [Each of the prospective owner-occupants on the list referred to in subsection (b)(1) shall be placed on the preliminary reservation list in the order in which they are selected at the lottery.] At the public lottery, each prospective owner-occupant purchaser, in the order in which they are selected in the lottery, shall be given the opportunity to select one of the residential units that have been designated pursuant to section 514A-103, execute a sales contract, and submit an earnest money deposit in a reasonable amount designated by the developer. The developer shall maintain a list, in the order of selection, of all prospective purchasers selected in the lottery, and maintain a list of all prospective purchasers who selected one of the residential units designated pursuant of section 514A-103. Those prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential units designated pursuant to section 514A-103 but who submitted an earnest money deposit in a reasonable amount designated by the developer shall be placed on a back-up reservation list in the order in which they were selected in the public lottery. Upon request of the commission, copies of the aforementioned lists shall be submitted.
  - (5) Within thirty calendar days after the date of the lottery, each prospective owner-occupant on the preliminary reservation list shall, in the order in which their names appear on the preliminary reservation list, be given the opportunity to select one of the owner-occupant residential units and submit an earnest money deposit, if not already submitted, in a reasonable amount designated by the developer. Those prospective owner-occupants selecting residential units shall be placed on a final reservation list, together with the units selected. Those prospective owner-occupants who did not select, or did not have the opportunity to select, an owner-occupant apartment shall be part of the final reservation list as back-up prospective owner-occupants, in the order in which they were as selected in the public lottery.
  - (6) If no sales contract is offered to the prospective owner-occupant within six months of the public lottery, or upon the request of a person who requests to be removed from the final reservation list or who has elected not to execute a sales contract, the entire earnest money deposit

shall be returned to such prospective owner-occupant and the developer shall not be required to pay any interest thereon.

- (7) The developer or developer's real estate broker shall submit to the commission, a certified copy of:
  - (A) The preliminary reservation list within two business days after the date of the public lottery. Should the due date be a holiday or weekend, the required document shall be due the next working day after the holiday or weekend;
  - (B) The final reservation list within thirty calendar days after the date of the public lottery.]”

SECTION 15. Section 514A-104.5, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-104.5 Affidavit.** [(a) The affidavit of intent to become an owner-occupant required by section 514A-104 shall be approved and issued by the commission.

(b)] (a) The owner-occupant affidavit required by section 514A-104 shall expire after three hundred sixty-five consecutive days have elapsed after the recording of the instrument conveying the apartment to the affiant. The affidavit shall expire prior to this period upon acquisition of title to the property by an institutional lender or investor through mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure.

[(c)] (b) The affidavit shall include statements by the affiant affirming that:

- (1) If the affiant intends to secure financing from a financial institution, the financing shall be an owner-occupant mortgage loan;
- (2) At any time after obtaining adequate financing or a commitment for adequate financing up until the expiration of the affidavit, the affiant shall notify the commission immediately upon any decision to cease being an owner-occupant; and
- (3) At closing of escrow the affiant shall file a claim for an owner-occupant property tax exemption with the appropriate county office[; and
- (4) The affiant shall comply with any other provision that the commission deems appropriate and expressly includes in the affidavit].

[(d)] (c) The affidavit shall be personally executed by all the prospective owner-occupants of the residential unit and shall not be executed by an attorney-in-fact.

[(e)] (d) The affidavit shall be reaffirmed as provided in [[ ]section[ ]] 514A-105(d).”

SECTION 16. Section 514A-105, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-105 Sale of residential units.** (a) From the issuance of an effective date of the first public report until the developer has complied with section 514A-104, the developer shall offer all the residential units designated pursuant to section 514A-103 for sale [to only the prospective owner-occupants whose names are on the final reservation list in the order in which their names appear on the list;] only as set forth in section 514A-104; provided[, however,] that notwithstanding this part, in the case of a project which includes one or more existing structures being converted to condominium status, each residential unit contained in the project shall first be offered for sale to any individual occupying the unit immediately prior to the conversion and who submits [a commission approved] an owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

[(b) Each prospective owner-occupant who has selected a residential unit shall be given not less than ten calendar days to execute a sales contract for the unit selected. Those owner-occupants who have been offered such a contract, but elect not to execute the contract, shall be permanently stricken from the final reservation list. Those residential units for which a sales contract is not executed shall be aggregated by the developer and re-offered to the back-up prospective owner-occupants in the order in which their names appear on the final reservation list. The developer shall be required to make this re-offer once only. After complying with the foregoing requirements, the developer shall not be obligated to re-offer any of the designated residential units to prospective owner-occupants, except as otherwise provided in this part.

(c) [(b) Each contract for the purchase of a designated residential unit by an owner-occupant may be conditioned upon the purchaser obtaining adequate financing, or a commitment for adequate financing, by a date which is no earlier than fifty calendar days after the developer's execution and acceptance of the sales contract, and if the financing or commitment is not obtained, the contract may be canceled by either the developer or the purchaser. If the sales contract is so canceled, the developer shall re-offer the residential unit first to those prospective owner-occupants [whose names have not been removed from the final] on the back-up reservation list [and] who have not executed a sales contract for a residential unit in the project in the order in which their names appear on [the final reservation] that list.

[(d) (c) Any prospective owner-occupant who executes an affidavit as set forth in section 514A-104.5 and a sales contract for the sale of one of the designated residential units shall be required to reaffirm the person's intent to be an owner-occupant no earlier than the person's receipt for a final public report and no later than closing of escrow for the unit. The developer may provide in its sales contract that failure to sign the reaffirmation upon reasonable request shall constitute a default under the sales contract by the person failing to sign. The developer shall cancel the sales contract or reservation of any person failing to make the reaffirmation pursuant to this subsection and shall re-offer the residential unit first to those prospective owner-occupants [whose names have not been removed from the final] on the back-up reservation list [and] who have not executed a sales contract for a residential unit in the project, in the order in which their names appear on [the final reservation] that list. If the sales contract has become binding upon the purchaser pursuant to section 514A-62, the developer may exercise the remedies provided for in the sales contract and any other remedies provided by law.

[(e) (d) Any prospective owner-occupant on the [final] back-up reservation list, at any time, may be offered any residential unit in the project not subject to the designation required by section 514A-103.

[(f) (e) The developer, escrow agent, or any other party, at the direction of the developer, shall mail twice to each owner-occupant by registered or certified mail, once by the sixtieth day and once by the two hundred seventieth day following the conveyance of the first unit to an owner-occupant listed on the final reservation list; a complete copy of the executed affidavit to inform them of their legal obligations and penalties as provided for in this part.

The developer shall keep records of its notice mailings and the owner-occupant affidavits for a period of three years starting from the date of its first mailing pursuant to this subsection and the date of the conveyance of the first unit to an owner-occupant listed on the final reservation list. Failure of the developer to give the notices required by this subsection shall not affect title to the owner-occupant unit or the obligations of the owner-occupant pursuant to this part.”

SECTION 17. Section 514A-108, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) This part shall not apply to any project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201E, 206, 356, or 359, provided that the developer of such a project may elect to be subject to this part through a written notification to the commission with the notification requirements of section [514A-102(b)(1).] 514A-102(b). Disclosure of the election shall be made through an additional statement in the announcement pursuant to section 514A-102(a).”

2. By amending subsection (d) to read:

“(d) A developer of a project enumerated in subsection (a) electing to be subject to this part or a project developed pursuant to an affordable housing condition or provision by a state or county governmental agency may elect to waive certain specific provisions of this part that conflict with the eligibility or preference requirements imposed by such governmental agency. The developer who exercises such an election shall provide detailed written notification to the commission of which specified provisions will be waived, an explanation for each waived provision, and a statement from the affected government agency that the project is either an inapplicable project pursuant to subsection (a) or a project whereby a governmental agency has imposed eligibility or preference requirements. This notification shall be filed with the notification requirements of section [514A-102(b)(1)] 514A-102(b) and a copy simultaneously filed with the affected governmental agency. Disclosure of the election to waive certain specific provisions of this part shall be made through an additional statement in the announcement pursuant to section 514A-102(a).”

SECTION 18. Act 106, Session Laws of Hawaii 1996, is amended by repealing section 10.

[“SECTION 10. Notwithstanding any other provision of law to the contrary, any fee imposed pursuant to section 6, 7, or 9 of this Act shall not exceed the existing fee amount required to be paid for the same purpose as of April 1, 1996; provided that for a biennial registration or re-registration, the re-registration fee, compliance resolution fund fee, and condominium management education fund fee shall not exceed twice the existing annual fee.”]

SECTION 19. Until such time as fees for a contingent final public report are prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes, the fees assessed shall be identical as those that apply to final public reports as prescribed in existing rules.

SECTION 20. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 21. This Act shall take effect on July 1, 1997. The provisions of sections 13, 14, 15, 16, and 17 of this Act shall not affect any condominium project for which the announcement required under section 514A-102, Hawaii Revised Statutes, is published prior to July 1, 1997.

(Approved June 16, 1997.)

**Notes**

1. Prior to amendment “purchase” appeared here.
2. Prior to amendment “calendar days” appeared here.
3. Edited pursuant to HRS §23G-16.5.

## ACT 136

H.B. NO. 816

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

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

SECTION 1. The legislature finds that Act 241, Session Laws of Hawaii 1996, increased from eight to ten years the number of years of credited service required for a former member of the armed services to qualify for up to two years of membership service credit under the employee's retirement system. There was no grandfathering provision to protect those persons already working for the State or counties who had made personal plans based on the eight-year requirement. The legislature finds that it is unfair to require someone who had a reasonable expectation of being able to obtain two years of credited service for retirement purposes after providing eight years of service, to work an additional two years because of this change in the law.

The purpose of this Act is to correct this oversight and allow employees hired before June 18, 1996 (the effective date of Act 241), to acquire up to two years of military service credit for retirement system purposes after eight years of service.

SECTION 2. Section 88-132.5, Hawaii Revised Statutes, is amended to read as follows:

**“§88-132.5 Credit for military service.** (a) Any [member of the system who] employee who becomes a member of the system in accordance with section 88-42 after June 17, 1996, and has rendered honorable active military service in the armed forces of the United States [and who has ten years of credited service in the system], may be credited with membership service credit for active military service of up to four years or the actual number of years of active military service, whichever is less, as follows:

- (1) Any member with ten years of credited service in the system may be credited with up to two years of membership service credit;
- (2) Any member with twenty years of credited service in the system may be credited with up to three years of membership service credit; and
- (3) Any member with twenty-five years of credited service in the system may be credited with up to four years of membership service credit.

(b) Any employee who became a member of the system in accordance with section 88-42 before June 18, 1996, and has rendered honorable active military service in the armed forces of the United States, may be credited with membership service credit for active military service of up to four years or the actual number of years of active military service, whichever is less, as follows:

- (1) Any member with eight years of credited service in the system may be credited with up to two years of membership service credit;
- (2) Any member with twenty years of credited service in the system may be credited with up to three years of membership service credit; and
- (3) Any member with twenty-five years of credited service in the system may be credited with up to four years of membership service credit.

(c) For the purposes of subsections (a) and (b), the latest membership date shall be used if there is a change in membership date due to termination and re-entry into the system.

[(b)] (d) Any retirant who returns to employment, is reenrolled as a member of the system, and has at least three years of credited service in the system during the period of reemployment may be credited with membership service credit for active

## ACT 137

military service as provided in subsection (a)[;] or (b); provided that membership service credit shall be based upon the member's total service.

[(c)] (e) Active military service in the military reserve or national guard is not considered active military service unless in time of war or declared national or state emergency. Membership service creditable under this section shall be credited in accordance with sections 88-59 and 88-272.

[(d)] (f) A contributory member's active military service shall be considered service in the member's occupation at the time that service is credited and shall be purchased at the rate specified in section 88-45, and the retirement allowance provided by that service shall be calculated as provided in section 88-74.

[(e)] (g) Any violation of this section shall result in the forfeiture of the amount of the purchase of membership service and loss of benefits and membership service credit for military service."

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

SECTION 4. This Act, upon its approval, shall be effective retroactive to June 18, 1996.

(Approved June 16, 1997.)

## ACT 137

H.B. NO. 872

A Bill for an Act Relating to the East-West Center.

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

SECTION 1. The legislature through Act 82, Session Laws of Hawaii 1975, established an international advisory board within the East-West Center. The board of governors of the East-West Center has since recognized that the members of the international advisory board are an invaluable resource to the Center and that expanding the panel to beyond the eleven members as set by law may be desirous. The purpose of this Act is to remove the limit on the number of members which may be appointed to the international advisory board of the East-West Center.

SECTION 2. Act 82, Session Laws of Hawaii 1975, is amended by amending section 6 to read as follows:

"SECTION 6. Powers and duties of the corporation. Except as otherwise limited by this Act, the corporation shall have the following powers and duties and shall:

- (a) Have succession and corporate existence in perpetuity;
- (b) To adopt, amend and repeal bylaws providing for its organization and internal management and governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law consistent with this Act and the Act of the United States Congress authorizing the establishment of the East-West center and other relevant laws of the United States and the State; provided that all meetings for the adoption, amendment and repeal of bylaws shall be open to the public, and public notice of any such meeting, including an agenda of items to be discussed at the meeting, shall be announced at least fourteen days in advance and published at least twice in a newspaper of general circulation in the State within the fourteen days but at least seven days prior to the meeting.

(c) Adopt and use a common seal;

(d) Acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, manage, and operate the same; and to sell, lease, rent, or otherwise dispose of the same at such time, in such manner, and to the extent deemed necessary or appropriate to carry out its purposes;

(e) Enter into and perform such contracts, leases, cooperative agreements, or other arrangements as may be necessary to carry out the purposes of this Act and on such terms as it may deem appropriate with any agency or instrumentality of the United States, another nation, a state, territory, or possession, or with any political subdivision of any of the foregoing, or with any person, firm, association, institution, corporation, or organization, whether private, governmental, or international and whether located within or outside of the United States;

(f) Determine the character of and necessity for its obligations and expenditures, and the manner in which the same shall be incurred, allowed, and paid;

(g) Seek, receive and accept from public and private sources whether located within or outside of the United States, by grants, gifts, devices, bequests or otherwise money and property, real, personal, or mixed, tangible or intangible, absolutely or in trust, to be used in carrying out the purposes of this Act;

(h) Serve as trustee and be named a beneficiary under the terms of any gift, indenture or will;

(i) Appoint and discharge a chief executive officer, subordinate officers, employees, and agents as the business of the corporation requires, and to classify, prescribe the duties and qualifications, and fix the compensation and benefits of all officers, employees, and agents of the corporation;

(j) Establish such policies and procedures as may be necessary, including a personnel system and a budget system;

(k) Enter into employee collective bargaining agreements in conformance with all applicable laws;

(l) Establish an international advisory board of not less than seven [nor more than eleven] members, whose terms shall be as set forth in the bylaws of the corporation, to advise the corporation on programmatic matters, and to establish such other committees, boards, and bodies as it may from time to time deem desirable, and to prescribe their duties and responsibilities;

(m) Grant a special certificate to individuals who have successfully completed programs of study, training and research conducted by the East-West center;

(n) Establish and maintain, and to assist in establishing and maintaining, scholarships, fellowships, lectureships, chairs, and other staff positions, and to enter into contracts, agreements, and other arrangements with any person, firm, association, institution, corporation, or organization, whether private, governmental, or international and whether located within or outside of the United States, for this purpose, and to pay the necessary and appropriate costs and expenses therefor;

(o) Collect fees and other charges for programs, facilities, services, and educational products, and to hold copyright;

(p) Sue and be sued in its corporate name, except that the corporation shall be immune from any writ of attachment and execution against its assets;

(q) Delegate any of the powers of the corporation to any standing or special committee, board, or body, or to any officer or agent, upon such terms as it deems fit except for the powers granted under subsection (b) hereof;

(r) Execute, in accordance with its bylaws, all contracts and other instruments necessary or appropriate for the exercise of its powers under this Act; and

(s) To do any and all things necessary or appropriate to carry out its purposes and exercise the powers given and granted in this Act.”



SECTION 3. Statutory material to be repealed is bracketed.

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

(Approved June 16, 1997.)

ACT 138

H.B. NO. 912

A Bill for an Act Relating to Service of Process.

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

SECTION 1. The legislature finds that the small claims court was instituted in order to provide the public with a simplified, direct, and low cost access to the legal system. Service of process for these actions was also simplified by allowing service by registered or certified mail as well as through the sheriff's office or licensed process server. However, in certain instances, service by mail is ineffective, such as the situation in which a defendant fails to pick up the mail or refuses to sign for certified mail. While service through a sheriff or process server is still an option, it is a costly one that is not appropriate for those matters when the monetary value of the claim may be very low. Therefore, the purpose of this Act is to allow service of process to be made by the parties themselves in small claims matters.

SECTION 2. Section 633-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Actions shall be commenced and conducted in the small claims division of the district court as provided by the rules of court. The clerk of the court [shall], at the request of an individual, shall prepare the papers required to be filed in an action in the court, but the clerk's services in the preparation of these papers shall not be available to a corporation, partnership, or association, or to any individual proprietorship. The mode of service shall be [as]:

- (1) As provided by law or rule of court for cases in the district courts[, or, as]; provided that for any small claims action, service may be made by one of the parties to the action by means of personal service to the other parties, on the condition that:
  - (A) The party being served signs that party's name to indicate actual receipt of service; or
  - (B) A competent witness, who is not an employee, family member, or agent of the plaintiff appears at a hearing on the matter or provides a notarized affidavit testifying that personal service on the party sought to be served was accomplished in the witness's presence;
- (2) As to actions arising under paragraphs (1) and (3) of section 633-27(a), by registered mail or by certified mail with return receipt signed by the addressee showing delivery within the circuit[, or, as]; or
- (3) As to actions arising under paragraph (2) of section 633-27(a), by registered mail or by certified mail with return receipt signed by the addressee showing delivery at any place within or without the State.

There shall be no appeal from a judgment of the small claims division, but the court, sitting as the small claims division, may alter or set aside any judgment as provided by the rules of court.”

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 16, 1997.)

## ACT 139

H.B. NO. 931

A Bill for an Act Making an Appropriation for Agricultural Research and Development.

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

SECTION 1. The legislature finds that agriculture is one of the State's most important industries and a vital component of the State's economic base. The legislature also finds that Hawaii's agriculture industry has become increasingly diverse with new economic opportunities as the sugar and pineapple industries have become smaller. Although the sugar and pineapple industries no longer predominate the agriculture industry, they remain among the leading producers of tangible exports and will continue to be important contributors to Hawaii's diversified agriculture industry. To maximize the opportunities for maintaining and expanding the agriculture industry and to take best advantage of the thousands of acres of prime farm land formerly in sugarcane, production-driven research is paramount.

The legislature further finds that the Hawaii Agriculture Research Center (formerly, Hawaiian Sugar Planters' Association) has effectively filled this research role for the sugar industry for more than a century. The Hawaii Agriculture Research Center (HARC) serves as a model of private-public partnerships for agricultural research, and, further, it effectively joins with the University of Hawaii college of tropical agriculture and human resources in facilitating agricultural technology transfer and in maximizing the use of limited community resources. Most of HARC's funding comes from the private sector, which increases the returns on the State's funding, benefitting farm production and the local economy.

HARC has been directing its research on coffee, papaya, sugarcane, and tree crops for forestry, each of which appears to have good potential for making substantial economic contributions to the State in the years ahead. HARC seeks to help increase commercial production through crop improvement programs focusing on improving cultural practices and producing superior planting material through plant breeding and selection. HARC also will conduct research on other crops that show commercial potential and economic benefit to the State as it has done recently on such crops as asparagus, onions, and corn. Agricultural research at HARC will continue to be a key resource in the State's efforts to strengthen and improve the agriculture industry, revitalize the economy, and maintain and create employment opportunities for residents, especially in rural areas.

The purpose of this Act is to provide the necessary funds to assist in maintaining current minimum levels of agricultural research at HARC.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 1997-1998 for agricultural research and development to be performed by the Hawaii Agriculture Research Center; provided that:

- (1) No research funds for specific agricultural commodities with annual statewide crop sales of \$20,000,000 or greater, based on the most recent

## ACT 140

statistics available from the department of agriculture, shall be expended unless matched on a dollar-for-dollar basis; and

- (2) No funds for agricultural research for other agricultural commodities shall be expended unless matched on the basis of \$3 from the State for each dollar from the private sector, except that up to \$250,000 per year may be released unmatched for exploratory agricultural research and development, including crop variety trials, demonstration plantings, and pest management alternatives to chemical control.

SECTION 3. The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

## ACT 140

H.B. NO. 939

A Bill for an Act Relating to Motor Vehicle Industry Taxes and Fees.

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

SECTION 1. Chapter 437D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§437D- License and registration fees.** Notwithstanding any law to the contrary, a lessor may visibly pass on to a lessee:

- (1) The general excise tax attributable to the transaction;
- (2) The vehicle license and registration fee and weight taxes, prorated at 1/365th of the annual vehicle license and registration fee and weight taxes actually paid on the particular vehicle being rented for each full or partial twenty-four hour rental day that the vehicle is rented; provided the total of all vehicle license and registration fees charged to all lessees shall not exceed the annual vehicle license and registration fee actually paid for the particular vehicle rented; and
- (3) The rental motor vehicle surcharge tax as provided in section 251-2 attributable to the transaction.

A representation by the lessor to the lessee that the visible pass on of the charges in paragraphs (1) to (3) is mandatory or that it is a government assessment upon the consumer shall be a per se violation of section 480-2.”

SECTION 2. Section 437D-6, Hawaii Revised Statutes, is amended to read as follows:

“**[§437D-6] Additional mandatory charges prohibited.** The daily and periodic rental cost to the lessee shall include the amount of each charge[, other than the general excise tax,] which is required as a condition to the rental[.] other than those charges provided for in section 437D- . The lessor shall disclose as part of any quotations of price, including all quotations contained in advertising or by telephone, all payments a lessee must make in order to rent the vehicle, including all charges provided for in section 437D- .”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 141**

H.B. NO. 1012

A Bill for an Act Relating to School Discipline.

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

SECTION 1. Section 302A-1134.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any child who is found to be in possession of a dangerous weapon, switchblade knife, intoxicating liquor, or illicit drugs while attending school, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent[.], the deputy superintendent, or the district superintendent with authority over the child. The due process procedures of the department [of education] adopted pursuant to chapter 91, shall apply to any child who is alleged to be in possession of a dangerous weapon, switchblade knife, intoxicating liquor, or illicit drugs while attending school. If a child is excluded from attending school, the superintendent shall ensure that substitute educational activities or other appropriate assistance [shall be] are provided, [and that the child is referred] such as referral for appropriate intervention and treatment services, as determined by the principal in consultation with the school counselor.”

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 June 16, 1997.)

**ACT 142**

H.B. NO. 1023

A Bill for an Act Relating to the Secondary School Students Conference.

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

SECTION 1. Section 317-1, Hawaii Revised Statutes, is amended to read as follows:

## ACT 143

**“§317-1 Purpose.** The purpose of this chapter is to provide for the establishment of an annual conference of secondary school students, (grades [9-12]) seven to twelve) which will enable students in our secondary schools to identify, discuss, and arrive at recommended solutions to major youth problems, with emphasis on school problems that require the attention and joint action by the students, the department of education, and the legislature. The conference format may be a state student conference, a student governance summit, or district-centered conferences as determined by the student conference committee.”

SECTION 2. Section 317-3, Hawaii Revised Statutes, is amended to read as follows:

**“§317-3 Duties of the committee.** It shall be the duty of the student conference committee to:

- (1) Plan and coordinate all phases of the annual conference;
- (2) Set the theme [and], scope, and format of the conference;
- (3) Set up the agenda of the conference;
- (4) Determine the number of participants;
- (5) Plan and provide for food, lodging, and transportation of all participants;
- (6) Evaluate the worth and effectiveness of the conference; and
- (7) Consider and act on any other matter relevant to or necessary to effectuate the purpose of this chapter.”

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 16, 1997.)

## ACT 143

H.B. NO. 1036

A Bill for an Act Relating to the Department of Hawaiian Home Lands.

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

SECTION 1. Pursuant to section 204.5 of the Hawaiian Homes Commission Act, 1920, as amended, and part III of chapter 39, the department of Hawaiian home lands, with the approval of the governor, is authorized to issue Hawaiian home lands revenue bonds in a total amount not to exceed \$100,000,000, in one or more series for Hawaiian home lands capital improvement projects designated to be financed by revenue bond funds or by general obligation bond funds with debt service costs to be paid for by special or trust funds, in such principal amounts 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. 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 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 department of Hawaiian home lands revenue bond special fund.

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

(Approved June 16, 1997.)

## ACT 144

H.B. NO. 1132

A Bill for an Act Relating to the Recodification of the Education Statutes.

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

SECTION 1. The purpose of this Act is to fully implement the recommendations of the education statutory revision interim study group, which was established pursuant to Act 168, Session Laws of Hawaii 1995, and whose recommendations were partially implemented pursuant to Act 89, Session Laws of Hawaii 1996. Specifically, this Act repeals sections -502, -503, -518, -519, -522, -523, -524, -538, -717, -734, -1219, and -1221 of the recodified education law, which were renumbered by the revisor of statutes pursuant to section 23G-15(1), Hawaii Revised Statutes, as sections 302A-402, 302A-403, 302A-418, 302A-419, 302A-421, 302A-422, 302A-423, 302A-437, 302A-617, 302A-633, 302A-1119, and 302A-1121, Hawaii Revised Statutes. In addition, this Act makes conforming amendments to sections 302A-101 and 302A-420.

SECTION 2. Section 302A-420, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-420]]~~ **Profits to pupils.** All net profits arising from agricultural and industrial pursuits under sections [302A-418] 302A-420 to 302A-431 at any school, under the rules of the department:

- (1) Shall be used by the school for the purchase of equipment and material, not otherwise provided for in the school budget, that will be of general benefit to the pupils; or
- (2) May be distributed among the pupils actually engaged in the pursuits.

The department shall provide for the keeping of simple books of account, showing the source and distribution of the money resulting from the operations carried on pursuant to this section [and section 302A-418], and for the auditing of these books of account at least quarterly.”

SECTION 3. Section 302A-101, Hawaii Revised Statutes, is amended by deleting the definition of “councilor”.

[““Councilor” means a member of a district school advisory council.”]

SECTION 4. Section 302A-402, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 302A-403, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 302A-418, Hawaii Revised Statutes, is repealed.

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SECTION 7. Section 302A-419, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 302A-421, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 302A-422, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 302A-423, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 302A-437, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 302A-617, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 302A-633, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 302A-1119, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 302A-1121, Hawaii Revised Statutes, is repealed.

SECTION 16. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 17. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 145

H.B. NO. 1188

A Bill for an Act Relating to a Symposium on Crime in Hawaii.

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

SECTION 1. The legislature finds that there is a critical need for representatives from federal, state, and county agencies to address the issue of crime in Hawaii.

Each of the government agencies involved have established their own unique administrative infrastructures, developed independent objectives and courses of action, and implemented their own specifically tailored, independently funded programs.

It is the intent of the legislature to assemble those agencies with the authority to make decisions to share information and increase coordination between the various agencies. The symposium is designed to be a one-day event, bringing together government agencies, using existing resources, such as government auditoriums and equipment. The federal and county agencies would be expected to bear their own costs for transportation and expenses. The county police departments and prosecuting attorneys have access to forfeiture funds and other resources to support their own participation.

The symposium is designed to inform and educate the participants, as well as the general public to the extent feasible, of existing crime programs and resources. Furthermore, the underlying intent is to provide a forum, without any additional costs to the taxpayer, in which to foster networking and collaboration among the participants for the purpose of:

- (1) Identifying and prioritizing areas of concern under the rubric of “crime in Hawaii;”
- (2) Recognizing and eliminating inefficient redundancies;
- (3) Pooling and streamlining ideas and assets (such as personnel, funding, and other important resources);
- (4) Establishing points of contact and interactive work groups or committees to provide ongoing subject matter feedback to all participants, the legislature, and the general public;
- (5) Attempt to establish a united coalition to effectively combat crime in Hawaii; and
- (6) Identify a responsible state agency or body as a focal point for future reference and coordination.

SECTION 2. The department of the attorney general shall coordinate a one-day, “Crime in Hawaii” symposium. The purpose of the symposium shall be to:

- (1) Open lines of communication between federal, state, and county agencies, and public and private agencies involved in various aspects of crime in Hawaii;
- (2) Identify the key agencies and organizations involved in fighting crime and develop a comprehensive statewide coordination matrix through the creation of a voluntary consortium comprised of these symposium members.

SECTION 3. The crime consortium shall be called upon to conduct the following activities:

- (1) Identify and prioritize areas under the rubric of crime in Hawaii;
- (2) Identify statewide redundancies and inefficiencies concerning programs and obligated assets (staffing, funding, and other resources);
- (3) Formulate a proposed statewide strategy to combat identified areas of crime in Hawaii;
- (4) Provide executable proposals and recommendations as well as alternative courses of actions for each area identified within the rubric of crime in Hawaii;
- (5) Develop a plan to implement the various measures to include oversight activities and required feedback;
- (6) Prepare a report designed to educate the legislature, the participants and the public on crime in Hawaii and the efforts being made to combat it; and
- (7) Make specific recommendations on legislative and policy proposals on how to better address crime in Hawaii to the legislature, and federal and county governments.

The department of the attorney general shall coordinate and implement the convening of the symposium. Furthermore, it may call upon the relevant federal, state, and county agencies for assistance in coordinating the symposium. The department of the attorney general shall invite the relevant federal, state, and county officials, including but not limited to, officials from crime prevention and law enforcement agencies, the judiciary, prosecuting attorneys, the criminal justice system, the corrections system, and other related supporting social agencies and services. The symposium may also be open to representatives from various community groups and private nonprofit organizations involved in crime prevention, crime reduction, or public safety, including but not limited to, members of community policing groups and neighborhood boards and elected community representatives.



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SECTION 4. The department of the attorney general shall report the finding and recommendations of the symposium and the crime consortium to the legislature, no later than twenty days prior to the convening of the regular session of 1998, on the specific items enumerated in section 2 of this Act.

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

## ACT 146

H.B. NO. 1243

A Bill for an Act Relating to Environmental Protection.

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

### PART I

SECTION 1. The legislature finds that the department of health is moving toward adoption of a risk-based environmental management strategy, which is based upon risk assessment to human health and the environment, rather than upon rigid technical standards.

Due to growing concern about airborne pollutants, and in conjunction with the department of health's objective of moving toward a risk-based environmental management strategy, the legislature finds that it is necessary for the department to obtain professional staff capable of assessing airborne chemical threats to the environment.

The legislature is aware that the department is currently lacking the expertise of professional toxicologists and air quality modelers, which the legislature finds are essential for the department to adequately model the dispersion of air releases and to evaluate the health impacts of the releases on human populations. It is the intention of the legislature that these positions will enable the department to move more rapidly in adopting a risk-based strategy in handling current and potential environmental problems, be they at Campbell Industrial Park or anywhere in the State.

SECTION 2. Chapter 128D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§128D- Toxicologists. The department may establish permanent exempt positions known as toxicologists for the purpose of assessing human health risk. The positions shall be appointed by the director without regard to chapters 76 and 77. The funds for these positions shall come from the environmental response revolving fund established in section 128D-2.”

SECTION 3. Chapter 342B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342B- Air quality modelers. The department may establish permanent exempt positions known as air quality modelers for the purpose of assessing the impact of air releases. The positions shall be appointed by the director without regard to chapters 76 and 77. The funds for these positions shall come from the clean air special fund established in section 342B-32.”

## PART II

SECTION 4. The legislature finds that the state of our environment is critical to the health and welfare of our citizens and of our economy. The proximity of industrial users and residential communities creates conflicts that will become increasingly common as residential density increases, particularly in Leeward Oahu, and new industrial facilities are required to provide needed services to the community.

Campbell Industrial Park is an important resource to the State because of the services provided by the industrial uses located in this area. However, residential areas have developed in proximity to Campbell Industrial Park. Additional residential and commercial development is expected and planned to occur in this area. Present occupants may need to expand in the future and new facilities may need to be located in Campbell Industrial Park. There is currently no other area on Oahu that can easily accommodate new heavy industrial facilities.

Conflicting opinions make it difficult for the department of health and the legislature to develop the long-term plans that are critical to maximize the potential for the industrial growth that will be needed to serve the community's needs while maintaining a healthy and sound environment for residents.

While the setting of new environmental standards has been discussed, the application of these standards is a complex issue. It is the legislature's intent that before any new controls be imposed a rational determination be made that such controls produce benefits that justify their cost.

Solutions to environmental issues will only be developed in an atmosphere where all interested parties work together in a cooperative manner.

SECTION 5. (a) There is established within the department of health, for administrative purposes, an advisory task force to:

- (1) Conduct an assessment of the air quality at Campbell Industrial Park and Kahe Valley on Oahu; and
- (2) Determine the air quality impacts of emission sources in these locations.
- (b) The task force shall consist of the following:
  - (1) Representatives from the department of health;
  - (2) Representatives of the residents, covered sources, and owners in Campbell Industrial Park and Kahe Valley who shall be appointed from lists of nominees submitted by residents' organizations, covered sources designated by the director of health, and owners in Campbell Industrial Park and Kahe Valley, respectively;
  - (3) Representatives from the neighborhood boards from the area who shall be appointed from lists of nominees submitted by each neighborhood board from the area;
  - (4) A representative of the organization known as the Campbell Local Emergency Action Network Committee ("CLEAN") who shall be appointed from a list of nominees submitted by the committee;
  - (5) A member of the senate; and
  - (6) A member of the house of representatives.

Except for the member of the senate who shall be appointed by the president of the senate, and the member of the house of representatives who shall be appointed by the speaker of the house of representatives, all members shall be appointed by the director of health. The appointments shall not be subject to section 26-34 or 26-35, Hawaii Revised Statutes. Vacancies shall be filled in the same manner as the original appointment.

(c) The task force shall elect a chairperson and vice chairperson from among its members. A majority of the task force members shall constitute a quorum for any meeting duly called for the purposes of conducting the task force's business. The members of the task force shall serve without compensation, and shall not be reimbursed for expenses of any kind.

(d) In cooperation with the residents, covered sources, and owners in Campbell Industrial Park and Kahe Valley, the task force may collaborate with a private entity which shall use its best efforts to raise funds necessary to retain an independent consultant or consultants to assist the task force in conducting the air quality assessment in Campbell Industrial Park and Kahe Valley. Any funds raised for this purpose may, for convenience, be deposited into an account managed by the private entity. The task force may request the private entity to retain the services of the independent consultant who shall work in coordination with and under the supervision of the department of health. The consultant shall have experience in managing programs to measure air quality and modeling the dispersion of emissions from various industrial sources. In consultation with the department's toxicologists and air quality modelers, the consultant shall:

- (1) Prepare a report on existing air quality in Campbell Industrial Park and Kahe Valley;
- (2) Prepare a report on the capacity of Campbell Industrial Park to accommodate the expansion of present facilities and the siting of new facilities;
- (3) Consider alternative approaches that would assist such accommodation, including, but not limited to, establishing an emission credit banking and trading program; and
- (4) Submit the report to the department and the task force for review.

SECTION 6. The task force shall submit to the legislature a progress report of its activities no later than twenty days prior to the convening of the regular session of 1998, and a final report of its findings no later than twenty days prior to the convening of the regular session of 1999.

### PART III

SECTION 7. Chapter 342B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§342B- Annual reports to neighboring communities.** (a) Every owner or operator of a major source within Campbell Industrial Park or Kahe Valley or every owner or operator of a geothermal facility that emits criteria air pollutants in excess of one hundred tons per year shall submit an annual report to the department within sixty days of the beginning of each year, which shall describe the following:

- (1) The type and quantity of criteria pollutants emitted by the facility during the previous year;
  - (2) A description of controls, operating procedures, or other measures being used by the owner or operator to control emissions of these criteria pollutants.
- (b)<sup>1</sup> The department shall review and evaluate the information submitted under subsection (b) and produce a report. The department shall include the following information in the reports:
- (1) A summary of the ambient air quality data collected for each criteria pollutant monitored;
  - (2) A comparison of the monitoring data collected against state and federal ambient air quality standards;

- (3) Impacts of the monitored criteria pollutants' adverse effects on human health and the environment; and
- (4) A report on air quality trends over a five-year period.
- (c) The department shall distribute the reports described in this section on a monthly basis to adjacent neighborhood boards or community associations, or both."

SECTION 7.<sup>2</sup> The legislature is further concerned about the recent occurrences of unplanned releases of criteria pollutants, and finds that the department of health should provide timely information to affected neighborhoods and communities.

SECTION 8.<sup>2</sup> Chapter 342B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§342B- Unpermitted releases; timely notice.** The department shall review the reports submitted by every owner or operator of a geothermal facility, or major source within Campbell Industrial Park or Kahe Valley, of their unpermitted releases to determine whether the release may have an adverse impact on human health. The department shall notify the neighborhood boards or community associations, or both, of the adjacent communities of unpermitted releases which may have an adverse impact on human health as soon as circumstances warrant."

SECTION 9.<sup>2</sup> The department of health may expend from the environmental response revolving fund the sum of \$78,000, which includes \$60,000 in salary and \$18,000 for fringe benefits, for the purpose of funding one toxicologist.

SECTION 10.<sup>2</sup> The department of health may expend from the clean air special fund the sum of \$78,000, which includes \$60,000 in salary and \$18,000 for fringe benefits, for the purpose of funding one air quality modeler.

SECTION 11.<sup>2</sup> New statutory material is underscored.<sup>3</sup>

SECTION 12.<sup>2</sup> This Act shall take effect upon its approval; provided that section 5 shall take effect upon its approval and shall be repealed on June 30, 1999; and provided further that sections 9 and 10 shall be effective on July 1, 1997.

(Approved June 16, 1997.)

#### Notes

1. "(b)" substituted for "(c)".
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

## ACT 147

H.B. NO. 1247

A Bill for an Act Relating to Environmental Protection.

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

SECTION 1. The legislature finds that the penalties for violating the State's clean water and hazardous waste laws should be increased to enhance the State's ability to punish violators, deter potential polluters, and make the State's penalties consistent with those of the federal law.

SECTION 2. 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, or any term or condition of a permit or variance issued pursuant to this chapter shall be fined not more than [\$10,000] \$25,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this section shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance or 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] \$10,000 for each day of denial, obstruction, or hampering. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 3. Section 342J-9, Hawaii Revised Statutes, is amended:

1. By amending subsection (a) to read as follows:

“(a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit or variance issued pursuant to this chapter shall be fined not more than [\$10,000] \$25,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

2. By amending subsection (c) to read as follows:

“(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 who violates any term or condition of a permit or variance issued pursuant to this chapter;
- (3) Transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil or used oil fuel in violation of any rules adopted pursuant to this chapter relating to used oil or used oil fuel; or
- (4) 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, including compliance with any rules adopted pursuant to this chapter relating to used oil or used oil fuel;

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.”

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 June 16, 1997.)

## ACT 148

H.B. NO. 1250

A Bill for an Act Relating to Environmental Response.

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

SECTION 1. The legislature finds that oil and hazardous materials that leak from pipelines, such as the major oil pipeline spill in May 1996, present ever increasing risks to Hawaii's environment. The intent of this Act is to promote an innovative approach in the development of new partnerships among the federal, state, and county governments, and private industry in managing the environmental risks posed by oil and hazardous materials.

Because of the State's limited resources, the legislature finds that the State can no longer afford to take a "business as usual" attitude in managing long-standing environmental risks to the public health and environment. Instead of setting up a regulatory framework which would overburden the taxpayers and industry, the legislature finds that it would be in everyone's best interest for industry to participate in the planning, monitoring, and oversight of pipeline safety without additional costs to the State.

SECTION 2. (a) As used in this Act, unless the context otherwise requires:

"Committee" means the pipeline safety committee.

"Hazardous substance" has the same meaning as defined in section 128D-1.

"Pipeline" means all parts of those physical facilities through which hazardous substances move in transmission, including pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

"Pipeline operator" means a person who operates a pipeline that carries hazardous substances.

(b) There is established within the department of health for administrative purposes, a pipeline safety committee consisting of representatives of state and local governments, public service, and industrial or commercial companies with interests in underground pipeline systems. The director of health or a designee of the director and the director of transportation or a designee of the director shall serve as ex officio members.

(c) The department of health shall request the participation of the following organizations to serve on the committee:

- (1) The board of water supply, city and county of Honolulu;
- (2) The department of wastewater management, city and county of Honolulu; and
- (3) Other pipeline operators.

(d) The committee shall elect a chairperson from among its members. Members shall serve without compensation. The committee shall meet at least once every four months.

(e) The committee shall:

- (1) Maintain a central depository of all pipeline maps;
- (2) Facilitate cooperative cathodic protection testing and interference mitigation; and
- (3) Facilitate information and technology sharing.

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(f) The department shall submit to the legislature no later than twenty days prior to the convening of each regular session, a complete and detailed report of its activities for the previous year, including:

- (1) A summary of safety-related reports filed with the federal Office of Pipeline Safety; and
- (2) A summary of cathodic protection reports.

SECTION 3. This Act shall take effect upon its approval and shall be repealed two years from its effective date.

(Approved June 16, 1997.)

## ACT 149

H.B. NO. 1300

A Bill for an Act Relating to Crime.

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

SECTION 1. Section 701-108, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A prosecution for murder, murder in the first and second degrees, attempted murder, and attempted murder in the first and second degrees, criminal conspiracy to commit murder in any degree, and criminal solicitation to commit murder in any degree may be commenced at any time.”

SECTION 2. Section 705-512, Hawaii Revised Statutes, is amended to read as follows:

“**§705-512 Grading of criminal solicitation.** Criminal solicitation is an offense one class or grade, as the case may be, less than the offense solicited[.]; provided that criminal solicitation to commit murder in any degree is a class A felony.”

SECTION 3. Section 705-526, Hawaii Revised Statutes, is amended to read as follows:

“**§705-526 Grading of criminal conspiracy.** (1) A conspiracy to commit [a class A felony is a class B felony.

(2)] murder in any degree is a class A felony.

(2) Except as provided in subsection (1), a conspiracy to commit a class A felony is a class B felony.

(3) Except as provided in subsections (1) and (2),<sup>1</sup> conspiracy to commit a crime is an offense of the same class and grade as the most serious offense which is an object of the conspiracy.”

SECTION 4. Section 706-640, Hawaii Revised Statutes, is amended to read as follows:

“**§706-640 Authorized fines.** (1) A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- [1] (a) \$50,000, when the conviction is of a class A felony, murder in the first or second degree, or attempted murder in the first or second degree;
- [2] (b) \$25,000, when the conviction is of a class B felony;
- [3] (c) \$10,000, when the conviction is of a class C felony;
- [4] (d) \$2,000, when the conviction is of a misdemeanor;
- [5] (e) \$1,000, when the conviction is of a petty misdemeanor or a violation;
- [6] (f) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;
- [7] (g) Any higher or lower amount specifically authorized by statute.

(2) Notwithstanding section 706-641, the court shall impose a mandatory fine upon any defendant convicted of theft in the first or second degree committed by receiving stolen property as set forth in section 708-830(7). The fine imposed shall be the greater of double the value of the stolen property received or \$25,000 in the case of a conviction for theft in the first degree; or the greater of double the value of the stolen property received or \$10,000 in the case of a conviction for theft in the second degree. The mandatory fines imposed by this subsection shall not be reduced except and only to the extent that payment of the fine prevents the defendant from making restitution to the victim of the offense, or that the defendant's property, real or otherwise, has been forfeited under chapter 712A as a result of the same conviction for which the defendant is being fined under this subsection. Consequences for nonpayment shall be governed by section 706-644; provided that the court shall not reduce the fine under section 706-644(4) or 706-645."

SECTION 5. Section 710-1018, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Securing the proceeds of an offense is a class C felony if the person assisted committed a class A or B felony[;] or murder of any degree; otherwise it is a misdemeanor.”

SECTION 6. Section 710-1029, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a class A, B, or C felony[, he] or murder in any degree, the person renders assistance to [such] the other person.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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 16, 1997.)

#### Note

1. So in original.



A Bill for an Act Relating to Condominium Property Regime.

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

SECTION 1. Section 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514A- **Applicability of chapter.** This chapter shall not apply to any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, SLH 1961, unless all of the owners and holders of liens affecting any of the apartments in the project have expressly declared that this chapter shall apply to the property, and shall govern the rights, interests, and remedies of all persons owning interests in or liens upon the property; provided that any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, SLH 1961, having seven or more apartments shall register with the commission and comply with the requirements pursuant to sections 514A-95.1 and 514A-132, except for the fidelity bond requirement. The express declaration shall be made through the execution and recordation of a declaration in form and content required to establish a condominium property regime pursuant to this chapter.”

SECTION 2. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every managing agent shall:

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under article 8 of chapter 412;
- (2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. Beginning December 31, 1996, the registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include but not be limited to evidence of and information on fidelity bond coverage, name, business address, phone number, and names of association of apartment owners managed;
- (3) Provide [complete] evidence with the initial registration application and reregistration application of a current fidelity bond in an amount equal to \$500 multiplied by the aggregate number of apartments of the association of apartment owners managed by the managing agent; provided that the amount of the bond shall not be less than \$20,000 nor greater than \$100,000. Current evidence of a fidelity bond includes a certification statement from an insurance company registered with the insurance division of the department of commerce and consumer affairs certifying that the bond is in effect and meets the requirement of this

section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association of apartment owners funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The bond shall protect the managing agent against the loss of any association of apartment owners' moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide [complete] evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or a bond alternative, or permit deductibles;

- (4) Act promptly and diligently to recover from the bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association of apartment owners, and apply the bond proceeds, if any, to reduce the association of apartment owners' loss. If more than one association of apartment owners suffers a loss, the managing agent shall divide the proceeds among the associations of apartment owners in proportion to each association of apartment owners' loss. An association of apartment owners may request a court order requiring the managing agent to act promptly and diligently to recover from the bond. If an association of apartment owners cannot recover its loss from the bond proceeds of the managing agent, the association of apartment owners may recover by court order from the real estate recovery fund established under section 467-16, provided that:
  - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
  - (B) The managing agent is a licensed real estate broker; and
  - (C) The association of apartment owners fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;
- (5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and
- (6) Report immediately in writing to the commission any changes to the information contained on the registration application, the [evidence of the] fidelity bond, or any other documents provided for registration. Failure to do so may result in termination of registration and subject the [condominium project or the association of apartment owners] managing agent to initial registration requirements."

SECTION 3. Section 514A-95.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each condominium project or association of apartment owners having six or more apartments shall:

- (1) Secure a fidelity bond in an amount equal to \$500 multiplied by the number of apartments, to cover all officers, directors, employees, and managing agents of the association of apartment owners who handle, control, or have custody of the funds of the association of apartment owners; provided that the amount of the fidelity bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The fidelity bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons, including any managing agent, handling the funds of the association of apartment owners. An association of apartment owners shall act promptly and diligently to recover from the fidelity bond required by this section. An association of apartment owners that is unable to obtain a fidelity bond may seek approval for an exemption or a bond alternative from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or a bond alternative, or permit deductibles. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide [complete] current evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained[;]. Current evidence of a fidelity bond includes a certification statement from an insurance company registered with the department of commerce and consumer affairs certifying that the bond is in effect and meets the requirement of this section and the rules adopted by the commission;
- (2) Register with the commission through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. Beginning June 30, 1997, the registration shall be for a biennial period with termination on June 30 of an odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any condominium project or association of apartment owners that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. Any new condominium project or association of apartment owners shall register within thirty days of the association of apartment owners' first meeting. If the association of apartment owners has not held its first meeting and it is at least one year after the recordation of the purchase of the first apartment in the condominium project, the developer or developer's affiliate or the managing agent shall register on behalf of the unorganized association of apartment owners and shall comply with this section, except the fidelity requirement for association of apartment owners. The public information required to be submitted on any completed application form shall include but not be limited to evidence of and information on fidelity bond coverage, names and positions of those persons who handle the association of apartment owners' funds, the name of the association of apartment owners' managing agent, if any, the street and the postal address of the condominium, and the names, addresses, and phone numbers of the officers of the association of apartment owners, of which one shall be desig-

- nated as the public contact person for the association of apartment owners;
- (3) Pay a nonrefundable application fee and, upon approval, an initial registration fee and subsequently pay a re-registration fee, and the condominium management education fund fee, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
  - (4) Register or re-register and pay the required fees by the due date. Failure to register or re-register or pay the required fees by the due date shall result in the assessment of a penalty equal to the amount of the registration or re-registration fee; and
  - (5) Report immediately in writing to the commission any changes to the information contained on the registration or re-registration application, the evidence of the fidelity bond, or any other documents set forth by the commission. Failure to do so may result in termination of registration and subject the condominium project or the association of apartment owners to initial registration requirements.”

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 151**

H.B. NO. 1367

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

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

SECTION 1. The purpose of this Act is to expand the scope of activity of the natural energy laboratory of Hawaii authority by allowing it to engage in retail concession activities that are not related to facilitating research, development, and commercialization of natural energy resources in Hawaii.

SECTION 2. Section 227D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the natural energy laboratory of Hawaii authority, which shall be a body corporate and politic and an instrumentality and agency of the State. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the natural energy laboratory of Hawaii authority shall be to facilitate research, development, and commercialization of natural energy resources in Hawaii[.] and to engage in one retail concession activity and one tour-related activity

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that will financially support that research, development, and commercialization at a research and technology park in Hawaii. Its duties shall include:

- (1) Establishing, managing, and operating facilities that provide sites for:
  - (A) Research and development;
  - (B) Commercial projects and businesses utilizing natural resources, such as ocean water or geothermal energy;
  - (C) Those businesses engaged in other compatible scientific and technological investigations; and
  - (D) Businesses or educational facilities that support the primary projects and activities;
- (2) Providing support, utilities, and other services to facility tenants and government agencies;
- (3) Maintaining the physical structure of the facilities;
- (4) Promoting and marketing these facilities; [and]
- (5) Promoting and marketing the reasonable utilization of available natural resources[.]; and
- (6) Engaging in one retail concession activity and one tour-related activity that are not related to facilitating research, development, and commercialization of natural energy resources in Hawaii; provided that all income derived from these activities shall be deposited in the natural energy laboratory of Hawaii authority special fund.

SECTION 3. Section 227D-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority shall not be subject to any requirement of law for competitive bidding, including the requirements of [chapter] chapters 103 and 103D [and section 103-42,] for project agreements, construction contracts, retail concession or tour-related contracts, or other contracts unless a project agreement with respect to a project or research and technology park shall require otherwise.”

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 16, 1997.)

**ACT 152**

H.B. NO. 1381

A Bill for an Act Relating to Tax Appeal Court Fees.

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

SECTION 1. Section 232-5, Hawaii Revised Statutes, is amended to read as follows:

“**§232-5 Small claims.** The tax appeal court shall establish by rule a small claims procedure [which,] that, to the greatest extent practicable, shall be informal. Any protesting taxpayer who would incur a total tax liability, not including penalties and interest, of less than \$1,000 by reason of the protested assessment or payment in question, may elect to employ [such] the procedure upon:

- (1) Payment per taxpayer of a [\$3] non-refundable filing fee[;] set pursuant to rules adopted by the supreme court, which shall not exceed \$25; and
- (2) Filing with the tax appeal court a written statement of the facts in the case, together with a waiver of the right to appeal to the supreme court.

The tax appeal court shall cause a notice of the appeal and a copy of [such] the statement to be served on the director of taxation.”

SECTION 2. Section 232-22, Hawaii Revised Statutes, is amended to read as follows:

**“§232-22 Costs; deposit for on appeal.** No costs shall be charged on appeal to the state board of review.

The non-refundable costs to be deposited [by the taxpayer] in any one case per taxpayer on any appeal to the tax appeal court shall be [five per cent of the amount of taxes in dispute but not more than \$100 nor less than \$5 in any one case.] an amount set pursuant to rules adopted by the supreme court, which shall not exceed \$100.

On appeal to the supreme court, the deposit for costs, and costs chargeable, shall be the same as in appeals to the supreme court from decisions of circuit courts, as provided by sections 607-5 and 607-6. If the decision of the supreme court is in favor of the taxpayer, the taxpayer shall pay no costs for the appeal and any payment or deposit therefor shall be returned to the taxpayer. If the decision is only partly in favor of the taxpayer, the costs shall be prorated in the manner provided by section 232-23. No costs shall be payable by, and no deposit shall be required from, the assessor or the county in any case.”

SECTION 3. Section 232-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the event of an appeal by a taxpayer to the tax appeal court, if the appeal or objection is sustained in whole, the costs deposited shall be returned to the appellant. If the appeal or objection is sustained in part only, or if an agreement or compromise is made between the appellant and the tax assessor or other proper officer, whereby a reduction is made in the total amount of the valuation assessed (in cases of real property tax appeals) or the tax assessed (in other cases), then a part of the costs proportionate to the amount for which the appellant [shall obtain] obtains a judgment or proportionate to the amount of the reduction, as the case may be, shall be returned to the appellant. In the event of dismissal of the appeal without hearing upon the merits, the costs deposited [in excess of the \$5 minimum] in the amount set pursuant to rules adopted by the supreme court shall be returned to the appellant.

In the event of a final determination of an appeal by a county to the tax appeal court or the supreme court, that a higher assessment should be made of the property involved, the additional tax due shall be collected in the same manner as the tax based upon the original assessment.”

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 16, 1997.)

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

**“§286-104 What persons shall not be licensed.** The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of driving [while drunk;] under the influence of alcohol or drugs;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
- (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;
- (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; or
- (5) To any person who is under seventeen years of age; provided that a person who is fifteen or sixteen years of age may be granted a special license upon satisfying the requirements of sections 286-108 and 286-109, which license may be suspended or revoked by a judge having jurisdiction over the holder of the special license. Upon revocation of the special license, the person shall not be eligible to operate a motor vehicle on the highway until the person is seventeen years of age and has again satisfied the requirements of sections 286-108 and 286-109.

Any person denied a license under this or any other section of this part shall have a right of appeal as hereinafter provided.”

SECTION 2. Section 286-137, Hawaii Revised Statutes, is amended to read as follows:

**“§286-137 District [judges] courts to keep records.** The district [judges] court of each [county] circuit shall keep, maintain, and control or shall otherwise provide for the keeping, maintaining, and controlling of proper and accurate records of each conviction or bail forfeiture or any other disposition of each violation of licensee coming within this part. The district [judges] court of each [county] circuit shall also establish procedures for the accounting, control, and disposition of each [and every] traffic citation, notice, or summons used or issued, whether the use or issuance of the same is authorized by the court or by any other governmental agency under applicable laws or ordinances, which may include the keeping of an accurate citation, notice, or summons control ledger or form in a numerical, chronological, or other accountable manner.”

SECTION 3. Section 286-138, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No nolle prosequi shall be entered in any case involving a violation of the traffic laws or ordinances of the State or of the several counties and no case or any charge arising therefrom shall be stricken, amended, or reduced, except by consent of the court upon [written] motion of the prosecuting attorney stating the reasons therefor. The court may deny the motion if it deems the reasons insufficient.”

SECTION 4. Section 286G-2, Hawaii Revised Statutes, is amended to read as follows:

“**§286G-2 Driver education and training fund.** There is established in the state treasury a special fund to be known as the driver education and training fund. All [fines] driver education assessments collected pursuant to this chapter shall be deposited in the driver education and training fund to be expended by the administrative director of the courts for driver education and training programs administered by the judiciary, subject to part III of chapter 37 to the extent that the same applies to appropriations for the judiciary.”

SECTION 5. Section 286G-3, Hawaii Revised Statutes, is amended to read as follows:

“**§286G-3 [Fines.] Driver education assessments.** (a) A [fine] driver education assessment of \$7 shall be levied on a finding that a violation of a statute or county ordinance relating to vehicles or their drivers or owners occurred, except for:

- (1) Offenses relating to stopping (when prohibited), standing, or parking;
- (2) Offenses relating to registration; and
- (3) Offenses by pedestrians.

In addition, a [fine] driver education assessment of \$100 shall be levied on persons convicted under section 291-4 to defray costs of services provided by the driver education and training program.

(b) The [fines] driver education assessments levied by subsection (a) shall be paid for each violation in addition to any fine imposed by the court, and regardless of whether a fine is suspended; provided that the [fine] driver education assessment of \$100 levied on a person convicted under section 291-4 may be waived by the court if the court determines that the person is unable to pay the [fine.] driver education assessment.

(c) The amount of each [fine] driver education assessment levied by subsection (a) shall be transmitted by the clerk of the court for deposit in the driver education and training fund.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 16, 1997.)



A Bill for an Act Relating to Traffic Infractions.

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

SECTION 1. Section 291C-171, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-171 Disposition of fines and forfeitures.** (a) All fines and forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any section or provision of the state traffic laws and all assessments collected relating to the commission of traffic infractions shall be paid to the director of finance of the State.

(b) In addition to any monetary assessment imposed for a traffic infraction, the court may impose penalties on all outstanding traffic citations and judgments. The penalties shall be established pursuant to rules approved by the supreme court; provided that the amounts of the penalties shall be based upon a graduated scale that increases in proportion to the length of the delinquency. Any interest penalty imposed as provided in this section may be waived by the court for good cause. All penalties collected for such outstanding citations and judgments shall be paid to the director of finance of the State.”

SECTION 2. New statutory material is underscored.

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

(Approved June 16, 1997.)

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 and may be cited as the Judiciary Appropriations Act of 1997.

SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the 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 funds
- B Special funds
- C General obligation bond funds
- N Other federal funds
- W Revolving 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.

**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, 1997, and ending June 30, 1999. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
<b>The Judicial System</b>							
1.	JUD101	COURTS OF APPEAL					
	OPERATING		JUD	75.00*		75.00*	
			JUD	4,549,199A		4,466,346A	
				75,000W		75,000W	
2.	JUD111	CIRCUIT COURTS					
	OPERATING		JUD	481.50*		485.50*	
				25,715,448A		25,681,171A	
3.	JUD112	FAMILY COURTS					
	OPERATING		JUD	409.00*		409.00*	
			JUD	25,659,213A		25,368,747A	
				100,000B		100,000B	
4.	JUD121	DISTRICT COURTS					
	OPERATING		JUD	491.50*		491.50*	
				17,001,151A		16,906,930A	
			JUD	35.00*		35.00*	
				1,536,735B		1,536,735B	
5.	JUD201	ADMIN. DIRECTOR SERVICES					
	OPERATING		JUD	223.00*		223.00*	
				14,566,218A		14,586,705A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			JUD	800,000B		800,000B	
		INVESTMENT CAPITAL	JUD	10,590,000C		8,900,000C	

PART III. PROGRAM PROVISIONS

SECTION 4. Provided that of the general fund appropriation for circuit court (JUD 111), the sum of \$1,417,087 for fiscal year 1997-1998 and the sum of \$1,417,087 for fiscal year 1998-1999 shall be used for purchases of services.

SECTION 5. Provided that of the general fund appropriation for family court (JUD 112), the sum of \$318,750 for the fiscal year 1997-1998 shall be used for purchases of service to obtain services for the operation of a domestic violence drop-in center.

SECTION 6. Provided that of the general fund appropriation for family court (JUD 112), the sum of \$983,000 for fiscal year 1997-1998 and the sum of \$983,000 for fiscal year 1998-1999 shall be used for purchases of service for domestic violence.

SECTION 7. Provided that of the general fund appropriation for family court (JUD 112), the sum of \$5,115,430 for fiscal year 1997-1998 and the sum of \$5,115,430 for fiscal year 1998-1999 shall be used for purchases of services.

SECTION 8. Provided that of the general fund appropriations for administrative director services (JUD 201), the sum of \$407,593 in fiscal year 1997-1998 and the sum of \$434,810 for fiscal year 1998-1999 may be used to fund workers' compensation costs for the judiciary employees.

SECTION 9. Provided that of the general fund appropriation for administrative director services, the sum of \$424,650 for fiscal year 1997-1998 and the sum of \$424,650 for fiscal year 1998-1999 shall be used for purchases of services.

SECTION 10. 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 operating purposes; provided that no transfer shall be made to implement any collective bargaining contract signed after this legislature adjourns sine die.

SECTION 11. Provided that if the chief justice, or any agency, or any government unit secures federal funds or other property 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 the agency with the chief justice’s approval, shall have the power to enter into the undertaking with the federal government, private organization, or individual; and provided further that while most federal aid allocations are known and state matching funds are provided in this Act, in 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 12. 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.

**PART IV. CAPITAL IMPROVEMENTS PROGRAM PROJECTS**

SECTION 13. The sum of \$19,490,000 appropriated or authorized in part II of this Act for capital improvements program projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums 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 1997-98	M O F	FISCAL YEAR 1998-99	M O F
<b>The Judicial System</b>							
<b>JUD201 - ADMIN. DIRECTOR SERVICES</b>							
1. HILO JUDICIARY COMPLEX, HAWAII							
		LAND ACQUISITION AND DESIGN FOR A JUDICIARY COMPLEX IN HILO, HAWAII.					
		LAND DESIGN			1		
		TOTAL FUNDING	JUD		3,000		
						3,001C	C
2. KAPUAIWA BUILDING RENOVATION, OAHU							
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF THE KAPUAIWA BUILDING, OAHU.					
		DESIGN			75		
		CONSTRUCTION			700		
		EQUIPMENT			10		
		TOTAL FUNDING	JUD			785C	C
3. HOAPILI HALE UPGRADE IMPROVEMENT, MAUI							
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR UPGRADE IMPROVEMENTS AT HOAPILI HALE, MAUI.					
		DESIGN			10		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION			1,200		
		TOTAL FUNDING	JUD		1,210C		
4.		ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			747		
		EQUIPMENT			1		
		TOTAL FUNDING	JUD		750C		
5.		REMODELING AND UPGRADING JUDICIARY BUILDING, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE.					
		PLANS			10		
		DESIGN			15		
		CONSTRUCTION			210		
		EQUIPMENT			15		
		TOTAL FUNDING	JUD		250C		
6.		KOOLAUPOKO DISTRICT COURT FACILITY, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW KOOLAUPOKO DISTRICT COURT.					
		PLANS			1		
		DESIGN			589		
		CONSTRUCTION					8,900
		TOTAL FUNDING	JUD		590C		8,900C
7.		ALI'IOLANI HALE ROOF AND STRUCTURAL IMPROVEMENTS, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR ROOF AND STRUCTURAL IMPROVEMENTS AT ALI'IOLANI HALE, OAHU.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			606		
		TOTAL FUNDING	JUD		608C		
8.		KAAHUMANU HALE ROOF IMPROVEMENTS, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ROOF AND AIR CONDITIONING IMPROVEMENTS AT KAAHUMANU HALE, OAHU.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			497		
		EQUIPMENT			1		
		TOTAL FUNDING	JUD		500C		
9.		JUVENILE DETENTION CENTER FACILITIES IMPROVEMENTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR HO'OMALU HALE IMPROVEMENTS INCLUDING STRUCTURAL IMPROVEMENTS, SECURITY FENCING, AND PAINTING, OAHU.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			260		
		EQUIPMENT			1		
		TOTAL FUNDING	JUD		263C		C
10.		FAMILY COURT CENTER AND JUVENILE DETENTION FACILITY, KAPOLEI, OAHU					
		DESIGN FOR THE FAMILY COURT CENTER AND JUVENILE DETENTION FACILITY AT KAPOLEI, OAHU.					
		DESIGN			2,633		
		TOTAL FUNDING	JUD		2,633C		C

PART V. ISSUANCE OF BONDS

SECTION 14. 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 IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed \$19,490,000.

PART VI. CAPITAL IMPROVEMENT PROGRAM PROVISOS

SECTION 15. Provided that of the general obligation bond fund appropriation for administrative director services (JUD 201), the sum of \$2,633,000 for fiscal year 1997-1998 shall be used for design of the family court center and juvenile detention facility; provided further that the location of the facilities shall be at Kapolei, Oahu as designated by the state of Hawaii/Campbell Estate agreements dated April 11, 1989 and September 14, 1994; and provided further that plans, land acquisition, design and construction for the family court center and juvenile detention center shall be through the normal design/construction method, purchase, lease back/purchase option agreement and/or the design/build process.

SECTION 16. Part V, Act 18, Session Laws of Hawaii 1995, First Special Session, as amended by Act 244, Session Laws of Hawaii 1996, is amended by amending section 12 to read:

“SECTION 12. Provided that of the general obligation bond fund appropriation for administrative director services (JUD 201), the sum of \$1,844,000 for fiscal year 1995-96 shall be used for plans, land acquisition, and design for the family court center; provided further that the location of the facility shall be [parcels number 4 and number 5] at Kapolei, Oahu as designated by the state of Hawaii/ Campbell Estate agreements dated April 11, 1989 and September 14, 1994; [and

provided further that no funds shall be expended, unless the state of Hawaii receives title of the land in fee simple terms at no cost and with no contingencies, encumbrances, or deed restrictions other than the land be used for the legislative intent of this section;<sup>1</sup>] and provided further that plans, land acquisition, design, and construction for the family court center shall be through the normal design/construction method, purchase, lease back/purchase option agreement and/or the design/build process.<sup>2,3</sup>

SECTION 17. Part V, Act 18, Session Laws of Hawaii 1995, First Special Session, as amended by Act 244, Session Laws of Hawaii 1996, is amended by amending section 13 to read:

“SECTION 13. Provided that of the general obligation bond fund appropriation for administrative director services (JUD 201), the sum of \$415,000 for fiscal year 1995-96 shall be used for plans, land acquisition, and design for the juvenile detention center; provided further that the location of the facility shall be [parcels number 4 and number 5] at Kapolei, Oahu as designated by the state of Hawaii/Campbell Estate agreements dated April 11, 1989 and September 14, 1994; [and provided further that no funds shall be expended for construction,<sup>1</sup> unless the state of Hawaii receives title of the land in fee simple terms at no cost and with no contingencies, encumbrances, or deed restrictions other than the land be used for the legislative intent of this section;] and provided further that plans, land acquisition, design, and construction for the juvenile detention center shall be through the normal design/construction method, purchase, lease back/purchase option agreement and/or the design/build process.<sup>2,3</sup>”

## PART VII. SPECIAL PROVISIONS

SECTION 18. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvements program projects authorized in part II and listed in part IV of this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all appropriations made for fiscal year 1997-1998 and fiscal year 1998-1999 which are unencumbered as of June 30, 2000, shall lapse as of that date.

SECTION 19. The judiciary is authorized to delegate to other state or county agencies the planning, acquisition of land, design, construction, and equipment of any capital improvements program project when it is determined by the judiciary to be advantageous to do so.

SECTION 20. All unrequired balances in the general obligation bond fund, after the objectives of part II appropriations for capital improvements program purposes listed as projects in part IV have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 21. If the amount allocated from the general obligation bond fund for a capital improvements program project listed in part IV of this Act is insufficient, the chief justice may make supplemental allotments from the project adjust-

ment fund; provided that supplemental allotments shall not be used to increase the scope of the project.

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 IV, the chief justice may authorize such reduction of project scope; provided that the scope of a project shall not be reduced solely to accommodate the amount of available funding.

SECTION 23. The chief justice shall determine when and the manner in which the authorized capital improvements program 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 those amounts through the issuance of bonds authorized in part VI of this Act.

SECTION 24. Any law or any provision to the contrary notwithstanding, the chief justice may supplement funds for any cost element for a capital improvements program project authorized under 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 which have not lapsed, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project.

## **PART VIII. 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, the remainder of the Act and any provision thereof shall not be affected. 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 shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 26. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 27. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 28. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

### **Notes**

1. So in original.
2. Period should be underscored.



A Bill for an Act Relating to Statewide Traffic Code.

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

SECTION 1. Section 291C-91, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad, and shall not proceed until the [driver can do so safely.] train has passed. The foregoing requirements shall apply when:

- (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
- (2) A crossing gate is lowered or when a human flagperson gives or continues to give a signal of the approach or passage of a train;
- (3) A railroad train approaching within approximately fifteen hundred feet of the highway crossing emits a signal audible from that distance and the railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard;
- (4) An approaching railroad train is approximately within fifteen hundred feet of the crossing and is plainly visible and is in hazardous proximity to the crossing.”

SECTION 2. Section 291C-92, Hawaii Revised Statutes, is amended to read as follows:

“**[[§291C-92]] All vehicles must stop at certain railroad grade crossings.** The director of transportation and the counties are authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only [upon exercising due care.] if no train is approaching. If a train is approaching, and is approximately within fifteen hundred feet of the crossing, the driver must not proceed until after the train has passed.”

SECTION 3. Section 291C-93, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and while so stopped shall listen and look in both directions along the track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and if a train is approaching, and is approximately within fifteen hundred feet of the crossing, shall not proceed until after the [driver can do so safely.] train has passed. After stopping as required herein and [upon proceeding when it is safe to do so] determining that no train is approaching, the driver of any such vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing the crossing and the driver shall not shift gears while crossing the track or tracks.”

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 16, 1997.)

## ACT 157

H.B. NO. 1410

A Bill for an Act Relating to Election Records and Uses Thereof.

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

SECTION 1. Section 11-14.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§11-14.5**~~]]~~ **Residence address; confidentiality.** (a) If a life threatening circumstance exists to [a]:

- (1) A law enforcement person [or to the];
- (2) The law enforcement person's family[,]; or
- (3) Persons otherwise determined by the clerk of the county in which the person is registered,

that [law enforcement] person may apply to the county clerk in writing to keep confidential the information relating to the residence address and telephone number contained in the affidavit of registration of that [law enforcement] person, or any list or register prepared therefrom.

(b) If the disclosure of the residence address or telephone number of a person would result in an unwarranted invasion of personal privacy or expose the person or a member of the person's family to risk of bodily harm, the person may apply to the chief election officer or county clerk to keep confidential the person's residence address and telephone number contained in the person's affidavit of registration, or any list or register prepared therefrom.

(c) Upon good cause shown, the clerk shall determine whether to grant confidentiality in accordance with [procedures] rules established by the [clerk,] chief election officer, and [the clerk's] that decision shall be final.

[(c)] (d) If the voter registration of a [law enforcement] person covered by this section is challenged, the clerk shall release the residence address of [the law enforcement] that person to the challenger pursuant to [procedures] rules established by the [clerk,] chief election officer. If an appeal is taken relating to the challenge, the residence address shall also be released to the appropriate appellate body.”

SECTION 2. Section 11-97, Hawaii Revised Statutes, is amended to read as follows:

“**§11-97 Records open to inspection.** [The register of voters and all records appertaining to the registry of voters, or to any election, in the possession of the board of registration, the precinct officials, the chief election officer, or the clerk] (a) A voter's full name, district/precinct designation, and voter status shall[, at all reasonable times,] be public; but all other personal information, as provided on the voter registration affidavit, shall be [open to the inspection of any voter only] confidential except for election or government purposes in accordance with [section 11-14.6,] rules adopted by the chief election officer, pursuant to chapter 91. [with the following exception:]

(b) [the voted] Voted materials shall not be open to the inspection of any voter until after the end of the contest period unless opened upon order of the court.”

SECTION 3. Section 11-14.6, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 158**

H.B. NO. 1450

A Bill for an Act Relating to Financial Services Loan Companies.

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

SECTION 1. The purpose of this Act is to broaden the authority of financial services loan companies to charge bona fide and reasonable fees for preparation of loan documents for real estate secured consumer loans, thereby treating the cost for loan documentation the same as other financial institutions.

The legislature finds that financial services loan companies spend thousands of dollars preparing and revising their loan application, processing, and disclosure forms to meet ever-changing federal laws and regulations. Changes in state laws and rules also add to the loan documentation costs. Under current law, financial services loan companies cannot pass on these government imposed costs to their customers. However, banks, savings and loans, and credit unions may and do charge loan preparation fees to partially cover these government imposed costs. Only the law governing financial services loan companies limits charges for loan documentation. Under article 9 of chapter 412, Hawaii Revised Statutes, only outside or in-house attorney’s fees for loan documentation may be passed on to customers.

The legislature finds that these restrictions in article 9 are a carryover from old out-dated thinking in the repealed chapter 408, Hawaii Revised Statutes, governing industrial loan companies. Drafted in the 1930’s and revised many times over, there was an unfounded but persistent suspicion that customers who borrowed from industrial loan companies needed special protection. If this suspicion were ever true, it has long since passed. Financial services loan companies compete directly with banks, savings and loans, credit unions, and mortgage brokers for various segments of the loan market. Their customers are bank customers, savings and loan customers, and credit union and mortgage broker customers.

Documenting real estate secured loans is particularly costly. For example:

- (1) The Real Estate Settlement Procedures Act (“Regulation X”) and Truth in Lending Act (“Regulation Z”) require pre-disclosures to all applicants within three business days;
- (2) For each adjustable rate mortgage type a different set of early disclosures are required;
- (3) The Equal Credit Opportunity Act (“Regulation B”) requires special disclosure language in applications and special notices for applications denied or withdrawn;

- (4) The Home Mortgage Disclosure Act (“Regulation C”) requires financial institutions to gather and report to the federal regulators specific data on the applicants and the loan requests for loans originated, canceled, denied, and withdrawn; and
- (5) The Community Reinvestment Act requires additional data gathering and reporting.

Compliance and the forms on which to comply and disclose requires thousands of dollars in legal expenses to develop and revise. This is in addition to insuring that the loan documents contain the hundreds of clauses and covenants that are necessary to be enforceable and comply with state and federal laws. Financial services loan companies must absorb all of the development costs for its loan and compliance forms and documents. Other financial institutions charge preparation fees and recover some of those costs. The legislature finds that treating financial services loan companies costs differently is fundamentally unfair.

SECTION 2. Section 412:9-304, Hawaii Revised Statutes, is amended to read as follows:

“**§412:9-304 Consumer loan charges.** Unless specifically authorized in this article or by rule adopted by the commissioner, a financial services loan company shall only have the right to charge, contract for, and receive in advance or otherwise the following charges in addition to the interest permitted in section 412:9-302 for a consumer loan made under this article:

- (1) Late charges under the consumer loan on any delinquent installment, or portion of the delinquent installment where there has been no extension or deferment. Delinquency occurs when the installment or payment is not paid on the due date. Late charges shall not be collected more than once for the same delinquent installment. Late charges on any consumer loan shall not exceed five per cent of the delinquent installment, and late charges shall not be assessed on any consumer loan after acceleration of the maturity of the consumer loan;
- (2) A prepayment penalty as provided in the note or other form of contract signed by the borrower on any amount that is voluntarily prepaid; provided that:
  - (A) The prepayment penalty on any consumer loan with a term of five years or more that is primarily secured by an interest in real property and in which the interest rate is computed under section 412:9-301(2) and which is prepaid within five years of the date of the loan shall be computed on the amount prepaid in excess of twenty per cent of the original principal amount of the loan in any twelve-month period measured from the date of the loan or from any anniversary of the loan date. The prepayment penalty may be charged only on amounts in excess of the twenty per cent amount in each twelve-month period in such five-year period and shall not exceed six months of interest at the maximum interest rate permissible for the consumer loan by law on the amount prepaid;
  - (B) The prepayment penalty shall not be charged on a consumer loan that is a variable rate or open-end loan, on a precomputed loan on which interest is computed under section 412:9-301(1), or on loans that are not secured by real estate; and
  - (C) The prepayment penalty shall not be charged on any amount that is paid because of the exercise of any acceleration provision by the financial services loan company;

- (3) Extension or deferment charges on any payment on account of the principal balance of a loan, or a portion thereof, that is due on a particular date but is extended or deferred to a later date by mutual agreement. The charges shall be based upon the amount so extended or deferred at interest not exceeding that permitted upon the original loan under section 412:9-302, for the actual period of the extension or deferment. The extension or deferment charges may be collected either in advance at the commencement of the period of extension or deferment or otherwise as agreed. The term and conditions of the extension or deferment, including the amount of the consumer loan so extended or deferred, and the period of, and the charge for the extension or deferment shall be set forth in writing and signed by the borrower with one copy given to the borrower;
- (4) Nonrefundable discount, points, loan fees, and loan origination charges, provided that:
  - (A) Discount, points, loan fees, and loan origination charges shall not be charged on precomputed loans on which interest is computed under section 412:9-301(1); and
  - (B) The nonrefundable discount, points, loan fees, and loan origination charges shall be permitted on consumer loans on which interest is computed under section 412:9-301(2) if the consumer loan is secured by an interest in real property or if the consumer loan is made to a lessee of land subject to the Hawaiian Homes Commission Act and the loan, but for the provisions of the Act, would be secured by a mortgage on the leasehold interest. Provided further that, except for open-end loans, the nonrefundable discount, points, loan fees, and origination charges shall be included as interest to determine compliance of the loan with the interest rate limits under section 412:9-302(b)(2) when the consumer loan is made.

The nonrefundable discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan commitment agreement or other form of contract is executed and the commitment fee paid or on the date the consumer loan is made and shall not be subject to refund on prepayment of the consumer loan;

- (5) Fees, charges, and expenses reasonably related to the consumer loan transaction that are retained by the financial services loan company; provided that the fees are bona fide and reasonable and not unfair or deceptive. These fees are limited to notary fees, appraisal fees, appraisal review fees, and [attorney's fees for preparing] a fee for the development, processing, and preparation of loan documents, including deeds, promissory notes, mortgages, and reconveyance, settlement, and similar documents[.]; provided that fees are charged only on [a] consumer [loan] loans which [is] are secured by an interest in real property. The commissioner may adopt, pursuant to rule, any fees in addition to those enumerated in this [subsection;] paragraph;
- (6) Fees, charges, and expenses reasonably related to the consumer loan transaction that are actually paid to third parties, no portion of which inures to the benefit of the financial services loan company. The fees, charges, and expenses may include, but are not limited to, charges for credit reports, actual taxes, and fees charged by a governmental agency for recording, filing, or entering of record any security agreements or instruments including the partial or complete release of such security agreements or instruments, insurance premiums of the kind and to the

extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System; provided that the insurance premium shall not exceed \$20, appraisal fees, appraisal review fees, title report or title insurance fees, mortgage reserve funds to be used for payment of taxes, insurance, lease rent and condominium assessments, and attorney's fees and expenses for documentation of the consumer loan or for the collection of any consumer loan in default."

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 16, 1997.)

## ACT 159

H.B. NO. 1485

A Bill for an Act Relating to Aquaculture Loans.

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

SECTION 1. Section 219-2, Hawaii Revised Statutes, is amended by:

1. Adding two new definitions to be appropriately inserted and to read as follows:

““Department” means the department of agriculture.

“Chairperson” means the chairperson of the board of agriculture.”

2. Amending the definition of “aquaculture” to read:

““Aquaculture” means the production of aquatic plants and animal life [for food and fiber within the ponds and other bodies of water that are] in a controlled salt, brackish, or freshwater environment within the real property for which real property taxes are assessed and paid by the owner or producer.”

SECTION 2. Section 219-5, Hawaii Revised Statutes, is amended to read as follows:

**“§219-5 [Rules.] Powers; rules. (a)** The department [of agriculture] shall have the necessary powers to carry out the purposes of this chapter, including the following:

- (1) Prescribe the qualifications for eligibility of applicants for loans[.];
- (2) Establish preferences and priorities in determining eligibility for loans and loan repayment requirements[.];
- (3) Establish the conditions, consistent with the purpose of this chapter, for the granting or for the continuance of a grant of a loan[.];
- (4) Provide for inspection at reasonable hours of the plant facilities, books, and records of an enterprise that has applied for or has been granted a loan and require the submission of progress and final reports[.];
- (5) [To make] **Make** loans for aquacultural products development, such as financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials or for the supplying of working capital, consistent with section 219-6[.];

- (6) [To authorize the department to secure] Secure loans by duly recorded first mortgages upon the following property within the State:
  - (A) Fee simple farm land;
  - (B) Leaseholds of farm land where the lease has an unexpired term at least two years longer than the term of the loan;
  - (C) Aquaculture products;
  - (D) Other chattels;
  - (E) A second mortgage when any prior mortgage does not contain provisions that might jeopardize the security position of the department or the borrower's ability to repay; and
  - (F) Written agreements, such as assignments of income[.];
- (7) [To administer] Administer the Hawaii aquaculture loan revolving fund and [to] deposit into the fund all moneys received on account of principal[.];
- (8) [To include] Include in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this chapter[.];
- (9) Insure loans made to qualified aquaculturalists by private lenders under sections 219-7 and 219-8; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on these loans exceed \$1,000,000[.];
- (10) Participate in loans made to qualified aquaculturalists by private lenders under section 219-8[.];
- (11) Make direct loans to qualified aquaculturalists as provided under section 219-9[.];
- (12) Establish interest rates chargeable by the State for direct loans and by private lenders for insured and participation loans[.]; and
- (13) Maintain a proper reserve in the aquaculture loan revolving fund to guarantee payment of loans insured under sections 219-7 and 219-8.

(b) The chairperson may approve loans, where the requested amount, plus any principal balance on existing loans to the applicant, does not exceed \$25,000 of state funds.

(c) The department shall adopt rules pursuant to chapter 91 to effectuate this section."

SECTION 3. Section 219-6, Hawaii Revised Statutes, is amended to read as follows:

**"§219-6 Loan; limitation and terms.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A", "B" [and], "C", and "D" in paragraph (1), (2) [and], (3), and (4) following and shall be made only to applicants who meet the eligibility requirements specified therein[.];

- (1) Class A: Aquaculture farm ownership and improvement loans. To provide for:
  - (A) The purchase or improvement of aquaculture farm land and waters;
  - (B) The purchase, construction, or improvement of adequate aquaculture farm dwellings, and other essential aquaculture farm facilities; and
  - (C) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$100,000 and for a term not to exceed forty years. To be eligible the applicant shall [(i) derive,];

- (i) Derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend

to devote, most of the applicant's time to aquaculture farming operations; [(ii) have] and

- (ii) Have or be able to obtain the operating capital, including fishstock and equipment, needed to successfully operate the applicant's aquaculture farm[.];
- (2) Class B: Aquaculture operating loans. To carry on and improve an aquaculture operation, including:
- (A) The purchase of aquaculture equipment and fishstock;
  - (B) The payment of production and marketing expenses including materials, labor, and services;
  - (C) The payment of living expenses; and
  - (D) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$75,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive or present an acceptable plan to derive a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to aquaculture operations[.];

- (3) Class C: Aquaculture cooperative and corporation loans. To provide credit to aquaculturalists' cooperative associations and corporations engaged in marketing, purchasing, and processing, and providing farm business services, including:
- (A) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$250,000 and a term not to exceed twenty years; and
  - (B) Operating loans to finance inventories of supplies, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$150,000 and a term not to exceed three years.

To be eligible, a cooperative or corporation shall have at least seventy-five per cent of its board of directors and seventy-five per cent of its membership as shareholders who meet the eligibility requirements prescribed by the board and who devote most of their time to aquaculture operations[.]; and

- (4) Class D: Emergency loans. To provide relief and rehabilitation to qualified aquaculturalists without limit as to purpose:
- (A) In areas stricken by extraordinary rainstorms, windstorms, droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophies;
  - (B) On farms stricken by aquatic diseases;
  - (C) On farms seriously affected by prolonged shipping and dock strikes;
  - (D) During economic emergencies such as those caused by overproduction and excessive imports; and
  - (E) During other emergencies as determined by the board.
- The maximum amounts and period for the loans shall be determined by the board; provided that the board shall require that any settlement or moneys received by qualified aquaculturalists as a result of an emergency declared under this section shall first be applied to the repayment of an emergency loan made under this chapter."

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



## ACT 160

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

(Approved June 16, 1997.)

## ACT 160

H.B. NO. 1547

A Bill for an Act Relating to Small Boat Harbors.

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

SECTION 1. The State's small boat harbors are important assets that are constructed, maintained, and operated for the purposes of recreational boating activities, landing of fish, commercial vessel activities, and interisland commerce. They have also been used historically for the interisland ferry. These state small boat harbors are centers of economic activity, and as such, must be managed and operated in a manner to facilitate recreation, commerce, and interisland transportation. Partnership with the community and private businesses can enhance successful management and operations of these facilities.

This Act is divided into two parts. Part one creates a task force in the department of land and natural resources to evaluate the feasibility and make recommendations about establishing a community-based management pilot program for one or more state small boat harbors. Part two provides additional incentives for operating interisland ferry service between Molokai and Maui, including the issuance of a commercial operating license and the waiver of applicable fees at Lahaina small boat harbor.

### PART I

SECTION 2. The legislature finds that community-based management could allow those who are directly affected by the outcome of a decision regarding an issue of significance to them to be involved in the management of the facilities they utilize. They may benefit by participating in the planning and decision-making process. In effect, this will enable the participants to gain a greater sense of ownership and commitment. The legislature further finds that it is important to evaluate the feasibility of restructuring management of the State's small boat harbors. Allowing harbors that meet certain requirements to be converted into independent marinas could foster greater responsibility and accountability in the management of small boat harbors. Moreover, instituting a community-based management system in small boat harbors may help to streamline government services.

Currently, small boat harbors, which are regulated by the board of land and natural resources, are subjected to a multitude of rules, some of which have been shown to be excessive or costly. Converting small boat harbors into independent marinas could streamline services, cut costs, and increase revenues.

The purpose of this part is to create a task force within the department of land and natural resources to evaluate the feasibility and make recommendations about establishing a community-based management pilot program for one or more state small boat harbors.

SECTION 3. (a) As used in this Act, unless the context otherwise requires:

“Board” means the board of land and natural resources.

“Department” means the department of land and natural resources.

“Marina board” means a duly elected board of a small boat harbor that is a not-for-profit organization registered and incorporated in the State of Hawaii.

“Pilot program” means the small boat harbors pilot management program.

“Small boat harbor” or “harbor” means a state small boat harbor constructed, maintained, and operated in accordance with chapter 200, Hawaii Revised Statutes.

“Task force” means a task force which includes individuals from throughout the State with experience as users of the various types of state small boat harbors and facilities, such as the chair of the marina boards of the Ala Wai harbor and Honokohau harbor. Two individuals would be chosen by the Senate President, two chosen by the House Speaker, and three chosen by the department. These individuals will serve without compensation.

(b) There is established within the department of land and natural resources for administrative purposes a task force to evaluate the feasibility of establishing a community-based management pilot program to provide that one or more small boat harbors be independently managed and administered by a marina board.

(c) The department shall convene a community-based management task force to:

- (1) Recommend the roles and responsibilities of the marina board;
- (2) Recommend the pilot program’s framework with goals and objectives;
- (3) Recommend guidelines and criteria for the process of qualifying, soliciting, evaluating, and selecting proposals. This may include but not be limited to such factors as the size and organization of the harbor, the harbor’s compliance with state statutes and rules, whether the harbor is truly representative of small boat harbor types including those with commercial use, and the financial feasibility of converting that small boat harbor into an independently managed marina in a manner that meets the fiscal and policy responsibilities of the department;
- (4) Recommend the required elements to be included in any lease or operating agreement between the marina board and the State. These elements may include but not be limited to specifying the responsibilities of the marina board relating to:
  - (A) The operations and management of the small boat harbor;
  - (B) The proportionate share of state debt attributable to the maintenance and repair of the marina facility that is outstanding on the effective date of the agreement;
  - (C) Liability issues;
  - (D) The mechanisms and procedures to collect, deposit, and disburse revenues generated by fee and permit collections from harbor users; and
  - (E) Expenses for the facility, including but not limited to operating expenses, debt service, payments for use of ceded land and the contribution to the costs of operating the State’s boating program;
- (5) Recommend the specific exemptions for the small boat harbor from state statutes and regulations;
- (6) Recommend a transition plan for the orderly transition of management and operations of the harbor;
- (7) Recommend the rights and responsibilities of the marina board relative to borrowing money for improvement projects to benefit the small boat harbor;
- (8) Evaluate the financial audit information to determine the feasibility of carrying out a community-based management pilot program and identify which harbors are the most suitable for the program;
- (9) Research any examples of similar arrangements of community-based management in public marina facilities in the United States; and

## ACT 161

- (10) Submit a report on their findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 1998.

### PART II

SECTION 4. Section 200-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [Vessels] Notwithstanding any limitations on commercial permits for Lahaina small boat harbor, vessels engaging in inter-island ferry service between the islands of Maui and Molokai shall be afforded preferential consideration for both ferry landings and other commercial purposes, including the issuance of a commercial operating permit and the waiver of any applicable fees, at Lahaina small boat harbor; provided that:

- (1) The vessel operator has been issued a certificate of public [conveyance] convenience and necessity for [this] the purpose[;] of engaging in inter-island ferry service between the islands of Maui and Molokai;
- (2) The design and performance characteristics of the vessel will permit safe navigation within the Lahaina harbor entrance channel and safe docking along the north face of the Lahaina pier; [and]
- (3) The vessel operations will not result in unreasonable interference with the use of Lahaina small boat harbor by other vessels[.]; and
- (4) All preferential consideration and waivers, including any commercial permits issued under this section, shall cease upon the vessel operator’s termination of inter-island ferry service between the islands of Maui and Molokai.”

### PART III

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 16, 1997.)

## ACT 161

H.B. NO. 1573

A Bill for an Act Relating to Agricultural Loans.

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

SECTION 1. Section 155-11, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) If a loan is granted, the department shall cause the title to real property to be examined and a mortgage drawn and recorded. The applicant shall pay the actual costs involved. No [loan] class “A” loans shall be made on unsurveyed lands.”

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 16, 1997.)

## ACT 162

H.B. NO. 1574

A Bill for an Act Relating to Agricultural Loans.

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

SECTION 1. Section 155-13, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The borrower will be expected to refinance the balance owed on any direct loan [except for purposes of class ‘D’] as soon as the borrower is able to obtain credit from other sources at reasonable rates and terms.”

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved June 16, 1997.)

## ACT 163

H.B. NO. 1576

A Bill for an Act Relating to Measurement Standards.

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

SECTION 1. Section 486-1, Hawaii Revised Statutes, is amended by amending the definition of “administrator” to read:

“‘Administrator’ means the administering officer of the [division of measurement standards.] quality assurance division, or any qualified person so designated by the chairperson.”

SECTION 2. Section 486-4, Hawaii Revised Statutes, is amended to read as follows:

“**§486-4 [Division of measurement] Measurement standards[;] branch; administrator.** There shall be a [division of] measurement standards branch within the department. The [board shall appoint an] administrator [of measurement standards, who] shall enforce the board’s rules and administer the [division] branch and such technical and clerical personnel as are necessary to carry out this chapter, in accord with the power, authority and duties delegated by the board.”

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 16, 1997.)

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the State and Providing Appropriations Therefor.

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

SECTION 1. The following sums 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, for claims against the State or its officers or employees for overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

	Amount
<b>JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:</b>	
Asato v. Ozaki, et al. Civil No. 96-1964-05, First Circuit	\$ 125,000.00 Settlement
Cerrone v. Department of Education, et al. Civil No. 93-245K, Third Circuit	50,000.00 Settlement
Deniz v. University of Hawaii at Hilo Civil No. 96-054K, Third Circuit	22,100.00 Judgment
Amount of Judgment:	21,600.00
Interest at 4% from 1/2/97	500.00
Fuller v. Department of Public Safety, et al., Civil No. 95-532, Third Circuit	27,922.37 Judgment
Amount of Judgment:	27,000.00
Interest at 4% from 9/23/96:	922.37
Madalora, et al. v. Roberts Tours, et al., Civil No. 94-282, Third Circuit	20,000.00 Settlement
Miyake v. County of Hawaii, et al. Civil No. 94-128, Third Circuit	30,000.00 Settlement
Osmose Wood Preserving, Inc. Case Nos. 3630, 4235, 4683 Tax Appeal Court	35,795.12 Settlement
Padua v. State Civil No. 94-4554-12, First Circuit	25,000.00 Settlement
Sadiri v. Wakukawa, et al. Civil No. 96-0007(1), Second Circuit	16,000.00 Settlement
State of Hawaii v. W.H. McVay, et al. Civil No. 91-4097-12, First Circuit	500,000.00 Settlement
Toyama, et al. v. DLIR Civil No. 95-1928-05, First Circuit	78,823.25 Judgment
Amount of Judgment:	75,241.42
Interest at 4% from 5/21/96:	3,581.83

Velasquez v. Johnson, et al. Civil No. 93-0592-02, First Circuit	20,000.00 Settlement
Scanlan v. State of Hawaii Civil No. 96-1137-03, First Circuit	40,000.00 Settlement
Wilsey v. State Civil No. 95-2391-07, First Circuit	57,000.00 Settlement
Mark A. Blankenship v. State, et al. Civil No. 94-3879-10, First Circuit	52,500.00 Settlement
Gannett Pacific Corp. dba The Honolulu Advertiser v. DLIR, et al. Civil No. 96-3451-08, First Circuit	8,400.00 Settlement
Shults v. State, et al. Civil No. 94-0174(3), Second Circuit	337,500.00 Settlement
Shults v. State, et al. Civil No. 94-0651(3), Second Circuit	337,500.00 Settlement
Arbitration of UHPA and University of Hawai Board of Regents (Grv. of Ramdas Lamb)	332,370.88 Arbitration Award
Livai, et al. v. State Civil No. 94-2353-06, First Circuit	55,000.00 Settlement
Stierman v. Depones and State Civil No. 95-148K, Third Circuit	45,000.00 Settlement
Martell v. Thames, et al. Civil No. 95-0474, Second Circuit	100,000.00 Settlement
Giorgini v. State, et al. Civil No. 96-0031(1), Second Circuit	68,175.94 Judgment
Amount of Judgment:	67,152.94
Interest at 4% from 3/5/97	1,023.00
El-Ramly v. University of Hawaii Civil No. 96-00440, U.S.D.C.	20,000.00 Settlement
Le v. Hill, et al. Civil No. 94-12785, First Circuit	35,000.00 Settlement
Morita v. Kapewa Iona, et al. Civil No. 95-3895-10, First Circuit	50,400.00 Settlement
Fogelstrom v. Kapewa Iona, et al. Civil No. 95-4581-12, First Circuit	25,500.00 Settlement
Tuiasosopo v. State, et al. Civil No. 94-0596-02, First Circuit	210,000.00 Settlement
Manuela Kravarik v. State, et al. Civil No. 95-0058(3), Second Circuit	47,500.00 Settlement
Ulysses K. Kim v. State, et al. Civil No. 95-4050-11, First Circuit	156,230.92 Settlement

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Ulysses K. Kim v. Penarosa, et al. Civil No. 95-00777 HG/FIY, U.S.D.C.	43,269.08 Settlement
Anne Vennell Tort claim	15,000.00 Settlement
Gary D. Roth, et al. v. State, et al Civil No. 95-0530-02, First Circuit	50,000.00 Settlement
Margaret K. Tanaka v. State, et al Civil No. 96-3788, First Circuit	50,000.00 Settlement
Douglas G. Westbrook v. Richard Mello, et al Civil No. 96-00833 DAE, U.S.D.C.	25,000.00 Settlement
Kathleen A. Berger v. Univ. of Hawaii, et al Civil No. 94-0375-01, First Circuit	75,000.00 Settlement
May Hinazumi v. Dept. of the Atty. General Civil No. 96-1376-04, First Circuit	15,000.00 Settlement
Bueno v. Matsumoto Civil No. 94-0019, Fifth Circuit	45,000.00 Settlement
Akuna v. Matsumoto Civil No. 93-0118, Fifth Circuit	37,500.00 Settlement
John Does, et al. v. Chandler, et al. Civil No. 95-00498, U.S.D.C.	64,936.68 Judgment
Amount of Judgment:	63,476.76
Interest at 10%:	1,459.92
Botelho v. State Civil No. 95-618, Third Circuit	22,000.00 Settlement
Claim of Warren Asaeda	14,499.58
Claim of Margaret J. GylInquest	24.20
Claim of Debra Y. Hiyakumoto	118.00
Claim of Richard McLaughlin	366.73
Claim of Maura M. Quinn	638.89
Jovita Brown v. Weldrite, et al Civil No. 95-1256-04, First Circuit	2,000,000.00 Settlement
Francis Wong v. State, et al Civil No. 95-2900-08, First Circuit	120,000.00 Settlement
Stebbins v. State of Hawaii Civil No. 94-2032-05, First Circuit	79,068.90 Judgment
Amount of Judgment:	77,273.26
Interest:	1,795.64
Green Sand Community Assoc., et al. v. Hawyard, et al. Civil No. 93-3259-08, First Circuit	24,672.22 Settlement

M & E Pacific, Inc. Contract Dispute	215,000.00 Settlement
Anthony DeGuzman v. Penarosa, et al Civil No. 96-00680 HG, U.S.D.C.	210,000.00 Settlement
Wilkinson v. State, et al Civil No. 94-4141-11, First Circuit	210,000.00 Settlement

SECTION 2. The sums hereinabove appropriated may 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 or checks 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 3. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which that statute applies.

SECTION 4. All unexpended and unencumbered balances of the appropriations made by section 1 of this Act as of the close of business on June 30, 1998, shall lapse into the general fund of the State.

SECTION 5. 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 6. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

**ACT 165**

H.B. NO. 1585

A Bill for an Act Relating to Criminal History Record Information.

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

SECTION 1. The purpose of this Act is to clarify which state and county agencies or programs are exempt from paying fees for services related to criminal history record information maintained by the Hawaii criminal justice data center.

SECTION 2. Section 846-10.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Except for services provided to criminal justice agencies and state or county agencies[,] for employment purposes, the Hawaii criminal justice data center and state and county criminal justice agencies shall assess the following fees for



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services provided or to be provided, which shall be deposited into the criminal history record improvement revolving fund:

- (1) For each [Hawaii] criminal history record name check, conducted by the data center, and other state and county agencies, \$10;
- (2) For each [Hawaii] criminal history record name check, via a public access terminal, for which a printout is requested, \$5 per printout;
- (3) For each fingerprint-based search of the [Hawaii] automated fingerprint identification system or manual fingerprint files, \$15;
- (4) For processing of each application for the expungement of arrest records, \$15;
- (5) For certification of documents, \$5 per document;
- (6) For each duplicate expungement certificate requested, \$10; and
- (7) For each complete set of fingerprints taken, \$10.”

2. By amending subsection (c) to read:

“(c) [Non-profit] Nonprofit charitable organizations that are tax-exempt under [the] Internal Revenue Code [(IRC) section] Section 501(c)(3) [will] shall be exempt from fees for criminal history record checks conducted on adult volunteers having direct contact with minors.”

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 16, 1997.)

## ACT 166

H.B. NO. 1587

A Bill for an Act Relating to the Issuance of Certificates of Identification.

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

SECTION 1. The purpose of this Act is to add a new section that will provide for an expiration date for Hawaii's certificate of identification, also known as the state identification card, and to make an appropriation to provide for an automated photo identification system.

Hawaii is one of a small number of states in the nation that does not provide for an expiration date on the state-issued identification card. An expiration date would ensure that state records are kept current and that the identification card reflects more accurate data and a more recent photograph for the individual.

An appropriation for an updated photo identification system would allow the civil identification staff to process the additional workload that an expiration date would generate without additional staffing, help improve services by reducing long processing and waiting times for the general public, improve the quality of the card, and improve the integrity of the information captured.

SECTION 2. Chapter 846, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

“~~§846-~~ **Expiration date.** Every certificate of identification issued under this part, whether an original or a renewal, shall bear an expiration date which shall be six years after the date of issuance; provided that if the person is a legal nonimmigrant, the certificate shall bear an expiration date that is the same as the

expiration date on the person's Immigration and Naturalization Service departure card (I-94). All certificates of identification issued without expiration dates shall expire on December 31, 1999."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$325,000 or so much thereof as may be necessary for fiscal year 1997-1998 for the purchase of a photo identification system that will be used to produce the state identification card and the sum of \$75,000 or so much thereof as may be necessary for fiscal year 1998-1999 for ongoing operational costs of the system.

SECTION 4. The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 167**

H.B. NO. 1593

A Bill for an Act Relating to Public Contracts.

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

SECTION 1. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§103D- Settlement on performance bonds.** Upon default of a contractor, the purchasing agency may accept moneys in satisfaction of the performance surety's obligation on its bond. Such moneys shall be deemed to be trust moneys and shall be deposited into a trust account with and under the control of the purchasing agency. These moneys and the interest earned thereon shall be used for the completion of such contract. Upon completion of the contract, any excess moneys shall be deposited in the general fund unless otherwise restricted.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Indemnification of the United States.

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

SECTION 1. Chapter 29, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§29- Indemnification of federal agencies. (a) To receive federal aid, assistance, support, benefits, services, and interests in or rights to use federal property, a state agency may agree in writing to an indemnity provision by which the State agrees to indemnify, defend, and hold harmless a United States agency, its officers, agents, and employees when all of the following conditions are satisfied:

- (1) Federal law expressly or by clear implication requires the indemnity provision;
- (2) The governor, following a favorable review by the department of the attorney general, approves the State’s proposed indemnification; and
- (3) The comptroller, pursuant to chapter 41D, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision or has determined that it is not in the best interest of the State to obtain insurance.

(b) An indemnity provision not in strict compliance with this section shall not give rise to a claim against the State under chapter 661 or otherwise waive the State’s sovereign immunity.

(c) This section shall not affect sections 201E-161(b)(2), 212-7, or 523A-64.”

SECTION 2. Chapter 41D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§41D- Insurance for indemnification. The comptroller may obtain sufficient loss insurance to cover the liability of the State that may arise from indemnity provisions agreed to pursuant to section 29- .”

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Vacation Allowances.

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

SECTION 1. Section 79-7, Hawaii Revised Statutes, is amended to read as follows:

**“§79-7 Vacation allowances on termination of employment.** An employee whose employment is voluntarily terminated without prejudice during any calendar year shall be entitled to all of the employee’s accumulated vacation allowance plus the employee’s current accrued vacation allowance to and including the date of termination, notwithstanding that the current accrued vacation allowance may not have been recorded at the time. An employee whose employment is involuntarily terminated otherwise than for cause due to the employee’s own misconduct shall be entitled to all of the employee’s accumulated vacation allowance and current accrued vacation allowance, and the date of such termination shall be fixed so as to permit the employee to take the leave. The date of discharge of an employee whose employment is terminated for cause due to the employee’s own misconduct may, within the discretion of the department head concerned, be fixed so as to permit the allowance of all or any part of any accumulated vacation allowance and current earned vacation allowance. If any employee dies with accumulated or current accrued vacation earned but not taken, an amount equal to the value of the employee’s pay over the period of such earned vacation, and any earned and unpaid wages, shall be paid to the person or persons who may have been designated as the beneficiary or beneficiaries by the employee during the employee’s lifetime in a verified written statement filed with the comptroller or other disbursing officer who issues warrants or checks to pay the employee for the employee’s services as a public officer or public employee, or, failing the designation, to the employee’s surviving spouse, or, failing the surviving spouse, to the employee’s estate.

Whenever an employee’s service is to be terminated, voluntarily or involuntarily, the service, at the option of the department head or other appointing power concerned, may be terminated forthwith and the retiring employee may be paid forthwith, in lieu of the employee’s vacation allowance, the amount of compensation to which the employee would be entitled or which the employee would be allowed during the vacation period if the employee were permitted to take the employee’s vacation in the normal manner, and in such case the employee’s position may be declared vacant and may be permanently filled by a new appointee before the expiration of any vacation period following the date of the termination. For an employee hired after June 30, 1997, whose service is to be terminated, voluntarily or involuntarily, the amount of compensation to be paid in lieu of vacation allowance under this section shall be computed using the rate of pay and amount of accumulated and accrued vacation on the date the employee is terminated. Prompt notice upon such forms and in such manner as may be required [by the personnel classification board having jurisdiction over the position] shall be given by the department head of any action taken under this provision.”

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

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

A Bill for an Act Relating to Suggestion Awards.

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

SECTION 1. Chapter 82, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§82- **Decisions on awards for suggestions.** All decisions rendered by the State or each of the political subdivisions of the State under this chapter, approving or disapproving employee suggestions for employee innovation awards, shall be final and shall be deemed a performance of a discretionary function as that term is used in section 662-15. If a dispute arises over the proper amount of the employee innovation award for an officer or employee whose suggestion is approved, the comptroller or designee for the state government, the administrative director of courts for the judiciary and the director of finance or designee for the political subdivisions of the State shall be the final arbiter of the proper award amount.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Creation of Trusts for the Deferred Compensation Plans.

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

SECTION 1. Section 88E-8, Hawaii Revised Statutes, is amended to read as follows:

“[[§88E-8]] **Deferred funds.** Sums deferred under the plan, as well as property and rights purchased with such amounts and income attributable to such amounts, shall [remain an unrestricted asset of the respective state or county jurisdiction.] be held in trust in accordance with section 457 of the Internal Revenue Code of 1986, as amended, for the exclusive benefit of participants and their beneficiaries.”

SECTION 2. Section 88F-6, Hawaii Revised Statutes, is amended to read as follows:

“[[§88F-6]] **Deferred funds.** Sums deferred under the plan, as well as property and rights purchased with the amounts and income attributable to the amounts, shall [remain an unrestricted asset of the respective state or county jurisdiction.] be held in trust in accordance with section 457 of the Internal Revenue

Code of 1986, as amended, for the exclusive benefit of participants and their beneficiaries.”

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

SECTION 4. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

## ACT 172

H.B. NO. 1620

A Bill for an Act Relating to Employment Security Law.

*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 be appropriately designated and to read as follows:

**“§383- Deduction and withholding of uncollected food stamp overissuances.** (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether the individual owes an uncollected overissuance (as defined in Section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons. The department shall notify the state food stamp agency enforcing the obligation of any individual who discloses that the individual owes an uncollected overissuance and who is determined to be eligible for unemployment compensation.

(b) The department shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance:

- (1) The amount specified by the individual to the department to be deducted and withheld under this subsection;
- (2) The amount determined pursuant to an agreement between the individual and the state food stamp agency under Section 13(c)(3)(A) of the Food Stamp Act of 1977; or
- (3) Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to Section 13(c)(3)(B) of the Food Stamp Act of 1977.

(c) Any amount deducted and withheld under this section shall be paid by the department to the appropriate state food stamp agency.

(d) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state food stamp agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this section, the term “unemployment compensation” means any compensation payable under this chapter, including amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section applies only if arrangements have been made for reimbursement by the state food stamp agency for all administrative costs incurred by the department under this section that are attributable to the repayment of uncollected overissuances to the state food stamp agency.”

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SECTION 2. Section 383-94, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) Each employer shall report all new employees hired subject to procedures prescribed by the department, within five working days after the first day of employment of such individual. If any employer fails to report with respect to a newly hired employee within five working days after the first day of employment, the employer shall pay a penalty in the amount of \$10. Effective October 1, 1998, employers need not report all new hires to the department.

(c) [Prior to July 1, 1988, each employer shall report the separation of any employee and the wages paid to such employee within five working days after the last day of employment, in the manner prescribed by the department. If any employer fails to report with respect to the separation of an individual or the remuneration which the employer paid to the individual within five working days after termination of the individual or after mailing of notice from the department so to do, the employer shall pay a penalty in the amount of \$10. Beginning on and after July 1, 1988, each] Each employer shall report the separation of any employee or the wages paid to such employee, or both, upon request of the department within five calendar days from the date that [such] the request was mailed to the employer. If any employer fails to report with respect to the separation of an individual, or the remuneration which the employer paid to the individual, or both, within five calendar days after mailing of notice from the department, the employer shall pay a penalty in the amount of \$10.

(d) [For each calendar quarter beginning July 1, 1988, each] Each employer or employing unit as defined in section 383-1 shall furnish the department with wage information for each employee in accordance with [such] rules as the department of labor and industrial relations may prescribe[.], except that no report shall be filed with respect to an employee of a state or local agency performing intelligence or counterintelligence functions, if the head of that agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission. Such quarterly wage report shall be filed with the department on or before the last day of the month succeeding the last month of each quarter. Any employer who fails to file a report of wages paid to each of the employer's employees for any period in the manner and within the time prescribed by this chapter and the rules of the department, or any employer who the department finds has filed an insufficient report, shall pay a penalty<sup>1</sup> of \$30.”

SECTION 3. Section 383-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in this chapter, information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant (or the claimant's legal representative) shall be supplied with information from the records of the department to the extent necessary for the proper presentation of the claimant's claim in any proceeding under this chapter. Subject to such restrictions as the director may by [regulation] rule prescribe, and costs incurred in furnishing the information are reimbursed to the department and all safeguards are established as are necessary to ensure that information furnished by the department is used only for authorized purposes, the information and determinations may be made available to:

- (1) Any federal or state agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices[.];
- (2) The Bureau of Internal Revenue of the United States Department of Treasury[.];
- (3) Any federal, state, or municipal agency charged with the administration of a fair employment practice or anti-discrimination law[, and];
- (4) Any other federal, state, or municipal agency if the director deems that the disclosure to the agency serves the public interest[.]; and
- (5) Any federal, state, or municipal agency if the disclosure is authorized under Section 303 of the Social Security Act and Section 3304 of the Internal Revenue Code of 1986, as amended.”

SECTION 4. Section 383-161, Hawaii Revised Statutes, is amended to read as follows:

**“§383-161 Waiver of rights void.** (a) Any agreement by an individual to waive, release, or commute the individual’s rights to benefits or any other rights under this chapter shall be void, except agreements to withhold and deduct benefits for the following purposes:

- (1) The payment of child support obligations as provided in section 383-163.5[.];
- (2) The voluntary deduction and withholding of federal and state income tax from unemployment compensation as provided in section 383-163.6; and
- (3) The repayment of uncollected overissuances of food stamp coupons as provided in section 383-\_\_\_\_\_.

(b) Any agreement by [any] an individual in the employ of [any] a person or concern to pay all or any portion of an employer’s contributions[,] required under this chapter from [such] the employer, shall be void. No employer [shall], directly or indirectly, shall make [or], require, or accept any deduction from wages to finance the employer’s contributions required from the employer, require or accept any waiver of any right hereunder by any individual in the employer’s employ, discriminate in regard to the hiring or tenure of work or any term or condition of work of any individual on account of the individual’s claiming benefits under this chapter, or in any manner obstruct or impede the filing of claims for benefits. Any employer [or], officer, or agent of any employer who violates this section [shall], for each offense, shall be fined not less than \$100 nor more than \$1,000, or imprisoned not more than six months, or both.”

SECTION 5. Section 383-163, Hawaii Revised Statutes, is amended to read as follows:

**“§383-163 No assignment of benefits; waiver.** No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be valid and the right to benefits shall not be subject to levy, execution, attachment, garnishment, or any other remedy for the collection of debt. No waiver of this section shall be valid, except that this section shall not apply to [section]:

- (1) Section 383-163.5 with respect to the withholding and deduction of benefits for the payment of child support obligations[.];
- (2) Section 383-163.6 with respect to the voluntary withholding and deduction of benefits for payment of federal and state income taxes; and



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(3) Section 383- with respect to the withholding and deduction of benefits for repayment of uncollected overissuances of food stamp coupons."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved June 16, 1997.)

Notes

- 1. Prior to amendment "in the amount" appeared here.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 173

H.B. NO. 1631

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 \$868,583 or so much thereof as may be necessary for fiscal year 1997-1998 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 on July 1, 1997.

(Approved June 16, 1997.)

ACT 174

H.B. NO. 1634

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

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

SECTION 1. Section 353-14, Hawaii Revised Statutes, is amended to read as follows:

**“§353-14 Cash [and clothing] furnished discharged committed person, when.** Upon the discharge or parole of any committed person who has undergone a commitment or sentence of more than one year, the committed person [shall] may be furnished by the Hawaii paroling authority, in its discretion, with funds of not more than \$200 [and clothing sufficient], to meet the committed person’s immediate needs. The expenditures [so] made by the Hawaii paroling authority shall be included among the accounts for cost and maintenance of committed persons.”

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

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

## ACT 175

H.B. NO. 1638

A Bill for an Act Relating to Correctional Industries.

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

SECTION 1. Section 354D-3, Hawaii Revised Statutes, is amended to read as follows:

“**§354D-3 Correctional industries program.** There is established a correctional industries program within the department [of public safety, under the supervision of the director and other subordinates as the director shall designate]. The administrator of the correctional industries program shall be appointed by the director [of public safety,] without regard to chapters 76 and 77. The director may appoint other employees necessary to carry out the function of this chapter without regard to chapters 76 and 77[.]; provided that the number of temporary exempt positions covered under this section shall not exceed [thirty] forty-five in any fiscal 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, 1997.

(Approved June 16, 1997.)

## ACT 176

H.B. NO. 1642

A Bill for an Act Relating to the Electronic Filing of Tax Returns.

*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- Electronic filing of tax returns.** The department may allow filing by electronic, telephonic, or optical means of any tax return, application, report, or other document required under the provisions of title 14 administered by the department. The date of filing shall be the date the tax return, application, report, or other document is transmitted to the department in a form and manner prescribed by departmental rules adopted pursuant to chapter 91. The department may determine alternative methods for the signing, subscribing, or verifying of a tax return, application, report, or other document that shall have the same validity and consequences as the actual signing by the taxpayer. A filing under this section shall be treated in the same manner as a filing subject to the penalties under section 231-39.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

## ACT 177

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

(Approved June 16, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 177

H.B. NO. 1643

A Bill for an Act Relating to Payments to the State by Electronic Funds Transfer.

*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- Annual report; assessments.** No later than twenty days prior to the convening of each regular session, the department shall submit a report to the legislature containing:

- (1) The number of taxpayers who were assessed the two per cent penalty pursuant to section 231-9.9(c);
- (2) The amounts of each assessment; and
- (3) The total amount of assessments collected for the previous year.”

SECTION 2. Section 40-35.5, Hawaii Revised Statutes, is amended to read as follows:

**“§40-35.5 Assessment and collection of service charges for dishonored items.** (a) Unless otherwise provided by law or rules having the force and effect of law, every public accountant receiving revenue or other moneys on account of the State shall assess and collect a service charge in the amount of:

- (1) \$15 for any check[;] or electronic funds transfer; and
- (2) \$7.50 for any draft, certificate of deposit, or other negotiable instrument,

the public accountant receives that is dishonored for any reason. A public accountant shall require payment of the service charge in cash or by certified or cashier's check or by bank or postal money order. The service charge shall be deposited with the director of finance as a realization of the general fund.

(b) The service charge shall be enforced as follows:

- (1) For charges due on dishonored checks written or electronic funds transfers made for payment of any [taxes] tax administered by the department of taxation under title 14, the charges shall be [a non-waiverable penalty] nonwaivable penalties and shall be made a part of the tax for which the payment was made in the same manner as penalties are made part of the tax under section 231-39; and
- (2) For [all other charges paid to the State by check,] charges due on other dishonored items, the public accountant shall refer the entire matter, including the [initial check] dishonored item and interest on the penalty, to the department of the attorney general for collection.

(c) Interest on the penalty at the rate of two-thirds of one per cent a month or fraction of a month shall be paid for the period beginning the first calendar day after the date of notification [from the bank that the check is dishonored to] of dishonor and ending on the date paid.

(d) All penalties, including interest thereon, for dishonored [checks] items shall be debts due the State.

(e) Penalties and interest collected for dishonored [checks] items by the department of taxation pursuant to this section shall be collected in the same manner as are taxes under chapter 231. The penalty shall be a realization of the general fund in the same manner as other penalties collected by the department[.] of taxation.”

SECTION 3. Section 231-9.9, Hawaii Revised Statutes, is amended to read as follows:

“[[[§231-9.9]] Payment of taxes by electronic funds transfer. (a) The director of taxation is authorized to require every person whose tax liability for any one taxable year exceeds \$100,000 and who files a tax return for any tax, including consolidated filers, to remit taxes by one of the means of electronic funds transfer approved by the department.

(b) Any person who files a tax return for any tax and is not required by subsection (a) to remit taxes by means of electronic funds transfer may elect to remit taxes by one of the means of electronic funds transfer approved by the department with the approval of the director of taxation.

(c) If a person who is required under subsection (a), or who elects under subsection (b), to remit taxes by one of the means of electronic funds transfer approved by the department fails to remit the taxes using an approved method on or before the date prescribed therefor, unless it is shown that the failure is due to reasonable cause and not to neglect, there shall be added to the tax required to be so remitted a penalty of two per cent of the amount of the tax. The penalty under this subsection is in addition to any penalty set forth in section 231-39.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval; provided that the first report required by section 1 shall be submitted to the legislature no later than twenty days prior to the regular session of 1998.

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 178**

H.B. NO. 1645

A Bill for an Act Relating to Conforming Tax Provisions to the Uniform Limited Liability Company Act.

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

SECTION 1. Section 235-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Partner” means the same as in the Internal Revenue Code.”

SECTION 2. Section 235-68, Hawaii Revised Statutes, is amended by amending the definition of “resident person” in subsection (a) to read as follows:

““Resident person” means any [individual]:

- (1) Individual included in the definition of resident in section 235-1; [any corporation]
- (2) Corporation incorporated or granted a certificate of authority under chapter 415, 415A, or 415B; [any partnership]
- (3) Partnership formed or registered under chapter 425 or 425D; [any foreign]
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or 425D; [or any trust]
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or [any estate]
- (9) Estate included in the definition of resident estate in section 235-1.”

SECTION 3. Section 237-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The words “gross income” and “gross proceeds of sales” shall not be construed to include: gross receipts from the sale of securities as defined in 15 United States Code section 78c or similar laws of jurisdictions outside the United States, contracts for the sale of a commodity for future delivery and other agreements, options, and rights as defined in 7 United States Code section 2 that are permitted to be traded on a board of trade designated by the Commodities Futures Trading Commission under the Commodity Exchange Act, or evidence of indebtedness or, except as otherwise provided, from the sale of land in fee simple, improved or unimproved, dividends as defined by chapter 235; cash discounts allowed and taken on sales; the proceeds of sale of goods, wares, or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the “gross income” or “gross proceeds of sales”; gross receipts from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one “member” of an “affiliated public service company group” to another “member” of the same group as such terms are defined in [section 239-2(6).] section 239-2. Accounts found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross proceeds of sale, or gross income, within this chapter, so far as they reflect taxable sales made, or gross income earned, after July 1, 1935, but shall be added to gross proceeds of sale or gross income when and if afterwards collected.”

SECTION 4. Section 237-23.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall not apply to amounts received, charged, or attributable to services furnished by one related entity to another related entity or to imputed or stated interest attributable to loans, advances, or use of capital between related entities.

As used in this subsection:

“Related entities” mean:

- (1) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;
- (2) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended; and
- (3) Those entities connected through ownership of at least eighty per cent of the total value of each such entity, including partnerships, associations, trusts, S corporations, nonprofit corporations, or any other group or combination of these or other tax entities acting as a business unit;

whether or not the entity is located within or without the State or licensed under this chapter.

“Services” mean legal and accounting services and those managerial and administrative services performed by an employee, officer, partner, trustee, [or] sole proprietor, member, or manager in the person’s capacity as an employee, officer, partner, trustee, [or] sole proprietor, member, or manager of one of the related entities and shall include overhead costs attributable to those services.”

SECTION 5. Section 237-34, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) 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 wilfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer’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 [a] 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[.]; and
- (12) Members of a limited liability company.

Any violation of this subsection shall be a misdemeanor.”

SECTION 6. Section 237D-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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] wilfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer’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[.]; and
- (12) Members of a limited liability company.

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.”

SECTION 7. Section 239-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read:

“‘Partner’ means the same as in the Internal Revenue Code.  
‘Partnership’ means the same as in the Internal Revenue Code.’”

SECTION 8. Section 239-8, Hawaii Revised Statutes, is amended to read as follows:

**“§239-8 Allocation and apportionment.** (a) The gross income included in the measure of the tax [under section 239-2(6)(B) or (C)] as defined in subparagraphs (B) and (C) of the definition of “gross income” in section 239-2, shall be determined by an allocation and separate accounting so far as practicable.

(b) If under [section 239-2(6)(B)] subparagraph (B) of the definition of “gross income” in section 239-2, an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that

proportion of the total gross income, so requiring apportionment, which the direct cost of the transportation, conveyance, or transmission designated in [section 239-2(6)(B)] subparagraph (B) of the definition of “gross income” in section 239-2, bears to the total direct cost of the transportation, conveyance, or transmission the gross income from which requires apportionment.

(c) If under [section 239-2(6)(C)] subparagraph (C) of the definition of “gross income” in section 239-2, an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that proportion of the total gross income, so requiring apportionment, which the total direct cost of the transportation, conveyance, or transmission within the State bears to the total direct cost of the transportation, conveyance, or transmission the gross income from which requires apportionment.”

SECTION 9. 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, corporations, trusts, estates, [or] partnerships[.], or other entities.”

SECTION 10. Section 251-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 wilfully 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[.]; and
- (12) Members of a limited liability company.



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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.”

SECTION 11. In codifying the new definitions added to section 239-2, Hawaii Revised Statutes, by section 6<sup>1</sup> of this Act, the revisor of statutes shall remove the numeric designations of the existing definitions and alphabetize the existing definitions and the new definitions into one list.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

### Note

1. Should probably be “section 7”.

## ACT 179

H.B. NO. 1648

A Bill for an Act Relating to Remittances to the Department of Taxation.

*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- Remittances.** In addition to sections 237-31, 237D-6.5, and 251-5, as well as any other form of payment allowed under provisions of title 14 administered by the department, the director, by rules adopted pursuant to chapter 91, may permit the use of credit or debit cards for remittances made to the department. A service fee shall not be required by the department for the use of debit cards for remittances, but may be required by the department for the use of credit cards for remittances.

For purposes of this section:

“Credit card” shall have the same meaning as provided in section 478-1.

“Debit card” means any card, plate, or other single credit device issued with or without a fee to a cardholder to purchase goods or services or to obtain cash that is debited from the cardholder’s checking or other bank account.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 180

H.B. NO. 1654

A Bill for an Act Relating to Supervision of Accounts.

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

SECTION 1. Section 12 of Act 321, Session Laws of Hawaii 1986, as amended by section 69 of Act 283, Session Laws of Hawaii 1987, by section 7 of Act 371, Session Laws of Hawaii 1989, by section 3 of Act 163, Session Laws of Hawaii 1991, and by section 2 of Act 314, Session Laws of Hawaii 1993, and by section 22 of Act 8, Special Session Laws of Hawaii 1993, is amended to read as follows:

“SECTION 12. This Act shall take effect on July 1, 1986, and be repealed as of June 30, [1998;] 2000; provided that on repeal sections 40-1, 40-2, 40-4, 40-6, and 40-81, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986, and section 40-58, Hawaii Revised Statutes, is reenacted in the form in which it read 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 June 16, 1997.)

## ACT 181

H.B. NO. 1655

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 commercial enterprises revolving fund.**

(a) Any law to the contrary notwithstanding, the University of Hawaii may engage in commercial enterprises that are related and incidental to the primary purposes of the university as set forth in this chapter, including but not limited to sponsorship of private, cultural, and athletic performances and sale of goods produced by university programs, or goods bearing the university logo.

(b) There is established a revolving fund for the University of Hawaii into which shall be deposited all revenues derived from the operation of commercial enterprises by university programs. Revenues deposited into this account may be expended by the university for all costs and expenses associated with the operation of the enterprises, including hiring personnel, renovating commercial space, and purchasing merchandise, supplies, and equipment, without regard to chapters 76 through 80, 89, 103, and 103D. Revenues not expended as provided herein may be transferred to other university funds to be expended for the general benefit of the university.

(c) Any law to the contrary notwithstanding, the university may transfer private funds at its disposal into this revolving fund to finance the establishment of new enterprises.”

## ACT 182

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved June 16, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 182

H.B. NO. 1656

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. Beginning with Acts 320 and 321, Session Laws of Hawaii 1986, the legislature has provided the University of Hawaii with increasing administrative and budgetary flexibility. Through Act 161, Session Laws of Hawaii 1995, the legislature provided the board of regents authority to manage tuition revenues generated for university programs.

The purpose of this Act is to make consistent the authority provided by the board of regents by Act 161 by deleting the statutory requirement to set aside tuition revenues for scholarships under the Hawaii opportunity program in education (HOPE) program. This Act creates the Hawaii opportunity in education (HOPE) endowment special fund, with the board of regents rather than the director of finance responsible for the management of this fund.

SECTION 2. Section 304-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Moneys appropriated by the legislature for the university shall be payable by the director of finance, upon vouchers approved by the board of regents or by any officer elected or appointed by the board under section 304-4 and authorized by the board to approve such vouchers on behalf of the board. All moneys received by or on behalf of the board of the university shall be deposited with the director of finance, except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature and moneys in trust or revolving funds administered by the university may be deposited in depositories other than the state treasury. [Beginning with the 1995-1996 fiscal year, all] All income from regular credit tuition and tuition related course and fee charges against students shall be deposited to the credit of the student tuition and fees special fund pursuant to section 304-16.5[; provided that such income collected during the 1994-1995 fiscal year credited to the 1995-1996 academic year shall be deposited into the fund]. Income derived from sale of goods or services shall be deposited to the credit of the general fund of the State; provided that income from university projects as defined and described in sections 306-1 to 306-12, may be credited to special or other funds[; provided further that in each fiscal year from 1997-1998 through 2001-2002, at least the first \$1,000,000 of tuition collected by the university shall be deposited in the state treasury to the credit of the Hawaii opportunity program in education special fund.

The university shall also actively seek private participation in the Hawaii opportunity program in education program].”

SECTION 3. Section 304-8.95, Hawaii Revised Statutes, is amended to read as follows:

“[[]§304-8.95[] Hawaii opportunity program in education endowment special fund. (a) There is created in the treasury of the State, the Hawaii opportunity program in education (HOPE) endowment special fund. Expenditures from the Hawaii opportunity program in education endowment special fund shall be limited to:

- (1) Providing funds to award scholarships, stipends, and mandatory fees for the University of Hawaii to financially needy students with priority given to students from ethnic groups which are under-represented in the student population of the University of Hawaii; and
- (2) Pay all costs incident to the prudent investment of the principal and income deposited in the endowment special fund.

Appropriations or authorizations from the Hawaii opportunity program in education endowment special fund shall be expended by the [University of Hawaii] board of regents.

(b) The endowment special fund shall be administered by the [director of finance who] board of regents, which shall also be responsible for investing the principal and income deposited therein, [in accordance with the provisions of chapters 36 and 38 or, at the director’s discretion, in the same manner as the trustees of the employees retirement system of the State are permitted to invest the funds in their custody and control under sections 88-119, 88-119.5, 88-121, and 88-121.5. The director may pay a reasonable amount to any person for servicing and handling mortgages which the director may purchase or for supplying investment advisory or consultative services, and to meet other costs incident to the prudent investment of the special fund.]

(c) Scholarship, stipend, and mandatory fee awards for the University of Hawaii, funded by sums from the Hawaii opportunity program in education endowment special fund, shall be made beginning in the fiscal year [2001] 1998, in accordance with rules adopted by the board of regents pursuant to chapter 91. The rules shall include criteria for determining under-representation of particular groups in the student population of the university and financial need. Scholarship, stipend, and mandatory fee awards shall be made from appropriations or authorizations from the Hawaii opportunity program in education endowment special fund, and only earnings from the investment of principal and income on deposit in the endowment special fund received after [June 30, 2000] June 30, 1997, shall be available for such appropriations or authorizations. The total sum appropriated or authorized for scholarship, stipend, and mandatory fee awards in any fiscal year shall not exceed ten per cent of the amount deposited in the endowment special fund on [June 30, 2000] June 30, 1997, and in no event shall the total sum appropriated or authorized out of the special fund for scholarship awards in any fiscal year cause the amount deposited in the Hawaii opportunity program in education endowment special fund to be less than the amount on deposit in the special fund on [June 30, 2000] June 30, 1997.

(d) Notwithstanding any law to the contrary, revenues derived from private organizations and individuals may be received by the Hawaii opportunity program in education endowment special fund and may be managed and invested pursuant to this section.”

## ACT 183

SECTION 4. Section 304-16.5(c), Hawaii Revised Statutes, is amended to read as follows:

“(c) The board of regents, or its designated representatives, is authorized to grant, modify, or suspend tuition waivers. The board of regents shall provide a report and make recommendations as appropriate to the legislature on all tuition waivers no later than twenty days prior to the convening of each regular session. The report shall include, but not be limited to, the number of tuition waivers and scholarships, stipends, and mandatory fees granted to financially needy students from ethnic groups that are under-represented in the student population of the University of Hawaii through the Hawaii opportunity in education endowment special fund.”

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

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

## ACT 183

H.B. NO. 1657

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. Section 304-20, Hawaii Revised Statutes, is amended to read as follows:

“**§304-20 College of education.** (a) The college of education shall be affiliated with the university and shall be under the jurisdiction and management of the board of regents. The board may grant appropriate degrees to properly qualified graduates of the college of education. In the matter of the curriculum, the university authorities may obtain the approval of the department of education. [The purpose of the college of education shall be to train teachers to meet the requirements of the public schools of the State.] The mission of the college is to:

- (1) Prepare and provide ongoing professional development of teachers, administrators, counselors, and related professionals at undergraduate and graduate levels primarily to meet the needs of Hawaii schools;
- (2) Generate, synthesize, and apply knowledge in education and related fields through teaching, research, and other scholarly activities; and
- (3) Provide service and support to the local, national, and global educational and related communities.

(b) There is created an advisory committee to be known as the teacher education coordinating committee to identify, study, take action, or make recommendations on matters of education of common interest to the department of education and institutions of higher learning in Hawaii. The membership of the committee shall include the superintendent of education and the dean of the college of education of the University of Hawaii, who shall serve in alternate years as chairperson of the committee with the superintendent acting as the first chairperson. The membership of the committee shall include a representative of each accredited teacher training institution in Hawaii. In addition, the superintendent of education and the dean of the college of education of the University of Hawaii may each appoint other members to the committee; provided that the dean of the college of

education of the University of Hawaii shall appoint at least two members of the committee from the University of Hawaii who are not within the college of education. The committee shall meet at least six times within any calendar year to:

- (1) [work] Work out problems related to the development of strong teacher training programs at accredited institutions of higher learning in Hawaii[,]; and
- (2) [to identify,] Identify, study, and discuss educational problems or other educational matters of interest to the committee and to develop findings and make recommendations for the improvement of education in Hawaii.

The committee shall submit an annual report on its activities to the legislature and may include [therein] recommendations for legislative consideration.”

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 16, 1997.)

## ACT 184

H.B. NO. 1658

A Bill for an Act Relating to Drivers Education Program.

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

SECTION 1. Section 431:10G-107, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The fees deposited for each fiscal year shall be distributed to and expended by the University of Hawaii community [college employment training office] colleges for the operation of a [drivers’] drivers education program for operators of motorcycles or motor scooters.”

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 16, 1997.)

## ACT 185

H.B. NO. 1659

A Bill for an Act Relating to the Research Corporation of the University of Hawaii.

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

SECTION 1. Section 307-1, Hawaii Revised Statutes, is amended to read as follows:

“**§307-1 Establishment of the research corporation; purpose.** There is established as a body corporate, “The Research Corporation of the University of

## ACT 186

Hawaii”[, hereinafter referred to as the “research corporation”]. The research corporation shall be a public instrumentality and shall be a part of the University of Hawaii for administrative purposes[, as provided for in] pursuant to section 26-35.

The [objects for which this] purposes of the research corporation [is organized are] shall include, but not be limited to [promote] the promotion of all educational, scientific, and literary pursuits by encouraging, initiating, aiding, developing, and conducting [scientific investigations and] training, research, and study in the physical, biological, and social sciences, and humanities, and all other branches of learning by encouraging and aiding in the education and training of persons for the conduct of such training, investigations, research, and study, by the furnishing of means, methods, and agencies by which the training, investigation, research, and study may be conducted, by assisting in the dissemination of knowledge by establishing, aiding, and maintaining professorships, or other staff positions, fellowships, scholarships, publications, lectures, by other means to make the benefits of training, investigations, research, and study available to the public; and by any and all other acts reasonably designed to promote the above purposes in the interest of promoting the general welfare of the people of the State.”

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

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

(Approved June 16, 1997.)

## ACT 186

H.B. NO. 1660

A Bill for an Act Relating to Procurement.

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

SECTION 1. The legislature finds that various efforts have been made in recent years to grant the University of Hawaii increased flexibility in fiscal and other matters to improve efficiency in its operations. Currently, the University of Hawaii must comply with the formal bidding and other procedural requirements of the State procurement code to purchase from its own bookstores. This Act exempts the University of Hawaii from the procurement code when making purchases from its bookstores, as long as the goods or services are those that are routinely stocked and marketed and not specially ordered.

In addition, this Act recognizes that the office of intercollegiate athletics at the University of Hawaii at Manoa (athletics office) is in the process of undergoing significant financial changes. For example, the athletics office plans to lose \$1,200,000 in general fund support over the fiscal biennium. After this reduction, its operations must become virtually self-sustaining, although it may continue to receive support for its overhead costs. As such, the athletics office must be provided with the tools to enable it to operate more entrepreneurially so that it can increase revenues from other sources. This Act exempts from the State procurement code the purchase of goods and services by the athletics office with moneys from the University of Hawaii at Manoa intercollegiate athletics revolving fund.

With the increased fiscal flexibility provided the athletic office comes greater responsibility and the need for accountability. Because of this responsibility the athletic office is directed to report annually to the legislature and to keep informed

the house committees on finance and higher education, and the senate committees on ways and means, education, and government operations and housing:

SECTION 2. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
  - (A) For grants, subsidies, or purchases of services as those terms are defined in section 42D-1, made in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
  - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
  - (C) To satisfy obligations [which] that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
  - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
  - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
  - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
  - (G) To governmental bodies of the State; and
  - (H) As loans, under loan programs administered by a governmental body;
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision; provided that University of Hawaii departments and programs, without regard to this chapter, may procure goods and services from the University of Hawaii bookstores that are routinely stocked and marketed and not specially ordered;
- (4) To procure goods or services for the office of intercollegiate athletics of the University of Hawaii at Manoa with moneys from the University of Hawaii at Manoa intercollegiate athletics revolving fund;
- [(4)] (5) To procure goods or services, including the following:
  - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
  - (B) Works of art for museum or public display;
  - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;



- (D) Meats and foodstuffs for the Kalaupapa settlement;
- (E) Opponents for athletic contests;
- (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
- (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
- (H) Goods and services for commercial resale by the State;
- (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds; and
- (J) Travel arrangements purchased by the University of Hawaii for its intercollegiate athletic programs;

which the policy office determines by rule or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and

- [(5)] (6) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
  - (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
  - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms.”

SECTION 3. The office of intercollegiate athletics of the University of Hawaii at Manoa shall submit an annual report to the legislature on the status of the University of Hawaii at Manoa intercollegiate athletics revolving fund, including a detailed accounting of expenditures made for goods and services made pursuant to section 2. Each annual report shall be submitted to the legislature no later than twenty days prior to the convening of the next regular legislative session.

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

SECTION 5. This Act shall take effect on July 1, 1997; provided that section 103D-102(b)(4), Hawaii Revised Statutes, shall be repealed on June 30, 1999.

(Approved June 16, 1997.)

## ACT 187

H.B. NO. 1662

A Bill for an Act Relating to the State Aquarium.

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

SECTION 1. Act 184, Session Laws of Hawaii 1995, is amended by amending section 6 to read as follows:

“SECTION 6. **State aquarium transition.** (a) Notwithstanding any other law to the contrary, the current management arrangements with the research corporation of the University of Hawaii and the University of Hawaii foundation shall

continue until a new management arrangement is approved by the board of regents or until June 30, [1997,] 1999, whichever occurs earlier.

(b) All permanent full-time general fund positions currently held by state employees presently assigned to the Waikiki Aquarium shall remain as such; provided that in the event a management arrangement with a nonprofit corporation is approved by the board of regents pursuant to this section, and section 304- , Hawaii Revised Statutes, the employees shall remain as such under the supervision of that nonprofit corporation; and provided further that any proposed changes shall be subject to chapter 89, Hawaii Revised Statutes, and the applicable collective bargaining agreements.”

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 16, 1997.)

## ACT 188

H.B. NO. 1687

A Bill for an Act Relating to Electronic Funds Transfers.

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

SECTION 1. The purpose of this Act is to establish the means by which the State can streamline its operations and provide more timely, effective services to the general public.

SECTION 2. Chapter 40, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“~~§40-~~ **Electronic funds transfers in lieu of checks.** Any other law to the contrary notwithstanding, every public accountant who receives revenues or other moneys on account for the State and is authorized to accept remittances by check, draft, or similar paper instrument may accept the remittances by electronic funds transfer or credit or debit card pursuant to standards established by the director of finance.”

SECTION 3. Section 40-51.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§40-51.5]]~~ **Checks or electronic funds transfers in lieu of warrants.** With reference to warrants addressed under this part, the comptroller may, with the approval of the director of finance, issue checks drawn from, or make electronic funds transfers from, depositories of state treasury moneys in lieu of warrants drawn from the state treasury.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 16, 1997.)

## Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 189

H.B. NO. 1688

A Bill for an Act Relating to King Kamehameha Celebration Commission.

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

SECTION 1. Section 8-5, Hawaii Revised Statutes, is amended to read as follows:

**“§8-5 King Kamehameha celebration commission.** (a) There shall be a commission to be known as the King Kamehameha celebration commission placed within the department of accounting and general services for administrative purposes. The commission shall consist of eighteen members to be appointed by the governor in the manner provided by section 26-34. The appointments shall be made from the following organizations, with at least one member from each organization:

- (1) [The] Royal Order of Kamehameha [of Hawaii;] I;
- (2) Ahahui Kaahumanu;
- (3) Hale o Na Alii o Hawaii Ahahui poo;
- (4) Daughters and Sons of Hawaiian Warriors;
- (5) Daughters of Hawaii;
- (6) Kamehameha Schools Alumni Association;
- (7) [State] Association of Hawaiian Civic Clubs;
- (8) Waimanalo Homesteaders' Association;
- (9) Kapahulu Music Club;
- (10) Hui Holo Pa-u Me Na Hoa Hololio;
- (11) Papakolea Community Association; and
- (12) Hui Kukakuka.

In addition, the governor shall appoint one member from each of the following islands: Kauai, Maui, Molokai, Oahu, and Hawaii. Each of these members shall be a resident of the respective island that the member represents. Also, there shall be one at-large member.

(b) The terms of all appointments shall be four years. The governor shall appoint the chairperson of the commission from among the members.

(c) The members of the King Kamehameha celebration commission shall serve without compensation, but shall be entitled to reimbursement for travel and necessary expenses while attending meetings and while in discharge of their duties. The comptroller shall reimburse the members of the King Kamehameha celebration commission for all necessary expenses incurred during the discharge of their duties.

(d) The commission may appoint and dismiss an arts program specialist and a part-time clerk typist, without regard to chapters 76 or 77, who shall serve at the commission's pleasure, and whose salaries shall be provided through fees, public contributions, and private donations.

[(d)] (e) The commission shall have charge of all arrangements for the celebration each year generally observed throughout Hawaii Nei on June 11, to commemorate the memory of the great Polynesian Hawaiian warrior and statesman King Kamehameha I, who united the Hawaiian Islands into the Kingdom of Hawaii, and is recognized as such under section 8-1. The commission may appoint committees and delegate [such] powers and duties to [such] the committees as it shall determine.

[(e)] (f) The comptroller shall account for all moneys appropriated by the legislature, may raise funds to defray administrative costs, and may accept donations of money and personal property on behalf of the commission; provided that all donations accepted from private sources shall be expended in the manner prescribed by the contributor[.], and all moneys received from all sources shall be deposited into the commission's trust account.

[(f)] (g) The commission shall be the coordinating agency for all state sponsored as well as other celebration events staged during the celebration period as designated by the commission to assure activities planned are timely and appropriate to commemorate the memory of King Kamehameha I. The commission is authorized to determine to whom and for which occasions permission is to be granted for the use of the statue of King Kamehameha I.

[(g)] (h) The commission shall adopt rules pursuant to chapter 91 necessary for the purpose of 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 June 16, 1997.)

## ACT 190

H.B. NO. 1689

A Bill for an Act Relating to the Expenditure of State Funds.

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

SECTION 1. The legislature finds there is a need to improve the process used to expend state funds for grants, subsidies, and purchases of services, particularly the process used to purchase health and human services from organizations and individuals in the community available and qualified to act on behalf of the State in responding to the health and human service needs of its citizens.

It is the legislature's intent that separate processes be used by state agencies to expend appropriations of state funds for grants and subsidies for public purposes, and to pay for and provide health and human services to the State's citizens on the agencies' behalf. It is also the legislature's intent that all state agencies use the same single process to obtain and pay for these health and human services.

The objective of this single process to purchase and provide health and human services is to ensure the fair and equitable treatment of all persons who apply to, and are paid to provide those services on the agencies' behalf. It is the intent of this legislature that this improved process result in a simpler, standardized process for both state agencies and the providers to use, and to optimize information-sharing, planning, and service delivery efforts.

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

**“CHAPTER  
PURCHASES OF HEALTH AND HUMAN SERVICES  
PART I. GENERAL PROVISIONS**

**§ -101 Application of this chapter.** (a) This chapter shall apply to all contracts made by state agencies to provide health or human services to Hawaii’s residents, provided that this chapter shall not apply to:

- (1) Contracts to award grants or subsidies of state funds appropriated by the legislature to a specific organization or individual;
- (2) Transactions between or among government agencies, including but not limited to agreements, contracts, and grants;
- (3) Transactions expressly exempt from the requirements of this chapter; and
- (4) Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board.

(b) This chapter shall only apply to contracts solicited or entered into after July 1, 1998, unless the parties agree to its application to a contract solicited or entered into prior to that date.

(c) Nothing in this chapter or rules adopted hereunder shall prevent any state agency from complying with the terms or conditions of any grant, bequest, or cooperative agreement, or from satisfying any requirement of federal statute or regulation to avoid the loss or reduction of federal assistance.

**§ -102 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“Administrator” means the administrator of the state procurement office.

“Agency” means any department, authority, commission, council, board, ittee, institution, legislative body, agency, or other establishment or office of ecutive, legislative, or judicial branch of the State, and includes the office of lian affairs.

“Chief procurement officer” means those officials designated by section -203.

“Contract” means all types of agreements, regardless of what they may be l.

“Contract amendment” means any written alteration of scope of services, of delivery, payment terms, amount of payment, or other provisions of any act accomplished by mutual action of the parties to the contract.

“Data” means recorded information, regardless of form or characteristic.

“Health and human services” means services to communities, families, or iduals which are intended to maintain or improve health or social well-being.

“Provider” means an organization or individual contracted by a state agency to provide health or human services to the public on its behalf.

“Purchasing agency” means a state agency authorized to or responsible for entering into contracts to provide health or human services to the public.

“Request for proposals” means all documents, whether attached or incorporated by reference, soliciting providers to submit a detailed plan to provide health or human services to the public, on behalf of a state agency.

“Scope of service” means any description of the type of activity, including but not limited to, number served, outcomes being sought, target group, and geographic area in which the activity takes place.

“Treatment” means services to individuals and families by health or social work professionals which attempt to alleviate physical or mental illness or behavioral problems, including but not limited to, medical treatment, counseling, physical,

occupational and other therapeutic services, and referral and case management services for medical treatment, counseling, and other therapeutic services.

§ **-103 Education and training.** The administrator of the state procurement office, either alone or in cooperation with the heads of the purchasing agencies, may develop a comprehensive education and training program for the purchase of health and human services. The program shall be available to agency employees, providers, and all other interested members of the public.

§ **-104 Exemption from chapter 103D.** Contracts to purchase health and human services required to be awarded pursuant to this chapter shall be exempt from the requirements of chapter 103D, unless a provision of this chapter imposes a requirement of chapter 103D on the contract or purchase.

§ **-105 Preventing impairment of federal funds.** This chapter shall be liberally construed to not hinder or impede a state agency's application for, or receipt and use, of federal funds.

§ **-106 Authority of the procurement policy board.** The policy board established under section 103D-201 shall adopt all rules necessary to implement this chapter. The policy board shall consider and decide matters of policy within the scope of this chapter including those referred to it by chief procurement officers. The policy board may audit and monitor implementation of its rules and the requirements of this chapter, but shall not exercise authority over the award or administration of any particular contract, or over any dispute or claim arising from a contract.

## PART II. PLANNING ORGANIZATION

§ **-201 Interagency committee on purchase of health and human services.** The administrator shall establish an interagency committee on purchase of health and human services comprised of heads of purchasing agencies or their designated representatives. Staff shall be provided by the state procurement office. The interagency committee shall assist the administrator in:

- (1) Securing input from providers to facilitate agency decision-making to assess needs, plan, budget, and purchase health and human services;
- (2) Establishing schedules for planning and purchasing health and human services in relation to the annual and biennial budget cycles;
- (3) Developing criteria to evaluate proposals to provide health and human services, and for restrictive purchases under section -403; and
- (4) Meeting the needs of purchasing agencies and providers for education and training to improve planning for or purchasing of health and human services.

§ **-202 Community council.** (a) There is established a community council on purchase of health and human services. The community council shall be comprised of no more than nine voting members, and one non-voting, ex-officio member of the interagency committee on purchase of health or human services designated by the majority of the members of the committee. There shall be a member from each county, except the county of Kalawao, and up to five members interested in health, human services, employment, or the provision of services to children and youth.

(b) Voting members shall be appointed by the governor and serve for four years. Each voting member shall serve until the member's successor is appointed. 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.

(c) Members shall serve without compensation, but shall be reimbursed for actual expenses, including travel expenses, necessary for the performance of their duties.

(d) The community council shall advise the administrator about or assist the administrator in:

- (1) Market or business conditions facing providers;
- (2) Securing input from providers to facilitate agency decision-making to assess needs, plan, budget, and purchase health and human services;
- (3) Facilitating provider participation in the process used by state agencies to plan for and purchase health and human services;
- (4) Establishing schedules for planning and purchasing health and human services in relation to the annual and biennial budget cycles;
- (5) Developing criteria to evaluate proposals to provide health and human services, and for restrictive purchases under section -403; and
- (6) The needs of purchasing agencies and providers for education and training to improve planning for or purchasing of health and human services.

§ -203 **Collaboration of providers.** Provider participation in a state agency's efforts to plan or purchase health or human services, prior to the agency's release of a request for proposal under section -402, including the sharing of information on community needs, best practices, and providers' resources, shall be encouraged, and, as determined by rules, shall not disqualify providers from submitting responses to requests for proposals.

### PART III. PROCUREMENT ORGANIZATION

§ -301 **Powers and duties of the administrator.** The administrator of the state procurement office shall carry out the following duties:

- (1) Assist, advise, and guide state agencies in matters relating to planning and purchasing health and human services;
- (2) Establish and maintain a central health and human services contracts data base;
- (3) Develop and administer a statewide orientation and training program for purchasing agency employees, provider organization employees, and all other interested parties on all matters relating to carrying out the purposes of this chapter;
- (4) Develop, distribute, and maintain a health and human service procurement manual for all state procurement officials;
- (5) Develop, distribute, and maintain a procurement guide for health and human service vendors wishing to do business with the State;
- (6) Perform periodic review of the procurement practices of all governmental bodies which purchase health and human services;
- (7) Contract for such services as may be necessary for the purposes of this chapter; and
- (8) Establish and fill such positions as may be necessary to carry out the functions of this chapter, without regard to chapters 76, 77, and 89.

§ -302 **Delegation of authority of the administrator of the state procurement office.** Subject to rules adopted pursuant to this chapter, the administrator may delegate any authority or responsibility conferred by this chapter to a head or the heads of purchasing agencies.

## PART IV. SOURCE SELECTION AND CONTRACT FORMATION

§ **-401 Methods of selection.** Unless otherwise provided by law, all contracts for purchases of health and human services shall be awarded by competitive purchase of services pursuant to section -402, except as provided in:

- (1) Section -403 (Restrictive purchase of services);
- (2) Section -404 (Treatment purchase of services);
- (3) Section -405 (Small purchases); and
- (4) Section -406 (Crisis purchase of services).

§ **-402 Competitive purchase of services.** (a) State agencies to which the legislature has appropriated funds for the purchase of health and human services shall solicit proposals to provide health and human services by purchase of health and human services contracts, by publishing a notice requesting the submission of health and human service proposals. Notice of the request for proposals shall be given a reasonable time before the date set forth in the request for submission of proposals. The policy board shall adopt rules which specify:

- (1) The form of the notice;
- (2) What constitutes a reasonable interim between notice and the proposal submission deadline; and
- (3) How the notice is to be published, including but not limited to, whether the publication is to be completed in a newspaper of general circulation, by mail, through a public or private telecommunications network, or any other method or combination of methods which the board deems appropriate.

(b) The request shall state all criteria which will be used to evaluate proposals, and the relative importance of the proposal evaluation criteria.

(c) Any applicant who has a question regarding a request may submit the question to the head of the purchasing agency, or a designee, prior to the proposal submission deadline. The head of the purchasing agency, or a designee, shall provide a response in the form of a clarification, or an amendment of the request, that shall be made available to all those who picked up a request.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing applicants during the process of proposal evaluation. A register of proposals shall be prepared and available for public inspection after proposal submission.

(e) If stated in the request, discussions, as provided by rule, may be held with applicants for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Applicants shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing applicants.

§ **-403 Restrictive purchase of services.** (a) A contract for the purchase of health and human services may be awarded without competition when the head of a purchasing agency determines in writing that there is a basis for restricting the purchase to a purchase from one provider, and the chief procurement officer approves the restrictive purchase determination in writing. Bases for restrictive purchase of services shall include, but are not limited to:

- (1) Need for a service in a geographic area available from only one provider;



- (2) Need for a service with a unique cultural approach designed for a limited target group available from only one provider; and
- (3) When only one provider satisfies limitations imposed by the source of funds for the procurement.

(b) A purchasing agency shall submit the written determination with evidence supporting the request for a restrictive purchase of services to the chief procurement officer. The determination shall be reviewed by the chief procurement officer and, if approved, a notice of intent to issue a restrictive purchase of services contract shall be posted in a manner that makes it accessible to the public.

(c) The policy board shall adopt rules to allow a reasonable opportunity for objections to be filed, including:

- (1) The manner in which notice is to be posted;
- (2) The duration of notice posting; and
- (3) The contents of the notice including, but not limited to, the name of the provider to be issued the contract, the date on which the contract is to be awarded, a statement indicating that any person may file written objections to the issuance of the contract, the address of the person or agency with whom the objections are to be filed, and the date by which the objections are to be filed.

(d) The written determination, any objections, and a written summary of the disposition of any objection shall be included in the contract data base.

§ **-404 Treatment purchase of services.** (a) Treatment services may be purchased in accordance with this section if either or both of the following circumstances are applicable:

- (1) Such services may become necessary from time to time, but cannot be anticipated accurately on an annual or biennial basis; and
- (2) When deferring treatment until solicitation, provider selection, and contract formation can be completed, the problem needing treatment would be rendered worse than at the time of diagnosis or assessment.

Contracts for treatment services shall be awarded on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

(b) At a minimum, before the beginning of each fiscal year, the administrator shall publish a notice describing the types of treatment services that may be needed throughout the year on a periodic basis and inviting providers engaged in providing these treatment services to submit current statements of qualification and expressions of interest to the office. The chief procurement officer may specify a uniform format for statements of qualifications. Providers may amend these statements by filing an amended or new statement prior to the date designated for submission.

(c) The administrator shall form an initial review committee consisting of a minimum of three employees from a state agency or agencies with sufficient education, training, and licenses or credentials to evaluate the statements of qualifications which the administrator receives in response to the notice published pursuant to subsection (b). The committee shall review and evaluate the submissions and other pertinent information, including references and reports, and prepare a list of qualified providers to provide treatment services during the fiscal year. Providers included on the list of qualified treatment providers may amend their statements of qualifications as necessary or appropriate. Providers shall immediately inform the administrator of any changes in information furnished which would disqualify the provider from being considered for a contract award.

(d) When the need to purchase treatment arises, the head of a purchasing agency shall select the provider most qualified to provide the needed treatment from the list of qualified providers.

(e) The head of the purchasing agency, or a designee, shall negotiate a contract, including a rate of compensation which is fair and reasonable, established in writing, and based upon the estimated value, scope, nature, and complexity of the treatment services to be rendered, or use the rate established by the administrator, if any. If negotiations fail, upon written notice of an impasse to the provider selected under subsection (d), the head of the purchasing agency shall choose another provider from the list of qualified providers, and conduct further negotiations. Negotiations shall be conducted confidentially.

(f) Contracts for treatment in excess of \$100,000 or one year shall be procured using section -402, competitive purchase of services, unless a waiver of this subsection is approved by the chief procurement officer.

§ **-405 Small purchases.** Purchases of health and human services of less than \$25,000 are small purchases, and shall be made in accordance with section 103D-305 and rules adopted by the policy board to implement that section.

§ **-406 Crisis purchase of services.** (a) The head of a purchasing agency may contract to purchase health and human services essential to meet a crisis by means other than specified in this chapter if:

- (1) The crisis results from domestic violence, physical or mental illness or injury, homelessness, lack of food, or such other reason, and seriously threatens life, the health, or the safety of any person; and
- (2) The crisis generates an immediate and serious need for health or human services which cannot be met through services available from the departments of health or human services, or under other provisions of this chapter.

(b) The crisis purchase of services shall be made with such competition as is practicable under the circumstances and, where practicable, approval from the chief procurement officer shall be obtained prior to the purchase. A written determination of the need to make a crisis purchase, and the reasons for selecting the provider shall be included in the contract file.

§ **-407 Amendment and cancellation of requests.** A request may be amended or canceled, or any or all proposals may be rejected in whole or in part, as specified in the request or in accordance with rules adopted by the policy board, when it is in the best interest of the state agency which issued the request to amend or cancel the request, or reject proposals in whole or in part. The reason for amending or canceling a request, or for rejecting proposals in whole or in part shall be set out in writing and included in the contract file, and made available to the public.

§ **-408 Modification and termination of contracts.** (a) The policy board shall adopt rules specifying when a contract clause providing for adjustments in time of performance, scope of service, payment amount and terms, or other contract provisions as appropriate, by prior written consent of the parties, may be included in a contract to purchase health and human services.

(b) The policy board shall adopt rules requiring the inclusion of a contract clause providing for termination of the contract, either in whole or in part, for non-performance, reduction in funds available to pay the provider, or a change in the conditions upon which the need for the service was based. The purchasing agency shall be required to provide advance written notice to the provider organization with the reasons for the termination.

§ **-409 Types of contracts.** (a) Any contract that will promote the State's best interests may be used.

(b) A standard contract form for health and human services, including purchases, grants, and subsidies, shall be provided to governmental bodies by the attorney general that may be utilized, at the option of the head of the purchasing agency, without requiring prior approval as to form by the attorney general so long as no substantive changes are made to the form and the contents are appropriate.

(c) 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.

§ -410 **Multi-term contracts.** A contract for health and human services may be for any period of time and for multiple terms if the head of a purchasing agency deems it to be in the best interest of the purchasing agency to enter into an extended term or multi-term contract, provided the possibility of an extended term or multi-term contract is included in the request for proposals, if applicable, funds are available for the first fiscal period of the initial term of the contract when the contract is executed, and the contract expressly provides that extension or renewal is subject to the availability and appropriation of funds.

§ -411 **Multiple awards.** Most contracts for the competitive purchase of health and human services will be through the award of multiple contracts, and the policy board shall adopt rules prescribing the manner in which multiple contracts are to be awarded.

§ -412 **Time line.** At least once annually, the administrator shall give public notice, as provided by rules, of the types of health and human services state agencies anticipate they will need so that providers may have advance notice of possible future opportunities to submit proposals.

§ -413 **Interim measure for assuring continuation of services.** If funds are appropriated and available, the chief procurement officer, or a designee, may extend the term of a contract which has not terminated for up to six months after the termination date of the contract, to assure the provision of services to the public without disruption.

§ -414 **Allotment.** Contracts to expend and appropriations for the purchase of health and human services shall be subject to the allotment system generally applicable to all appropriations made by the legislature.

## PART V. PROTESTS

§ -501 **Protested awards.** (a) A person who is aggrieved by an award of a contract may protest a purchasing agency's failure to follow procedures established by this chapter, rules adopted by the policy board, or a request for proposals in selecting a provider and awarding a purchase of health and human services contract, provided the contract was awarded under section -402 or -403. Amounts payable under a contract awarded under section -402 or -403, and all other awards of health and human services contracts may not be protested and shall be final and conclusive when made.

(b) The protest shall be submitted to the head of the purchasing agency, in writing, within five working days after the postmark date on the notice of award.

(c) The head of the purchasing agency, or a designee, may settle and resolve a protest by one or more of the following means:

- (1) Amending or canceling a request for proposal;
- (2) Terminating the contract which was awarded;
- (3) Initiating a new process to award a contract;
- (4) Declaring the contract null and void from the time of its award; or
- (5) Affirming the purchasing agency's contract award decision.

This authority shall be exercised in accordance with rules adopted by the policy board.

(d) If the protest is not resolved by mutual agreement, the head of the purchasing agency, or a designee, shall promptly issue a decision in writing. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protesting person of the protester's right to reconsideration as provided in this part.

A copy of the written decision shall be mailed or otherwise furnished to the person who initiated the protest.

(e) A decision under subsection (d) shall be final and conclusive unless a request for reconsideration is submitted to the chief procurement officer under section -502.

**§ -502 Right to request reconsideration.** (a) A request for reconsideration of a decision of the head of the purchasing agency under section -501 shall be submitted to the chief procurement officer not later than five working days after the receipt of the written decision, and shall contain a specific statement of the factual and legal grounds upon which reversal or modification is sought.

(b) A request for reconsideration may be made only to correct a purchasing agency's failure to comply with section -402 or -403, rules adopted to implement the sections, or a request for proposal, if applicable.

(c) The chief procurement officer may uphold the previous decision of the head of the purchasing agency or reopen the protest as deemed appropriate.

(d) A decision under subsection (c) shall be final and conclusive.

**§ -503 Award of contract suspended during a protest.** In the event of a timely protest, or request for reconsideration, no further action to award the contract until the issue is resolved shall be taken, unless the chief procurement officer makes a written determination that the award of the contract without delay is necessary to protect the health, safety, or welfare of a person, as provided by rules.

**§ -504 Exclusivity of remedies.** The procedures and remedies provided for in this part, and the rules adopted by the policy board, shall be the exclusive means available for persons aggrieved in connection with the award of a contract to resolve their concerns."

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## "CHAPTER GRANTS AND SUBSIDIES

**§ -101 Definitions.** As used in this section, unless the context clearly requires otherwise:

"Grant" means an award of state funds by the legislature, by an appropriation to a specified recipient, to support the activities of the recipient and permit the community to benefit from those activities.

"Recipient" means any organization or person receiving a grant or subsidy.

“Subsidy” means an award of state funds by the legislature, by an appropriation to a recipient specified in the appropriation, to reduce the costs incurred by the organization or individual in providing a service available to some or all members of the public.

§ -102 **Applications for grants and subsidies.** Requests for grants and subsidies shall be submitted to the appropriate standing committees of the legislature at the start of each regular session of the legislature. Each request shall state:

- (1) The name of the requesting organization;
- (2) The public purpose for the grant or subsidy;
- (3) The services to be supported by the grant or subsidy;
- (4) The target group; and
- (5) The cost of the grant or subsidy and the budget.

§ -103 **Standards for the award of grants and subsidies.** (a) Grants and subsidies shall only be awarded to individuals who, and organizations which:

- (1) Are licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which a grant or subsidy is awarded;
- (2) Comply with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability;
- (3) Agree not to use state funds for entertainment or lobbying activities; and
- (4) Allow the state agency to which funds for the grant or subsidy were appropriated for expenditure, legislative committees and their staff, and the auditor full access to their records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and assuring the proper expenditure of the grant or subsidy.

(b) In addition, a grant or subsidy may be made to an organization only if the organization:

- (1) Is incorporated under the laws of the State; and
- (2) Has bylaws or policies that describe the manner in which the activities or services for which a grant or subsidy is awarded shall be conducted or provided.

(c) Further, a grant or subsidy may be awarded to a non-profit organization only if the organization:

- (1) Has been determined and designated to be a non-profit organization by the Internal Revenue Service; and
- (2) Has a governing board whose members have no material conflict of interest and serve without compensation.

§ -104 **Contracts for grants and subsidies.** An appropriation for a grant or subsidy shall be disbursed by a contract between the state agency designated the expending agency for the appropriation by the legislature, and the recipient of the grant or subsidy. The contract shall be effective as of the first day of the fiscal year for which the funds for the grant or subsidy are appropriated, provided that up to one fourth of the total amount appropriated may be disbursed prior to the execution of the contract.

§ -105 **Allotment.** Contracts to disburse and appropriations for grants and subsidies shall be subject to the allotment system generally applicable to all appropriations made by the legislature.

§ -106 **Monitoring and evaluation.** Every grant or subsidy shall be monitored by the expending agency to ensure compliance with this chapter and the public purpose and legislative intent of the grant or subsidy.”

SECTION 4. Section 103D-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The policy office shall consist of a board of [five] seven members. Notwithstanding the limitations of section 78-5, the members of the board shall include:

- (1) The comptroller;
- (2) A county employee with significant high-level procurement experience; and
- (3) [~~Three~~] Five persons who shall not otherwise be full-time employees of, or contractors with, the State or any county; provided that at least one member shall be a certified professional in the field of procurement, [and] at least one member shall have significant high-level, federal procurement experience[.], and at least two members shall have significant experience in the field of health and human services.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy office. The initial and subsequent members of the policy office, other than the comptroller, shall be appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the policy office members shall be subject to the requirements of section 26-34. No member of the policy office shall act concurrently as a chief procurement officer. The members of the policy office shall devote such time to their duties as may be necessary for the proper discharge thereof.”

SECTION 5. Act 310, Session Laws of Hawaii 1996, is amended by amending section 3 to read as follows:

“SECTION 3. [(a)] The responsibility for all purchase of service contracts under chapter 42D, Hawaii Revised Statutes (HRS), is transferred to the state procurement office effective July 1, 1998. During the interim period from the effective date of this Act to July 1, 1998, the administrator of the state procurement office shall prepare for the transfer of the responsibility for purchase of service contracts. [Effective July 1, 1998, the purchase of service system shall be transferred from chapter 42D, HRS, to chapter 103D, HRS, to provide for the procurement of all services under one chapter.]

During the two-year transition period, the administrator of the state procurement office shall work with purchase of service providers and affected departments to develop and design a concrete, detailed, and comprehensive procedure to process purchase of service contracts to replace the purchase of service contract procedures presently provided in chapter 42D, HRS; provided that in the design of the procedure the administrator shall establish an advisory council or councils to assist in the processing of such contracts. Each department involved in the purchase of service system shall fully cooperate with the administrator at section, branch, division, and departmental levels.

Toward this end the administrator shall also develop and implement a transition plan to develop necessary and desirable planning and procurement procedures. The transition plan shall be completed no later than December 31, 1996, and

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may be prepared by a consultant hired by the administrator. The transition plan shall include, but not be limited to:

- (1) Planning procedures and processes that establish criteria for developing:
  - (A) Purchase of service contract requirements, including the manner and need for provider input into the executive decision making process;
  - (B) A contract evaluation mechanism;
  - (C) A contract extension evaluation mechanism;
  - (D) A needs assessment mechanism; and
  - (E) A defined schedule necessary to implement the purchase of service system.
- (2) Developing procurement procedures, if necessary, for:
  - (A) [Chapter 103D, HRS, including consideration of whether] A new chapter with a separate procurement process for purchase of service [is desirable]; and
  - (B) The rulemaking process.”

SECTION 6. Sections 6E-16, 6E-40, 11-205.5, 103D-102, 121-45, 163D-17, 195-6.6, 210D-13, 211F-7, 261-6, 304-16.5, 304-35, 321-352, 328K-12, 333F-2, 333F-21, 346-7.5, 346-41.5, 346-274, 353D-3, 358D-8, 383-128, 601-3.6, and 431N-4, Hawaii Revised Statutes, are amended by replacing all references to “chapter 42D” or any particular section of chapter 42D with reference to the appropriate chapter or chapters created under this Act, as appropriate and as the context requires.

SECTION 7. Chapter 42D, Hawaii Revised Statutes, is repealed.

SECTION 8. Act 194, Session Laws of Hawaii 1992, as amended by Act 310, Session Laws of Hawaii 1996, is amended by amending section 20 to read as follows:

“SECTION 20. This Act shall take effect on July 1, 1992, and shall be repealed on July 1, 1998[; provided that sections 42D-1, 42D-2, 42D-3, 42D-4, 42D-5, 42D-6, 42D-7(a), 42D-8, 42D-9, 42D-12(a), 42D-21(b) and (c), 42D-23, 42D-24(a), 42D-25, 42D-31, 42D-32, 42D-33, and 42D-34 shall be reenacted in the form in which they read on the day before the approval of this Act].”

SECTION 9. Act 8, Special Session Laws of Hawaii 1993, as amended by Act 118, Session Laws of Hawaii 1995, is amended by amending section 61 to read as follows:

- “SECTION 61. This Act shall take effect on July 1, 1994; provided that[.:
- (1) Sections] sections 51 and 52 of this Act and sections -110, -201, -202, -204, and -211 of the chapter established in section 2 of this Act shall take effect upon approval[; and
  - (2) The amendment to section 42D-1, Hawaii Revised Statutes, made by section 54 of this Act, which substituted the reference to chapter 103, Hawaii Revised Statutes, with reference to chapter 103D, Hawaii Revised Statutes, in the definition of “purchase of service”, shall continue in effect after the repeal and reenactment of section 42D-1 as provided in section 20 of Act 194, Session Laws of Hawaii 1992].”

SECTION 10. 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 1997-1998 and \$300,000 or so much thereof as may be necessary for fiscal year 1998-1999 to pay for the operating expenses of the state procurement office to implement the requirements of this Act.

The sums appropriated shall be expended by the state procurement office for the purposes of this Act.

SECTION 11. All contracts entered into under statutes or portions of statutes repealed or amended by this Act shall continue to be honored until their termination. The provisions of this Act shall not be applied so as to impair any contract existing as of the effective date of this Act or to otherwise be violative of either the Hawaii Constitution or Article I, section 10, of the United States Constitution.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 1997; except that:

- (1) Sections 7, 8, and 9 shall take effect on June 30, 1998;
- (2) The provisions of chapter 42D, Hawaii Revised Statutes, as they were in effect immediately prior to the chapter's repeal, shall remain in full force and effect until all contracts for grants, subsidies, and purchases of services entered into pursuant to those provisions are terminated by their terms or any other means; and
- (3) Sections 3 and 6 shall take effect on July 1, 1998.

(Approved June 16, 1997.)

**Note**

1. So in original.

**ACT 191**

H.B. NO. 1690

A Bill for an Act Relating to Revenue Maximization.

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

SECTION 1. Section 29-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury an interagency federal revenue maximization revolving fund into which shall be deposited all proceeds collected from the federal government and third-party payors for reimbursable costs not previously claimed by the State, with the exception of proceeds collected for services provided by the Hawaii health systems corporation, for reimbursement by federally-funded state programs. For purposes of this chapter, federally-funded state programs include but shall not be limited to those federally-funded programs within the departments of human services, education, and health. Expenditures and transfers from the fund shall be made by the comptroller in proportional allocations established by the comptroller and the director of finance. Transfers shall be made to the department claiming the reimbursement for expenses incurred related to federal fund reimbursement claims and to the general fund of the State. Moneys in the fund may be expended for consultant services rendered under subsection (b).”



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SECTION 2. There are appropriated out of the revenues of the interagency federal revenue maximization revolving fund the sum of \$425,000 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$425,000 or so much thereof as may be necessary for fiscal year 1998-1999 to the department of human services for expenses, including the creation and hiring of temporary staff, related to the recovery of federal fund reimbursements under section 29-24, Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of human services pursuant to Act 11, Special Session Laws of Hawaii 1995.

SECTION 3. There are appropriated out of the revenues of the interagency federal revenue maximization revolving fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$200,000 or so much thereof as may be necessary for fiscal year 1998-1999 to the department of education for expenses, including the creation and hiring of temporary staff, related to the recovery of federal fund reimbursements under section 29-24, Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of education pursuant to Act 11, Special Session Laws of 1995.

SECTION 4. There are appropriated out of the revenues of the interagency federal revenue maximization revolving fund the sum of \$425,000 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$425,000 or so much thereof as may be necessary for fiscal year 1998-1999 to the department of health for expenses, including the creation and hiring of temporary staff, related to the recovery of federal fund reimbursements under section 29-24, Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of health pursuant to Act 11, Special Session Laws of Hawaii 1995.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

**ACT 192**

H.B. NO. 1695

A Bill for an Act Relating to Energy Performance Contracting for Public Facilities.

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

SECTION 1. Section 36-41, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

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

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

evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;

- (2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
- (4) The term of any energy performance contract entered into pursuant to this section shall not exceed [ten] fifteen years;
- (5) Any contract entered into shall contain the following annual allocation dependency clause:

“The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made”; [and]

- (6) Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract[.]; and
- (7) Any energy performance contract shall provide that total payments shall not exceed total savings.

(c) Any agency may enter into an energy performance contract pursuant to this section for a period not to exceed [ten] fifteen years.

(d) For purposes of this section:

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

“Energy performance contract” means an agreement for the provision of energy services and equipment, including but not limited to building energy conservation enhancing retrofits and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the [energy] cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the measured energy cost savings [or], energy production[.], avoided maintenance, avoided energy equipment replacement, or any combination of the foregoing bases.

“Facility” means a building or buildings or similar structure owned or leased by, or otherwise under the jurisdiction of, the agency.

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

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

**ACT 193**

SECTION 3. This Act, upon its approval, shall have retroactive effect upon all existing contracts executed by any agency under section 36-41, Hawaii Revised Statutes.

(Approved June 16, 1997.)

**ACT 193**

H.B. NO. 1696

A Bill for an Act Relating to the Natural Energy Laboratory of Hawaii Authority.  
*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend the purpose of the Natural Energy Laboratory of Hawaii Authority (NELHA) to include ocean-related research, technology, and industry. It also expands NELHA's duties to include supporting ocean research and technology development projects which support national and state interests, use facilities and infrastructure in Hawaii, and foster potential commercial development.

SECTION 2. Section 227D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the natural energy laboratory of Hawaii authority, which shall be a body corporate and politic and an instrumentality and agency of the State. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the natural energy laboratory of Hawaii authority shall be to facilitate research, development, and commercialization of natural energy resources and ocean-related research, technology, and industry in Hawaii. Its duties shall include:

- (1) Establishing, managing, and operating facilities that provide sites for:
  - (A) Research and development;
  - (B) Commercial projects and businesses utilizing natural resources, such as ocean water or geothermal energy;
  - (C) Those businesses engaged in other compatible scientific and technological investigations; and
  - (D) Businesses or educational facilities that support the primary projects and activities;
- (2) Providing support, utilities, and other services to facility tenants and government agencies;
- (3) Maintaining the physical structure of the facilities;
- (4) Promoting and marketing these facilities; [and]
- (5) Promoting and marketing the reasonable utilization of available natural resources[.]; and
- (6) Supporting ocean research and technology development projects that support national and state interests, use facilities and infrastructure in Hawaii, and foster potential commercial development.”

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 16, 1997.)

## ACT 194

H.B. NO. 1706

A Bill for an Act Relating to the Employment and Training Fund.

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

SECTION 1. The legislature finds that we are entering an important era during which greater cooperation is needed between employers and employees and their respective representatives in order to afford more employment opportunities and to reduce the likelihood of unemployment in Hawaii. When the unemployment insurance training fund was created in 1991, its primary objective was to promote job growth and reduce short-term unemployment through employee training. The fund has grown over a period of five years to more than \$8,000,000 and some relief is needed for employers.

Accordingly, we find it in the public interest to provide employers immediate economic relief.

SECTION 2. Section 383-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Effective January 1, 1992, through June 30, 1997, and from January 1, 1999, through December 31, 2000, 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.”

SECTION 3. The department of labor and industrial relations shall report to the legislature no later than twenty days prior to the convening of the Regular Session of 1999, on the advisability of continuing the moratorium under section 2 of this Act in employer contributions to the employment and training fund and justification thereto.

SECTION 4. New statutory material is underscored.

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

(Approved June 16, 1997.)

## ACT 195

H.B. NO. 1709

A Bill for an Act Relating to the Hawaii Teacher Standards Board.

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

SECTION 1. The purpose of this Act is to enable the Hawaii teacher standards board, through the department of education, to collect licensing or credentialing fees by mandatory payroll deductions.

SECTION 2. Section 302A-803, Hawaii Revised Statutes, is amended to read as follows:

“**[[§302A-803]] Powers and duties of the board.** In addition to establishing standards for the issuance of licenses and credentials, the board’s powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, repealing, or suspending the policies, standards, or rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations;
- (4) Submitting an annual report to the governor and the legislature on the board’s operations;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing and credentialing fees in accordance with chapter 91[;], including the collection of fees by means of mandatory payroll deductions, which shall subsequently be deposited into the state treasury and credited to the Hawaii teacher standards board revolving fund; and
- (7) Establishing penalties in accordance with chapter 91.’’

SECTION 3. Section 302A-805, Hawaii Revised Statutes, is amended to read as follows:

“**[[§302A-805]] Teachers; license or credential required; renewals.** [(a)] Beginning with the 1997-1998 school year, no person shall serve as a teacher in a public school without first having obtained a license or credential from the department under this subpart. All licenses issued by the department shall be renewable every five years, [provided] if the licensee continues to satisfy the board’s licensing standards. All credentials issued by the department shall be renewable every year, up to a maximum of three years[; provided],<sup>1</sup> if the credential holder continues to satisfy the board’s credentialing standards and actively pursues appropriate licensing.

[(b)] No person shall be issued a license or credential without having first paid the fee established by the board in accordance with chapter 91.]’’

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 16, 1997.)

**Note**

1. Comma should be underscored.

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

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

SECTION 1. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding a new section to be appropriately designated and to read as follows:

“§ . **Housing development.** The department is authorized to develop and construct single-family and multifamily units for housing native Hawaiians. The method of disposition, including rentals, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of such single-family and multifamily units shall be prescribed by rules adopted by the department pursuant to chapter 91.”

SECTION 2. Section 207 of the Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsections (a) and (b) to read as follows:

“(a) The department is authorized to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands within the following acreage limits per each lessee: (1) not more than forty acres of agriculture lands or lands used for aquaculture purposes; or (2) not more than one hundred acres of irrigated pastoral lands and not more than one thousand acres of other pastoral lands; or (3) not more than one acre of any class of land to be used as a residence lot; provided that in the case of any existing lease of a farm lot in the Kalanianaʻole Settlement on Molokai, a residence lot may exceed one acre but shall not exceed four acres in area, the location of such area to be selected by the department; provided further that a lease granted to any lessee may include two detached farm lots or aquaculture lots, as the case may be, located on the same island and within a reasonable distance of each other, one of which, to be designated by the department, shall be occupied by the lessee as the lessee’s home, the gross acreage of both lots not to exceed the maximum acreage of an agricultural, pastoral, or [aquaculture] aquacultural lot, as the case may be, as provided in this section. [The department is authorized to develop and construct multifamily units for housing native Hawaiians. The method of disposition, as well as the terms, conditions, covenants, and restrictions as to the use and occupancy of such multifamily units shall be prescribed by rules adopted by the department pursuant to chapter 91.]

(b) The title to lands so leased shall remain in the [[]State[]]. Applications for tracts shall be made to and granted by the department, under such regulations, not in conflict with any provisions of this title, as the department may prescribe. The department shall, whenever tracts are available, enter into such a lease with any applicant who, in the opinion of the department, is qualified to perform the conditions of such lease.”

SECTION 3. Section 208 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§208. Conditions of leases.** Each lease made under the authority granted the department by section 207 of this Act, and the tract in respect to which the lease is made, shall be deemed subject to the following conditions, whether or not stipulated in the lease:

- (1) The original lessee shall be a native Hawaiian, not less than eighteen years of age. In case two lessees either original or in succession marry, they shall choose the lease to be retained, and the remaining lease shall be transferred, quitclaimed, or canceled in accordance with the provisions of succeeding sections.
- (2) The lessee shall pay a rental of \$1 a year for the tract and the lease shall be for a term of ninety-nine years; except that the department may extend the term of any lease provided that the approval of any extension shall be subject to the condition that the aggregate of the initial ninety-nine year term and any extension granted shall not be for more than one hundred ninety-nine years.

- (3) The lessee may be required to occupy and commence to use or cultivate the tract as the person's home or farm or occupy and commence to use the tract for aquaculture purposes, as the case may be, within one year after the commencement of the term of the lease.
- (4) The lessee shall thereafter, for at least such part of each year as the department shall prescribe by rules, so occupy and use or cultivate the tract on the person's own behalf.
- (5) The lessee shall not in any manner transfer to, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree so to transfer, or otherwise hold, the person's interest in the tract. Such interest shall not, except in pursuance of such a transfer to or holding for or agreement with a native Hawaiian or Hawaiians approved of by the department, or for any indebtedness due the department or for taxes, or for any other indebtedness the payment of which has been assured by the department, including loans from other agencies where such loans have been approved by the department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet the person's interest in the tract or improvements thereon[.]; provided that a lessee may be permitted, with the approval of the department, to rent to a native Hawaiian or Hawaiians lodging either within the lessee's existing home or in a separate residential dwelling unit constructed on the premises.
- (6) Notwithstanding the provisions of paragraph (5), the lessee, with the consent and approval of the commission, may mortgage or pledge the lessee's interest in the tract or improvements thereon to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States; provided the loan secured by a mortgage on the lessee's leasehold interest is insured or guaranteed by the Federal Housing Administration, [Veterans Administration,] Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee such loans[.], or any acceptable private mortgage insurance as approved by the commission. The mortgagee's interest in any such mortgage shall be freely assignable. Such mortgages, to be effective, must be consented to and approved by the commission and recorded with the department.

Further, notwithstanding the authorized purposes of loan limitations imposed under section 214 of this Act and the authorized loan amount limitations imposed under section 215 of this Act, loans made by lending institutions as provided in this paragraph, insured or guaranteed by the Federal Housing Administration, [Veterans Administration,] Department of Veterans Affairs, or any other federal agency and their respective successors and assigns, may be for such purposes and in such amounts, not to exceed the maximum insurable limits, together with such assistance payments and other fees, as established under section 421 of the Housing and Urban Rural Recovery Act of 1983 which amended Title II of the National Housing Act of 1934 by adding section 247, and its implementing regulations, to permit the Secretary of Housing and Urban Development to insure loans secured by a mortgage executed by the homestead lessee covering a homestead lease issued under section 207(a) of this Act and upon which there is located a one to four family single family residence.

- (7) The lessee shall pay all taxes assessed upon the tract and improvements thereon. The department may pay such taxes and have a lien therefor as provided by section 216 of this Act.
- (8) The lessee shall perform such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the lease; provided that an original lessee shall be exempt from all taxes for the first seven years after commencement of the term of the lease.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 197**

H.B. NO. 1713

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, As Amended.

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

SECTION 1. Section 201 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§201. [[ ]Definitions. [ ] (a) [That when] When used in this title:

[(1) The term “commission”] “Commission” means the Hawaiian [Homes Commission;] homes commission.

[(2) The term “public land”] “Public land” has the same meaning as defined in paragraph (3) of subdivision (a) of section 73 of the Hawaiian Organic Act[;].

[(3) The term “fund”] “Fund” means the Hawaiian home loan fund[;].

[(4) The term] “State” means the State of Hawaii[;].

[(5) The term] “Hawaiian home lands” means all lands given the status of Hawaiian home lands under the provisions of section 204 of this title[;].

[(6) The term “tract”] “Tract” means any tract of Hawaiian home lands leased, as authorized by section 207 of this title, or any portion of [such] the tract[;].

[(7) The term] “Native Hawaiian” means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778[;].

[(8) The term “irrigated pastoral land”] “Irrigated pastoral land” means land not in the description of the agricultural land but which, through irrigation, is capable of carrying more livestock the year through than first-class pastoral land.

(b) Any term defined or described in section 347 or 351 of the Revised Laws of Hawaii of 1915, except a term defined in [subdivision] subsection (a) of this section, shall, whenever used in this title, have the same meaning as given by such definition or description.”

SECTION 2. Section 204.5 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:



“[[§204.5.]] **Additional powers.** In addition and supplemental to the powers granted to the department by law, and notwithstanding any law to the contrary, the department may:

- (1) With the approval of the governor, undertake and carry out the development of any Hawaiian home lands available for lease under and pursuant to section 207 of this Act by assembling these lands in residential developments and providing for the construction, reconstruction, improvement, alteration, or repair of public facilities therein, including, without limitation, streets, storm drainage systems, pedestrian ways, water facilities and systems, sidewalks, street lighting, sanitary sewerage facilities and systems, utility and service corridors, and utility lines, where applicable, sufficient to adequately service developable improvements therein, sites for schools, parks, off-street parking facilities, and other community facilities;
- (2) With the approval of the governor, undertake and carry out the development of available lands for homestead, commercial, and multipurpose projects as provided in section 220.5 of this Act, as a developer under this section or in association with a developer agreement entered into pursuant to this section by providing for the construction, reconstruction, improvement, alteration, or repair of public facilities for development, including, without limitation, streets, storm drainage systems, pedestrian ways, water facilities and systems, sidewalks, street lighting, sanitary sewerage facilities and systems, utility and service corridors, and utility lines, where applicable, sufficient to adequately service developable improvements therein, sites for schools, parks, off-street parking facilities, and other community facilities;
- (3) With the approval of the governor, designate by resolution of the commission all or any portion of a development or multiple developments undertaken pursuant to this section an “undertaking” under part III of chapter 39, Hawaii Revised Statutes; and
- (4) Exercise the powers granted under section 39-53, Hawaii Revised Statutes, including the power to issue revenue bonds from time to time as authorized by the legislature.

All provisions of part III of chapter 39, Hawaii Revised Statutes, shall apply to the department and all revenue bonds issued by the department shall be issued pursuant to the provisions of that part, except these revenue bonds shall be issued in the name of the department, and not in the name of the State.

As applied to the department, the term “undertaking” as used in part III of chapter 39 shall include a residential development or a development of homestead, commercial, or multipurpose projects under this Act. The term “revenue” as used in part III of chapter 39, shall include all or any portion of the rentals derived from the leasing of Hawaiian home lands or available lands, whether or not the property is a part of the development being financed.”

SECTION 3. Section 205 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“§205. [[]Sale or lease, limitations on.]] Available lands shall be sold or leased only [(1) in]:

- (1) In the manner and for the purposes set out in this title[, or (2) as]; or
- (2) As may be necessary to complete any valid agreement of sale or lease in effect at the time of the passage of this Act;

except that such limitations shall not apply to the unselected portions of lands from which the department has made a selection and given notice thereof, or failed so to

select and give notice within the time limit, as provided in paragraph (3) of section 204 of this title.”

SECTION 4. Section 206 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§206. [Other officers not to control Hawaiian home lands; exception.]** The powers and duties of the governor and the board of land and natural resources, in respect to lands of the State, shall not extend to lands having the status of Hawaiian home lands, except as specifically provided in this title.”

SECTION 5. Section 210 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§210. [Cancellation of leases.]** Whenever the department has reason to believe that any condition enumerated in section 208, or any provision of section 209, of this title has been violated, the department shall give due notice and afford opportunity for a hearing to the lessee of the tract in respect to which the alleged violation relates or to the successor of the lessee’s interest therein, as the case demands. If upon such hearing the department finds that the lessee or [his] the lessee’s successor has violated any condition in respect to the leasing of such tract, the department may declare [his] the lessee’s interest in the tract and all improvements thereon to be forfeited and the lease in respect thereto canceled, and shall thereupon order the tract to be vacated within a reasonable time. The right to the use and occupancy of the Hawaiian home lands contained in such tract shall thereupon revert in the department and the department may take possession of the tract and the improvements thereon.”

SECTION 6. Section 211 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§211. [Community pastures.]** The department shall, when practicable, provide from the Hawaiian home lands a community pasture adjacent to each district in which agricultural lands are leased, as authorized by the provisions of section 207 of this title.”

SECTION 7. Section 213.5 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**[§213.5.] Establishment of special fund.** A separate special fund of the department shall be established for each undertaking or part thereof financed from the proceeds of revenue bonds equally secured. Each fund shall be designated “department of Hawaiian home lands revenue bond special fund” and bear any additional designation the department deems appropriate to properly identify the fund. Any law to the contrary notwithstanding, including any provision of this Act, from and after the issuance of revenue bonds under and pursuant to the provisions of this Act and part III of chapter 39, Hawaii Revised Statutes, to finance an undertaking, all rentals, income, receipts, and other revenues derived by the department from the particular undertaking for which financing is undertaken shall be paid into the special fund established pursuant to this Act and applied in the manner and for the purposes set forth in part III of chapter 39, Hawaii Revised Statutes, and the proceedings authorizing the issuance of revenue bonds.”

SECTION 8. Section 215 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“**§215. Conditions of loans.** Except as otherwise provided in [ ]section 213(c)[ ], each contract of loan with the lessee or any successor or successors to the lessee’s interest in the tract or with any agricultural, mercantile, or aquacultural cooperative association composed entirely of lessees shall be held subject to the following conditions whether or not stipulated in the contract loan:

- (1) At any one time, the outstanding amount of loans made to any lessee, or successor or successors in interest, for the repair, maintenance, purchase, and erection of a dwelling and related permanent improvements shall not exceed fifty per cent of the maximum single residence loan amount allowed in Hawaii by the United States Department of Housing and Urban Development’s Federal Housing Administration (FHA), for the development and operation of a farm, ranch, or aquaculture operation shall not exceed \$50,000, except that when loans are made to an agricultural or aquacultural cooperative association for the purposes stated in section 214(a)(4), the loan limit shall be determined by the department on the basis of the proposed operations and the available security of the association, and for the development and operation of a mercantile establishment shall not exceed the loan limit determined by the department on the basis of the proposed operations and the available security of the lessee or of the organization formed and controlled by lessees; provided that upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall make the payment provided for by section 209(a), the amount of any such payment shall be considered as part or all, as the case may be, of any such loan to the successor or successors, without limitation as to the above maximum amounts; provided further that in case of the death of a lessee, or cancellation of a lease by the department, or the surrender of a lease by the lessee, the successor or successors to the tract shall assume any outstanding loan or loans thereon, if any, without limitation as to the above maximum amounts but subject to paragraph (3).
- (2) The loans shall be repaid in periodic installments, such installments to be monthly, quarterly, semiannual, or annual as may be determined by the department in each case. The term of any loan shall not exceed thirty years. Payments of any sum in addition to the required installments, or payment of the entire amount of the loan, may be made at any time within the term of the loan. All unpaid balances of principal shall bear interest at the rate of two and one-half per cent a year for loans made directly from the Hawaiian home loan fund, or at the rate of two and one-half per cent or higher as established by law for other loans, payable periodically or upon demand by the department, as the department may determine. The payment of any installment due shall be postponed in whole or in part by the department for such reasons as it deems good and sufficient and until such later date as it deems advisable. Such postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.
- (3) In the case of the death of a lessee the department shall, in any case, permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). In case of the cancellation of a lease by the department or the surrender of a lease by the lessee, the department

may, at its option declare all installments upon the loan immediately due and payable, or permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). The department may, in such cases where the successor or successors to the tract assume the contract of loan, waive the payment, wholly or in part, of interest already due and delinquent upon the loan, or postpone the payment of any installment thereon, wholly or in part, until such later dates as it deems advisable. Such postponed payments shall, however, continue to bear interest on the unpaid principal at the rate established for the loan. Further, the department may, if it deems it advisable and for the best interests of the lessees, write off and cancel, wholly or in part, the contract of loan of the deceased lessee, or previous lessee, as the case may be, where such loans are delinquent and deemed uncollectible. Such write off and cancellation shall be made only after an appraisal of all improvements and growing crops or improvements and aquaculture stock, as the case may be, on the tract involved, such appraisal to be made in the manner and as provided for by section 209(a). In every case, the amount of such appraisal, or any part thereof, shall be considered as part or all, as the case may be, of any loan to such successor or successors, subject to paragraph (1).

- (4) No part of the moneys loaned shall be devoted to any purpose other than those for which the loan is made.
- (5) The borrower or the successor to [his] the borrower's interest shall comply with such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the contract of loan.
- (6) The borrower or the successor to [his] the borrower's interest shall comply with the conditions enumerated in section 208, and with section 209 of this Act in respect to the lease of any tract.
- (7) Whenever the department shall determine that a borrower is delinquent in the payment of any indebtedness to the department, it may require such borrower to execute an assignment to it, not to exceed, however, the amount of the total indebtedness of such borrower, including the indebtedness to others the payment of which has been assured by the department of all moneys due or to become due to such borrower by reason of any agreement or contract, collective or otherwise, to which the borrower is a party. Failure to execute such an assignment when requested by the department shall be sufficient ground for cancellation of the borrower's lease or interest therein."

SECTION 9. Section 217 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

**“§217. [[E]jectment, when[:]; loan to new lessee for improvements.[]]**

In case the lessee or borrower or the successor to [his] an interest in the tract, as the case may be, fails to comply with any order issued by the department under the provisions of section 210 or 216 of this title, the department may [(1) bring]:

- (1) Bring action of ejectment or other appropriate proceedings[, or (2) invoke]; or
- (2) Invoke the aid of the circuit court of the State for the judicial circuit in which the tract designated in the department's order is situated. Such court may thereupon order the lessee or [his] the lessee's successor to comply with the order of the department. Any failure to obey the order of the court may be punished by it as contempt thereof. Any tract forfeited under the provisions of section 210 or 216 of this title may be

again leased by the department as authorized by the provisions of section 207 of this title, except that the value, in the opinion of the department, of all improvements made in respect to such tract by the original lessee or any successor to [his] an interest therein shall constitute a loan by the department to the new lessee. Such loan shall be subject to the provisions of this section and sections 215, except paragraph (1), and 216 to the same extent as loans made by the department from the Hawaiian loan fund.”

SECTION 10. Section 227 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“~~[[~~§227.~~]]~~ **Enterprise zones.** The department is authorized to participate in any federal or state program that permits the establishment of one or more enterprise zones on available lands, provided that participation in the program will result in economic benefits to native Hawaiians. The administration of the program shall be governed by rules adopted by the department in accordance with chapter 91, Hawaii Revised Statutes.”

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

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

(Approved June 16, 1997.)

## ACT 198

H.B. NO. 1715

A Bill for an Act Relating to Fraudulent Use of Credit Cards.

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

SECTION 1. The purpose of this Act is to address the fraudulent use of debit cards. With the implementation of the electronic benefits transfer (EBT) system for the issuance of the food stamps and financial assistance benefits, which includes the aid to families with dependent children (AFDC), general assistance (GA), and the aid to the aged, blind, and disabled (AABD) programs, an EBT card will be issued to all eligible public assistance and food stamp households. The EBT card is a debit card and the statutes are being amended to address the consequences of the fraudulent use of debit cards by broadening the existing definition of credit cards.

SECTION 2. Section 346-34, Hawaii Revised Statutes, is amended to read as follows:

“**§346-34 Frauds, penalties.** (a) Any recipient who buys or disposes of real property or any person who knowingly aids or abets a recipient in the purchase or sale of real property without the consent of the department of human services shall be guilty of [fraud.] a petty misdemeanor.

(b) If, at any time while the recipient of public assistance is receiving public assistance, the recipient’s living requirements are reduced and the recipient wilfully fails to report the reduction within thirty days from the date of the reduction to the department, or the recipient acquires from any source real property, funds, income, or other resources and wilfully fails to report the amount acquired together with the

source of the resources to the department within thirty days of receipt of the resources, or prior to spending or otherwise disposing of all or any portion of the resources, the recipient shall be guilty of [fraud and shall be subject to the penalties provided by this section.] a petty misdemeanor.

(c) No person shall knowingly obtain or attempt to obtain, or aid or abet another person in obtaining or attempting to obtain, any food commodity under a food distribution program or any food stamp or coupon under a food stamp plan[,] or an electronic benefits transfer card or similar debit-card-type device, to which the person or the other person is not entitled to receive or use under any law, or under any rule adopted pursuant to section [[346-14(11)[]] or chapter 91.

(d) No person shall knowingly give, sell, trade, or otherwise dispose of to another person not entitled to receive or use the same pursuant to any law, or pursuant to any rule adopted pursuant to section [[346-14(11)[]] or chapter 91:

- (1) Any food [commodity] exceeding \$300 in value received under a food distribution program[;] or any food of any value received under a food distribution program if that food is sold or traded by the recipient;
- (2) Any food stamp or coupon received under a food stamp plan; [or]
- (3) Any food commodity received wholly or partially in exchange for a food stamp or coupon received under a food stamp plan[.]; or
- (4) Any electronic benefits transfer card or similar debit-card-type device through which food stamp benefits may be obtained by the food stamp household.

(e) No person shall knowingly buy or give any other consideration in exchange for any food stamp or coupon issued under a food stamp plan or through any electronic benefits transfer card or similar debit-card-type device through which food stamp benefits may be obtained by the food stamp household except in compliance with any law or any rule adopted pursuant to section [[346-14(11)[]] or chapter 91.

(f) No person shall knowingly obtain or attempt to obtain emergency assistance under section 346-65 to which the person is not entitled. No person shall knowingly aid or abet another person in obtaining or attempting to obtain emergency assistance to which that other person is not entitled. No person shall expend emergency assistance granted to the person for other than the purpose approved by the department to eliminate or alleviate the emergency situation.

(g) No person shall knowingly transfer assets from that person's name to another person's or entity's name for the purpose of qualifying for public assistance under this chapter or chapter 346D. It shall be prima facie evidence of such a transfer if there was a transfer of assets for less than fair market value of the assets within the federally required time period, or "lookback" period, from the date of the application for public assistance.

(h) [Any] A person convicted under [this section] subsections (c), (d), (e), (f), or (g) shall be guilty of a misdemeanor; provided that [a];

- (1) A person convicted under subsection (d)(2) or (e) for an offense involving food stamps or coupons with a value which exceeds \$300 shall be guilty of a class C felony; [provided further that a] and
- (2) A person convicted under subsection (d)(2) or (e) for an offense involving food stamps [or], coupons [with a value which exceeds \$20,000], an electronic benefits transfer card, or a debit card shall be guilty of a class B felony[.] if the benefit to which the person is not entitled exceeds \$20,000.

Any portion of assistance obtained by any fraudulent device, and any assistance paid after receipt of resources which have not been reported to the department as required in this section shall be recoverable by the State for the use of the department as a

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debt due the State, or, restitution of the amount may be ordered by the court following conviction.

(i) The term "recipient" includes any person to whom a grant of public assistance is made by direct payment, and any person for whose use and benefit a grant of public assistance is made by payment to a relative or other person. Prosecution under this section shall not be considered an exclusive remedy but shall be in addition to any other criminal, civil, or administrative remedy or sanction authorized by law."

SECTION 3. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of "credit card" to read as follows:

""Credit card" means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value[, on credit]."

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 16, 1997.)

ACT 199

H.B. NO. 1716

A Bill for an Act Relating to the Disposition of Unclaimed Financial Assistance Benefits.

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

SECTION 1. The purpose of this Act is to revert to the State the balance of the financial assistance benefits of clients who pass away and who have no surviving family member receiving assistance in the same financial assistance case or upon abandonment of their electronic benefits transfer accounts.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§346- Unclaimed financial assistance balances in electronic benefits transfer accounts.** If there is a balance of financial assistance benefits in an electronic benefits transfer account, that balance shall revert back to the State upon the death of the client who has no surviving family member receiving assistance in the same financial assistance case or upon abandonment of the financial assistance account.

For purposes of this section, financial assistance benefits refer to:

- (1) Temporary assistance to families with minor dependents;
- (2) General assistance to households without minor dependents; or
- (3) Aid to the aged, blind, and disabled program.

A financial assistance account shall be considered abandoned when there is no debit transaction to the account for a period of ninety consecutive calendar days after the effective date of closure of the financial assistance case."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 200**

H.B. NO. 1721

A Bill for an Act Relating to Eligibility for Payment Programs.

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

SECTION 1. Section 346-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Minor dependents” means dependents living in the home of a specified adult, as defined by rules, in which the adult is the primary caretaker and the dependent is under eighteen or if between eighteen and nineteen, enrolled full-time in a program of secondary or equivalent level vocational or technical school, and is expected to complete the program before reaching age nineteen.”

SECTION 2. Section 346-1, Hawaii Revised Statutes, is amended by amending the definition of “exempt household” to read:

““Exempt household” means a household in which [the adult is:] all adult members or the minor parent who is head of a household, are exempt for one or more of the following reasons:

- (1) Ill, incapacitated, or disabled, as determined by the department on the basis of medical or other competent evidence;
- (2) [Sixty-five] Sixty years of age or older;
- (3) Needed in the household, as determined by the department, to care for another household member who is ill, incapacitated, or disabled;
- (4) [The] In a one adult household, the parent or other relative of a child who is not of school age and is personally providing care for the child, unless child care is provided by the department under this part;
- (5) Non-needy; or
- (6) A single parent responsible for the care and custody of a child under the age of [eight weeks.] six months.”

SECTION 3. Section 346-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of human services and its agents shall keep [such] records [as] that may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance, food stamps, or social services;



- (2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any [and all forms] form of public assistance, food stamps, medical assistance, or social services, including [but not limited to] disclosure by the department, of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding any [and all aspects] aspect of theft, fraud, deception, or overpayment in connection with any aspect of public assistance, food stamps, medical assistance, or social services; provided that disclosure by recipient agencies and personnel is permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;
- (3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount of public assistance, [such] the determination is to include [but not be limited to] verification of information provided by the recipient of public assistance, medical assistance, or food stamps, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services needed;
- (4) Disclosure to banks, financial institutions, or any other payor of a public assistance warrant or check of any [and all] information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;
- (5) Federal agencies responsible for the administration of federally assisted programs, [which] that provide assistance, in cash or in kind, for services, directly to individuals on the basis of need; and certification of receipt of [aid to families with dependent children] assistance to needy families with minor dependents to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted;
- (6) Employees acting within the scope and course of their employment of [such] recognized social welfare organizations as may be approved by the department;
- (7) Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an adult day care center, including [but not limited to] disclosure by the department, of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations;
- (8) Disclosure to the child support enforcement agency for obtaining or enforcing a child support order under chapter 576D; [and]
- (9) Purposes directly connected to and necessary for the career planning, job training, education, job placement, or employment of participants in the workfare program under part IX[.]; and
- (10) Disclosure of a recipient's residence and business address to law enforcement officers who request information if the information is needed for an official administrative, civil, or criminal law enforcement purpose to identify a recipient as a fugitive felon or parole violator, and in cases where the information is needed for an official purpose and

where the department has informed the recipient of the circumstances in which the recipient's address may be released under section 92F-19(a)(1), (3), or (4)."

SECTION 4. Section 346-29, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No applicant or recipient who is found guilty of fraudulently misrepresenting residence to obtain assistance in two or more states shall be entitled to public assistance under this chapter for ten years from date of conviction. No applicant or recipient shall be entitled to public assistance under this chapter who is a fugitive felon or who is in violation of a condition of probation or parole or has sufficient income or other resources to provide a standard above that provided in this chapter, or who is an inmate of any public institution [as long as the Social Security Act precludes the use of federal funds to provide public assistance to an inmate of such an institution], except that any inmate of a public institution who is otherwise eligible for medical assistance and who has been determined by the medical director of the institution as having a major illness or medical condition requiring the provision of medical care outside of the institution may receive assistance under this chapter. An inmate of [an] a public institution [mentioned in this section] or resident of a medical institution may apply for assistance to begin after the inmate's discharge from the institution. In determining the needs of an applicant or recipient for public assistance by the department, the department shall:

- (1) Disregard the amounts of earned or unearned income [and resources] as required or allowed by [the Social Security Act or other] federal acts[,] and other regulations, to receive federal [matching] funds and disregard from gross earned income twenty per cent plus \$200 and a percentage of the remaining balance of earned income consistent with federal regulations and other requirements;
- (2) Consider as net income in all cases the income as [the Social Security Act or other] federal acts [may] and other regulations require the department to consider for receipt of federal [matching] funds and may consider the additional income and resources as these acts [may] and regulations permit, now or in the future, to be considered;
- (3) [Disregard] For households with minor dependents, disregard a total of \$5,000 in assets and the value of one motor vehicle in determining the needs of persons for financial assistance; provided that the amount to be disregarded shall not exceed standards under the department's federally funded financial assistance programs. This paragraph shall not apply to persons eligible for Federal Supplemental Security Income benefits[.], aid to the aged, blind or disabled, or general assistance to households without minor dependents. In determining the needs of such persons, the department shall apply all the resource retention and exclusion requirements under the Federal Supplemental Security Income Program;
- (4) Apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a single person for medical assistance only;
- (5) Apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a family of two persons for medical assistance only and an additional \$250 for each additional person included in an application for medical assistance only;

- (6) Disregard amounts of emergency assistance granted under section 346-65;
- (7) Not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the [JOBS] first to work program of part XI, other than wages. Wages earned by a participant while participating in the [JOBS] first to work program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law;
- (8) Not consider as income or resources payment made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under Title I of the Civil Liberties Act of 1988, Public Law 100-383, which made restitution to individuals of Japanese ancestry who were interned during World War II;
- (9) Allow the community spouse of an individual residing in a medical institution to maintain countable resources to the maximum allowed by federal statutes or regulations with provisions for increases, as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree, without jeopardizing the eligibility of the institutionalized spouse for medical assistance;
- (10) Allow an individual residing in a medical institution to contribute toward the support of the individual's community spouse, thereby enabling the community spouse to maintain the monthly maximum income allowed by federal statutes or regulations, with provisions for increases as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree; and
- (11) Consider the transfer of assets from the applicant's name to another name within the specified time period as required by federal regulations, known as the "lookback" period, prior to the application for medical assistance for care in a nursing home or other long-term care facility. Pursuant to rules adopted under chapter 91, the director may attribute any assets that have been transferred within the required federal "lookback" period from the applicant if the director determines that transfer of certain assets was made solely to make the applicant eligible for assistance under this chapter."

SECTION 5. Section 346-53, Hawaii Revised Statutes, is amended to read as follows:

**"§346-53 Determination of amount of assistance.** (a) This subsection does not apply to general assistance[.] to households without minor dependents. The standard of need for families of given sizes shall equal the poverty level established by the federal government in 1993, prorated over a twelve-month period.

The assistance allowance provided shall be based on a percentage of the standard of need. For exempt households[.] and households in which all caretaker relatives are minors, living independently with minor dependents and attending school, the assistance allowance shall be set at sixty-two and one-half per cent of the standard of need. For all other households, the assistance allowance shall be set no higher than sixty-two and one-half per cent of the standard of need and set no lower than fifty per cent of the standard of need. The standard of need shall be determined by dividing the 1993 federal poverty level by twelve and rounding down the quotient. The remaining quotient shall be multiplied by the per cent as set by the director by rules pursuant to chapter 91 and the final product shall be rounded down to determine the assistance allowance[:]; provided that:

- (1) The department may reduce the assistance allowance as determined in this subsection for non-exempt households for the purpose of providing work incentives or services under part XI of this chapter;
- (2) No reduction shall be allowed that jeopardizes eligibility for or receipt of federal [matching] funds [under the Social Security Act; and];
- (3) Reductions in the assistance allowance shall be limited to no more than one per year[.]; and
- (4) No non-exempt household, which includes an adult who has received sixty cumulative months of temporary assistance to needy families with minor dependents, shall be eligible for an assistance allowance, unless authorized by federal regulations.

(b) The director shall determine the allowance for general assistance to households without minor dependents based upon the total amount appropriated for general assistance[,] to households without minor dependents, among other relevant factors.

(c) The director, pursuant to chapter 91, shall determine the rate of payment for the different levels of domiciliary care provided to recipients eligible either for Federal Supplemental Security Income, or public assistance in accordance with state standards, or both. The director shall provide for level of care payments as follows:

- (1) For those adult residential care homes classified as facility type I and type II the state supplemental payments shall be: [not]
  - (A) Not less than \$79.90 for level of care (LOC) I; [not]
  - (B) Not less than \$129.90 for LOC II; and [not]
  - (C) Not less than \$191.90 for LOC III;
- (2) For those adult residential care homes classified as facility type I, the state supplemental payment shall not exceed:
  - (A) \$284.90 for LOC I;
  - (B) \$369.90 for LOC II; and
  - (C) \$471.90 for LOC III;
 and
- (3) For those adult residential care homes classified<sup>1</sup> facility type II, the state supplemental payment shall not exceed:
  - (A) \$338.90 for LOC I;
  - (B) \$477.90 for LOC II; and
  - (C) \$579.90 for LOC III.

(d) The rate of payment at which level a recipient enters an adult residential care home licensed pursuant to section 321-15.6 shall remain the same for as long as the recipient resides in that adult residential care home. The rate of payment may be raised if the recipient's condition so requires, or by rule of the department in accordance with [this] subsection[;] (c); provided that:

- (1) Notwithstanding the rate of payment at the time of entry, the department shall ensure that the recipient shall receive the quality of care consistent with the level of care as determined by the department; and
- (2) If the operator does not provide the quality of care consistent with the needs of the individual as determined by and to the satisfaction of the department, the department may reduce the rate of payment, or adjust the level of care, or remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection [shall allow] allows the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator [thereof] is agreeable to the recipient remaining [therein], except where the recipient requires a higher level of

care than provided [thereby], or where the recipient no longer requires any domiciliary care.

[(d)] (e) The department shall pay rental and utility (to include gas, electricity, and water only) deposits once only for any person eligible for financial assistance by the department. However, under extraordinary circumstances as determined by the department, an additional rental deposit, utility deposit, or both, may be granted.

[(e)] (f) Any recipient may petition the department for additional assistance when the recipient's need is due to emergencies caused by seismic wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or fire determined by the director to have caused losses as to require and justify additional assistance from the State. In addition, any recipient may petition the department for additional assistance for the replacement or repair of household appliances. Such additional assistance shall be paid on an emergency basis, as determined by the department, to meet the cost of replacing or repairing household appliances. If the cost of repairs of household appliances is less than one-half the unit cost of the item, the department shall pay for the cost of repairs. If the cost of repairs of household appliances is more than one-half the unit cost of the item, the department shall replace the household appliance; provided that the replacement cost shall not exceed \$350. For the purposes of this subsection "household appliances" means a refrigerator or a range.

The department shall establish an emergency fund, not to exceed one per cent of total financial assistance from state funds required by this chapter in the previous fiscal year. The director shall adopt rules pursuant to chapter 91 for determining in which cases to grant lump sum payments to recipients petitioning for additional assistance.

[(f)] (g) The department shall include protective child care payment as a special needs item in the financial assistance standard for cases of child neglect or abuse requiring placement of a child in child care. The referral for protective child care payment shall be from the department's child welfare program and the rate of payment shall be set by the department.

[(g)] Notwithstanding any other law to the contrary, the director, subject to the availability of funds, shall develop and implement rules adopted pursuant to chapter 91 that allow the department to subtract income from the standard of need. The department may ratably reduce the difference between countable income and the standard of need to determine the assistance allowance.]

(h) The director shall adopt rules pursuant to chapter 91 to implement this section."

SECTION 6. Chapter 346, Part III, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**"PART III. GENERAL ASSISTANCE  
TO HOUSEHOLDS WITHOUT MINOR DEPENDENTS"**

SECTION 7. Section 346-71, Hawaii Revised Statutes, is amended to read as follows:

**"§346-71 General assistance[.] to households without minor dependents.**  
(a) The department of human services is authorized to administer and provide public assistance to eligible persons who are disabled, [or have dependent children in the home] who are not otherwise provided for under this chapter, and who are unable to provide sufficient support for themselves or those dependent upon them; provided that such persons:

- (1) Have first been determined ineligible for a comparable federally funded financial assistance program;
- (2) Are bona fide residents of this State; and
- (3) Have furnished to the department a social security account number for each member of the assistance unit or verification that an application was made with the Social Security Administration for a social security account number for each member of the assistance unit.

[In family groups in which there are children, income and resources of both parents shall be considered available for each other and the support of their children.]

Persons who meet the categorical criteria for eligibility, but fail to satisfy income and resource criteria adopted by the department [for eligibility under the comparable federally funded financial assistance program] shall not be eligible for general assistance[.] to household without minor dependents. The failure of any adult member of the assistance unit to comply with the requirements or conditions of general assistance to households without minor dependents shall exclude the entire assistance unit from receiving financial assistance. However, when the adult member is disqualified for not meeting the work requirement, the assistance unit shall not be disqualified if the assistance unit was formed after the failure to meet the work requirement occurred. "Assistance unit" as the term is used in this section means persons whose needs, income, and assets are considered in the financial assistance payment and their dependents.

For purposes of determining whether persons seeking assistance are bona fide residents of this State, the department of human services shall consider, but is not limited to considering, the following factors: [enrollment]

- (1) Enrollment and receipt of welfare benefits from another jurisdiction; [physical]
- (2) Physical presence in the State; [maintenance]
- (3) Maintenance of a place of residence in the State; [the]
- (4) The availability of furnishings and household and personal effects sufficient to lead a reasonable person to conclude that the place of residence is more than a public accommodation; [qualification]
- (5) Qualification as to residence for purposes of voting in the State; [change]
- (6) Change in vehicle operation license; [vehicle]
- (7) Vehicle registration; [enrollment]
- (8) Enrollment of children in local schools; [bank] and
- (9) Bank accounts in this State or any other jurisdiction.

(b) A person between eighteen and sixty-five years of age with a disability shall be eligible for general [for not more than twenty-four months,] assistance to households without minor dependents if the person:

- (1) Is determined to be needy in accordance with standards established by this chapter and the rules adopted under subsection [(f);] (d);
- (2) Is unable to meet the disability requirements established by the [Federal] federal Supplemental Security Income Program or its successor agency; and
- (3) [(A)] Is unable to engage in any substantial gainful employment because of a determined and certified physical or mental disability.
  - (A) A determination and certification of physical disability shall only be made by a board of licensed [physician.] physicians designated and paid for by the department.
  - (B) A determination and certification of mental disability shall be made by a board of licensed psychologists or licensed [physician] physicians whose specialty is in psychiatry [or by a licensed

psychologist. The department may require that such determination and certification be by a psychiatrist or a psychologist designated and paid by the department;]. This board shall also be designated and paid for by the department;

- [(B) When] (C) If a determination of mental disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person's choice;
- [(C) When] (D) If a determination of physical disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person's choice; and
- [(D)] (E) Any person, to continue to be certified as mentally or physically disabled, shall be reevaluated annually as provided by this section and more frequently as required by the department.

As used in this subsection:

“Substantial” [as the term is used herein] means at least [thirty] twenty hours of work per week.

“With a disability” or “having a disability” [as the terms are used in this section] means a disability which extends for a period of over [thirty] sixty days.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be required to accept the services as a further condition of eligibility for the receipt of general assistance to households without minor dependents under this section. An assistance unit shall be determined ineligible for general assistance to households without minor dependents if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment, and participate in public work projects as described in section 346-31, and in public employment projects as described in section 346-102.

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

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

“Children” as used in this section means persons who:

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

- (2) Are in need, and do not have sufficient income or other resources to provide health care and support to maintain a standard consistent with this chapter;
- (3) Have not attained the age of eighteen years; provided that a child between the ages of eighteen and nineteen years shall be eligible for assistance under this section, if the child is a full-time student enrolled in a public or private secondary school, or equivalent level of vocational or technical school; and further provided that the child is expected to complete the program of the secondary school or vocational or technical school before reaching age nineteen; and
- (4) Are living in a home with their father, mother, or hanai parents in a place of residence maintained by such relative as the relative's own home.

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

(d) The department shall further require in addition to the conditions and requirements stated in subsection (c), that persons who are physically fit, able to work, and employable shall as a condition to receiving general assistance, register for work on public work projects and accept an assignment to work under section 346-31 or accept such employment as may be offered to them by the department under section 346-102 or by an employer. The term "public work projects" includes any kind of labor under the department of accounting and general services of the State or the department of public works of any county, or under any other department, board, commission, or agency of the State or any county. All such agencies may employ persons registering under this section. Payment for the work shall not be made from the funds of the agency employing such persons but shall be made from the funds of the department. The department shall promulgate such rules and regulations as it deems necessary to enforce and carry out this section.

(e) (c) Applicants and recipients shall be required to satisfy all applicable provisions of this section. Recipients disqualified for failure to comply with any of the requirements under [the provisions of] this section shall be excluded from general assistance to households without minor dependents for a period not to exceed twelve months.

(d) The allowance for general assistance to households without minor dependents shall not exceed sixty-two and one-half per cent of the standard of need.

[(f)] (e) Within the limitations of this section, the department shall by rules adopted pursuant to chapter 91, determine:

- (1) The allowance for general assistance to households without minor dependents based upon the total amount appropriated for general assistance[;] to households without minor dependents;
- (2) A method for determining assistance amounts; and
- (3) Other necessary provisions to implement general assistance[.] to households without minor dependents."

SECTION 8. Section 346-72, Hawaii Revised Statutes, is amended to read as follows:

**"§346-72 Applications.** Applications for general assistance to households without minor dependents shall be made by the applicant or by someone acting in the applicant's behalf in the manner, place, and form prescribed by the department of human services."

SECTION 9. Act 300, Session Laws of Hawaii 1996, is amended by amending section 6 to read as follows:



## ACT 201

“SECTION 6. This Act shall take effect upon its approval, and shall be repealed on June 30, 1998[.]; provided that sections 346-29(b) and 346-53(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on July 2, 1996.”

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

SECTION 11. This Act shall take effect on July 1, 1997, and except for section 7, shall be repealed on June 30, 1998; provided that:

- (1) The definition of “exempt household” in section 346-1, Hawaii Revised Statutes;
- (2) The title to part III, chapter 346, Hawaii Revised Statutes; and
- (3) Section 346-10, Hawaii Revised Statutes;

shall be reenacted in the form in which they read on the day before the approval of this Act; and provided further that sections 346-29 and 346-53 shall be reenacted in the form in which they read on July 2, 1996.

(Approved June 16, 1997.)

### Note

1. Prior to amendment “as” appeared here.

## ACT 201

H.B. NO. 1724

A Bill for an Act Relating to Medical Assistance.

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

SECTION 1. Section 346-37, Hawaii Revised Statutes, is amended to read as follows:

“**§346-37 Recovery of payments[.] and costs of medical assistance.** (a) If a recipient under this chapter dies leaving an estate and does not have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or any designated heir, the department [may file] shall have a valid claim against the estate for the amount of social services overpayments, financial assistance overpayments, or burial payments granted[, and the claim shall be allowed]. The department shall file a claim against the estate of a deceased recipient of medical assistance for the amount of medical assistance granted, only if the recipient was age fifty-five or over when such medical assistance was received and there is no surviving spouse, or surviving child who is under twenty-one years of age, or blind, or disabled. The department shall file a claim against the estate of a recipient of medical assistance who was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution only if there is no surviving spouse or surviving child who is under twenty-one years of age, or blind, or disabled.

(b) If any portion of any public assistance, including medical assistance, food stamps, or burial payment, was obtained by any fraudulent device, including but not limited to those [mentioned in] under section 346-34, or if any public assistance, including medical assistance, food stamps, or burial payment, was furnished or provided after receipt of income or resources which were not reported to the department as required by this chapter or by the department, the department may file

a claim against the estate of the deceased recipient notwithstanding [the provisions in] subsection (a).

(c) If the department has provided medical assistance or burial payment to a person who was injured, suffered a disease, or died under circumstances creating a tort or other liability against [some] a third person, the department shall have a right to recover from the third person an amount not to exceed the [amount] costs of medical assistance or burial payment furnished or to be furnished by the department. The department shall as to this right be subrogated to any right or claim that a claimant, defined in subsection (k), has against [such] the third person for special damages to the extent of the [amount] costs of medical assistance or burial payment furnished or to be furnished by the department.

To enforce [such] its rights, the department may intervene or join in any action or proceeding brought by a claimant against the third person who is liable. If [such] the action or proceeding is not commenced within six months after the first day on which medical assistance or burial payment is furnished by the department in connection with the injury, disease, or death involved, the department may institute and prosecute legal proceedings against the third person who is liable for the injury, disease, or death, in a state court, either alone (in its own name or in the name of a claimant) or in conjunction with the claimant.

(d) [When] If a claim is made by the claimant under subsection (c) against a third person, the claimant shall give timely notice of [such] the action to the department. An attorney representing a claimant shall make reasonable inquiry as to whether the claimant has received or is receiving medical assistance related to the incident involved in the action from the department. Upon obtaining a judgment or reaching a settlement through negotiation or legal proceedings, but before the release of any award or settlement proceeds to any person:

- (1) The claimant's attorney, if the attorney has received actual notice from the department of a lien or if the attorney has reason to know that a lien exists, or
- (2) The claimant or the claimant's heirs, representatives, or beneficiaries, if not represented by an attorney who has received actual notice of the lien,

shall notify the department immediately.

(e) [Where] If third party liability is found to exist, or [where] if the issue of [such] third party liability is settled or compromised without a finding of liability, regardless of who institutes legal proceedings or seeks other means of recovering, the department shall have a lien in the amount of the costs of medical assistance [and] or burial payment made against the proceeds from special damages awarded in a suit or settlement. The lien shall attach as provided<sup>1</sup> by subsection (f). [Where] If a notice of lien is properly served upon the attorney representing the claimant as provided in subsection (f), that attorney shall satisfy the lien prior to disbursing any of the proceeds of the suit or settlement to the attorney's client. [Where] If a notice of lien is properly served upon the third person [described in] under subsection (c), the third person's agent or attorney, or upon the third person's insurance company, as provided in subsection (f), it shall be the responsibility of the third person to satisfy the lien prior to disbursing any of the proceeds to the claimant's attorney. This section is not intended to restrict or diminish the right of the department to settle or compromise its subrogation or lien rights [provided herein] under this section .

(f) The lien of the department for reimbursement of costs of medical assistance or burial payments[, provided in] under subsection (e), shall not attach unless [and until] a notice of lien is served upon the claimant's attorney or upon the third person, the third person's agent, attorney, or insurance company. The method of service shall be by registered mail, return receipt requested, or by delivery of the notice of lien personally to the individuals referred to. Service by registered mail is

complete upon receipt. The notice of lien shall state the name of the injured, diseased, or deceased person, the amount of the lien, and the date of the accident or incident which caused the injuries, disease, or death which necessitated the department's medical assistance or burial payments. [Where] If the notice of lien is served upon the claimant's attorney, the notice of lien shall state that the claimant's attorney shall pay the amount of the lien from the proceeds of any judgment, settlement, or compromise based on the incident or accident. [Where] If the notice of lien is served upon the third person [described in] under subsection (c), the third person's agent, attorney, or insurance company, the notice of lien shall state that the third person shall satisfy the lien prior to disbursing any of the proceeds to the claimant or to the claimant's attorney. A notice of lien may be amended from time to time until extinguished, each amendment taking effect upon proper service.

(g) [In the event that] If there is a dispute between the claimant, the claimant's agent, or the claimant's attorney, and the department concerning the existence of the lien or the amount of the lien, the claimant, the claimant's agent, or the claimant's attorney may request in writing a hearing on the dispute. After receipt by the department of [such] a written request, the department shall conduct an administrative hearing within a reasonable period of time. [The provisions of chapter] Chapter 91 shall apply to [such a] the hearing. Funds sufficient to extinguish the lien rights of the department shall be either retained by the person or entity served with the notice of lien, or shall be paid to the department pending its decision.

(h) Upon the recovery of any claim as provided in this section, the amount [so] recovered shall be paid into the treasury of the State, and if the amount for which claim was paid was in part from federal funds, the proper portion thereof shall be paid by the director of finance into the treasury of the United States, and the director of finance shall report the payment to the department.

(i) Any person failing to satisfy the lien as required by subsections (e) and (f), although able to do so from the proceeds of [such] the suit or settlement, shall be personally liable to the department for any damage proximately caused to the department by such failure.

(j) No action taken by the department in connection with the rights [afforded] under this section shall [operate to] deny to the claimant the recovery for that portion of the claimant's damage not covered [hereunder] under this section .

(k) For purposes of this section, the term "claimant" shall include an injured or diseased person, the person's guardian, or the personal representative, estate, dependents, or survivors, of the deceased person.

(l) The department may agree with a provider or medical care insurer for the provision of medical care services or medical assistance to any claimant, and the agreement may provide for the department to be the exclusive entity authorized to recover all costs of medical assistance rendered to a claimant. The department may recover all costs through the use of the lien procedures established by this section.

(m) For purposes of this section, the term "costs of medical assistance" furnished or to be furnished by the department shall include:

- (1) The value or cost of medical care services provided directly by the department;
- (2) The amount paid by the department to a provider for medical care services rendered or to be rendered;
- (3) The value or cost of medical care services rendered or to be rendered by a provider that has received the equivalent of an insurance benefit, capitation rate, and other fee or like charge paid by the department or by a medical care insurer to provide for medical care services."

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

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

(Approved June 16, 1997.)

**Note**

1. Prior to amendment "in" appeared here.

**ACT 202**

H.B. NO. 1731

A Bill for an Act Relating to Hawaii State Public Library System.

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

SECTION 1. Section 26-12, Hawaii Revised Statutes, is amended to read as follows:

**“§26-12 Department of education.** The department of education shall be headed by an executive board to be known as the board of education.

Under policies established by the board, the superintendent shall administer programs of education and public instruction throughout the State, including education at the preschool, primary, and secondary school levels, adult education, school library services, health education and instruction (not including dental health treatment transferred to the department of health), and such other programs as may be established by law. The state librarian,<sup>1</sup> under policies established by the board of education, shall be responsible for the administration of programs relating to public library services and transcribing services for the blind.

The functions and authority heretofore exercised by the department of education<sup>3</sup> (except dental health treatment transferred to the department of health), library of Hawaii, Hawaii county library, Maui county library, and the transcribing services program of the bureau of sight conservation and work with the blind, as heretofore constituted are transferred to the public library system established by this chapter.

The management contract between the board of supervisors of the county of Kauai and the Kauai public library association shall be terminated at the earliest time after November 25, 1959, permissible under the terms of the contract and the provisions of this paragraph shall constitute notice of termination, and the functions and authority heretofore exercised by the Kauai county library as heretofore constituted and the Kauai public library association over the public libraries in the county of Kauai shall thereupon be transferred to the public library system established by this chapter.

The management contracts between the trustees of the library of Hawaii and the Friends of the Library of Hawaii, and between the library of Hawaii and the Hilo library and reading room association, shall be terminated at the earliest time after November 25, 1959, permissible under the terms of the contracts, and the provisions of this paragraph shall constitute notice of termination.

Upon the termination of the contracts, the State or the counties shall not enter into any library management contracts with any private association; provided that in providing library services the board of education may enter into contracts approved by the governor for the use of lands, buildings, equipment, and facilities owned by any private association.

[There shall be within the public library system] Notwithstanding any law to the contrary, the board of education may establish, specify the membership number and quorum requirements for, appoint members to, and disestablish a commission in each county to be known as the library advisory commission [for the county], which

## ACT 203

shall in each case sit in an advisory capacity to the board of education on matters relating to public library services in [the] their respective county. [Each commission shall consist of not less than seven and no more than eleven members.]”

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 16, 1997.)

### Notes

1. Should not be underscored.
2. Prior to amendment “public instruction” appeared here.
3. Should be underscored.

## ACT 203

H.B. NO. 1732

A Bill for an Act Relating to Recordation.

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

SECTION 1. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§501- Equipment modernization fees.** Notwithstanding any other law to the contrary, all fees received for the recording of documents at the bureau of conveyances, other than the special mortgage recording fee established pursuant to section 431P-16, shall be remitted to the registrar of conveyances. Upon receipt of remittances under this section, the registrar of conveyances shall deposit \$2 for each document recorded to the credit of the bureau of conveyances equipment modernization special fund established under section 502- , and shall deposit the remaining balance to the credit of the state general fund.”

SECTION 2. Chapter 502, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“**§502- Equipment modernization fees.** Notwithstanding any other law to the contrary, all fees received for the recording of documents at the bureau of conveyances, other than the special mortgage recording fee established pursuant to section 431P-16, shall be remitted to the registrar of conveyances. Upon receipt of remittances under this section, the registrar of conveyances shall deposit \$2 for each document recorded to the credit of the bureau of conveyances equipment modernization special fund established under section 502- , and shall deposit the remaining balance to the credit of the state general fund.

**§502- Bureau of conveyances equipment modernization special fund.**

(a) There is established in the state treasury the bureau of conveyances equipment modernization special fund, into which shall be deposited the revenues remitted pursuant to sections 501- and 502- , interest earnings, grants, donations, and appropriations from the legislature.

(b) Moneys in the bureau of conveyances equipment modernization special fund shall be used by the bureau of conveyances for the following purposes:

- (1) Planning, design, construction, and acquisition of equipment, furnishings, and software necessary for the development of the recording system described in this chapter and chapter 501;
- (2) Operating, maintaining, and improving the recording system described in this chapter and chapter 501; and
- (3) Any other purpose deemed necessary by the bureau of conveyances for the purpose of planning, improving, developing, operating, and maintaining the recording system described in this chapter and chapter 501.”

SECTION 3. There is appropriated out of the bureau of conveyances equipment modernization special fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 1997-1998 to be expended by the department of land and natural resources for the purposes of this Act.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1997, and shall be repealed on June 30, 2002.

(Approved June 16, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 204**

H.B. NO. 1745

A Bill for an Act Relating to Boating Enforcement.

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

SECTION 1. Section 200-14, Hawaii Revised Statutes, is amended to read as follows:

**“§200-14 Violation of rules; penalty.** (a) 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 [\$2,000] \$1,000 or less than \$50 for each violation, 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 [\$2,000] \$1,000 or less than \$50 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.] thirty days.

(b) Notwithstanding the provisions of subsection (a) establishing a fine of not more than [\$2,000,] \$1,000 or less than \$50 for each violation, any person who violates any rule adopted [and published] by the department relating to unauthorized discharge, dumping, or abandoning, in any state boating facility or state waters, of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, shall be fined not more than \$10,000 for each day of violation, and any vessel, the agents, owner, or crew of which violate [such] the rules of the department shall be fined not more than \$10,000 for each day of violation.”

## ACT 205

SECTION 2. Section 200-25, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§200-25]]~~ **Fines and penalties.** Any person violating [any of the provisions of] this part, or [of the rules] any rule adopted pursuant to this part, shall be [guilty of a misdemeanor;] fined not less than \$50 and not more than \$1,000 or sentenced to a term of imprisonment of not more than thirty days, or both, 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 any vessel, including[, ] but not limited to[, ] any thrill craft or vessel engaged in parasailing[, ] or water sledding, in the waters of the State for a period of not more than [two years.] thirty days.”

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 16, 1997.)

## ACT 205

H.B. NO. 1746

A Bill for an Act Relating to Duties of the Kaho‘olawe Island Reserve Commission.

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

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

“**§6K-6 Responsibilities and duties of the commission.** The [commission shall:] general administration of the island reserve shall rest with the commission. In carrying out its duties and responsibilities, the commission:

- (1) [Establish] Shall establish criteria, policies, and controls for permissible uses within the island reserve;
- (2) [Approve] Shall approve all contracts for services and rules pertaining to the island reserve;
- (3) [Provide] Shall provide advice to the governor, the department, and other departments and agencies on any matter relating to the island reserve;
- (4) [Provide] Shall provide advice to the office of planning and the department of the attorney general on any matter relating to the federal conveyance of Kaho‘olawe;
- (5) [Enter] May enter into curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices for the purposes stated in section 6K-3;
- (6) [Carry] Shall carry out those powers and duties otherwise conferred upon the board of land and natural resources and the land use commission with regard to dispositions and approvals pertaining to the island reserve. All powers and duties of the board of land and natural resources and the land use commission concerning dispositions and approvals pertaining to the island reserve are transferred to the commission;

- (7) [Carry] Shall carry out those powers and duties concerning the island reserve otherwise conferred upon the county of Maui by chapter 205A. The powers and duties of the county of Maui and its agencies concerning coastal zone [disposition] dispositions and approvals pertaining to the island reserve are transferred to the commission; [and]
- (8) Shall carry out those powers and duties concerning the island reserve otherwise conferred upon the island burial councils and the department with regard to proper treatment of burial sites and human skeletal remains found in the island reserve;
- [(8)] (9) [Adopt] Shall adopt rules in accordance with chapter 91 that are necessary for the purposes of this chapter and shall maintain a record of its proceedings and actions[.]; and
- (10) May delegate to the executive director or employees of the commission, by formal commission action, such power and authority vested in the commission by this chapter as the commission deems reasonable and proper for the effective administration of this chapter.”

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

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

(Approved June 16, 1997.)

## ACT 206

H.B. NO. 1752

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, or industrial lease, may:

- (1) [modify] Modify or eliminate any of the restrictions specified in subsection (a);
- (2) [extend] Extend or modify the fixed rental period of the lease; or
- (3) [extend] Extend the term of the lease

to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, Department of Veterans Affairs, Small Business Administration, Farmers Home Administration, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or any other federal mortgage lending agency qualified to do business in the State, and their respective successors and assignees, or to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates; provided that the private lender shall be qualified to do business in the State; provided further that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;



- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) [The rental shall not be less than the rental for the preceding term;] In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening; and
- (4) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.”

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 16, 1997.)

**ACT 207**

H.B. NO. 1753

A Bill for an Act Relating to the Hawaii Historic Preservation Special Fund.

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

SECTION 1. 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, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and 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 counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the counties 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 legislature detailing the accomplishments of the year [and], recommendations for changes in the state plan or future programs relating to historic preservation[.]; and an accounting of all income, expenditures, and the fund balance of the Hawaii historic preservation special fund;
- (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;
- (15) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- (16) Development and adoption, in consultation with the [Office] office of Hawaiian [Affairs] affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments.’’

SECTION 2. Section 6E-16, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established a Hawaii historic preservation special fund into which shall be deposited the following moneys:

- (1) Appropriations by the legislature to the special fund; [and]
- (2) Gifts, donations, and grants from public agencies and private persons[.]; and
- (3) All proceeds collected by the department derived from historic preserve user fees, historic preserve leases or concession fees, or the sale of goods.

All interest earned or accrued on moneys deposited in the fund shall become part of the fund. The fund shall be administered by the department [of land and natural resources]; provided that the department may contract with a public or private agency to provide the day-to-day management of the fund.

(b) The department may expend moneys from the fund to replenish goods, to produce public information materials, and to provide financial assistance to public agencies and private agencies in accordance with chapter 42D involved in historic preservation activities other than those covered by section 6E-9.’’

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

SECTION 4. This Act shall take effect on July 1, 1997.

(Approved June 16, 1997.)

## ACT 208

H.B. NO. 1757

A Bill for an Act Relating to Concessions on Public Property.

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

SECTION 1. The legislature finds that the awarding of contracts for parking lots on public property is not adequately addressed in existing statutes.

The purpose of this Act is to include parking lots on public property within the definition of the word "concession" in chapter 102, Hawaii Revised Statutes.

SECTION 2. Section 102-1, Hawaii Revised Statutes, is amended to read as follows:

**"§102-1 Definition.** The word "concession" as used in this chapter means the grant to a person of the privilege to [conduct]:

- (1) Conduct operations [which] that are essentially retail in nature, involving the sale of goods, wares, merchandise, or services to the general public, such as restaurants, cocktail lounges, soda fountains, and retail stores, in or on buildings under the jurisdiction of any government agency[.]; and
- (2) Operate a parking lot on property owned or controlled by the State with the exception of buildings, facilities, and grounds operated by or otherwise under the jurisdiction of the department of education."

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 16, 1997.)

## ACT 209

H.B. NO. 1768

A Bill for an Act Relating to the Transfer of Land to the Department of Hawaiian Home Lands.

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

SECTION 1. Act 95, Session Laws of Hawaii 1996, is amended by amending section 2 to read as follows:

"SECTION 2. All present title-holders of the lands of the public land trust, as defined in section 10-2, Hawaii Revised Statutes, and sugarcane lands referred to in article XII, section 1 of the constitution of the State of Hawaii, covering proposed development of housing projects known as the Villages of Laiopua [(TMK: (3)-7-4-8:17 (portion)] (TMK: (3)-7-4-21:09 (Village 3)) in Kealakehe, Hawaii, and the Villages of Kapolei [(TMK: 9-1-16:61, 62, 65, 66, 67 and 68)] (TMK: (1)-9-1-16:61) on Oahu under section 10-13.6, Hawaii Revised Statutes, shall, as grantors, within one year of the effective date of this Act, execute instruments of conveyance as may be necessary and proper to the department of Hawaiian home lands in trust, as grantee, to convey full title to these lands and improvements in fee simple, in

consideration of which the department of Hawaiian home lands shall pay just compensation to the grantors at fair market value.”

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 16, 1997.)

## ACT 210

H.B. NO. 1796

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-50, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The corporation may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

- (1) [Exclusively from] ~~From~~ the income and revenues of the housing project financed with the proceeds of the bonds, or with the proceeds together with a grant from the federal government in aid of the project;
- (2) [Exclusively from] ~~From~~ the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of the bonds;
- (3) From its revenues generally; or
- (4) [With respect only to bonds issued pursuant to section 201E-50.6, exclusively from] ~~From~~ the income and revenues derived from the sale of land or from both land and improvements thereon, serviced by infrastructure financed from the proceeds of the bonds.”

SECTION 2. Section 201E-51, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The bonds shall bear interest at such [rate or] rates payable at such [time or] times as the corporation may, with the approval of the governor, determine except for deeply discounted bonds [which] that are subject to redemption or retirement at their accreted value; provided that the discounted value of [such] the bonds shall not exceed ten per cent of any issue; and provided further that no such bonds may be issued without the [prior] approval of the director of finance and the governor. Notwithstanding any other law to the contrary, the corporation may, subject to the approval of the director of finance and the governor, issue bonds pursuant to section 201E-50.6, in which the discounted value of the bonds exceeds ten per cent of the issue.”

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 16, 1997.)

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

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

SECTION 1. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

**“§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 age 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:
  - (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;
  - (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;
  - (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 service as an investigator of the department of the attorney general;
  - (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 service as a narcotics enforcement investigator;
  - [(E) After June 30, 1992, if the member has at least ten years of credited service, a part of which is credited as a corrections officer or narcotics enforcement investigator; provided the member is employed with the department of public safety, is promoted or accepts a position as a public safety investigations staff investigator, and retires from that department;
  - (F)] ~~(E)~~ After December 31, 1993, 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 water safety officer; and
  - [(G)] ~~(F)~~ After June 30, 1994, if the member has at least ten years of credited service, [a part] of which [is] the last five or more years prior to retirement are credited service as a public safety investigative staff investigator [and the member is employed with the department of public safety and retires from that department]; then for each year of 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, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty

per cent of the member's average final compensation. If the member has not attained age 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 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, public safety investigations staff investigator, sewer worker, or water safety officer, 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] a refund [thereof] as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest; or
- (3) If the member has credited service as a judge, an elective officer, or the chief clerk, 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, 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 that 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 the 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 in excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation."

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 16, 1997.)

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

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

SECTION 1. Section 88-75, Hawaii Revised Statutes, is amended to read as follows:

**“§88-75 Ordinary disability retirement.** Upon [the] application of a member in service or on leave without pay, or [of the head of the member's department,] the person appointed by the family court as guardian of an incapacitated member, any member who has [had] ten or more years of credited service shall be retired by the board of trustees on an ordinary disability retirement allowance if the medical board after a medical examination of the member certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

Retirement shall become effective upon the date specified by the board, which [date] shall be no earlier than thirty days after the date [of filing of] the application[.] is filed.”

SECTION 2. Section 88-77, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Upon application of a member, or [of the head of the member's department,] the person appointed by the family court as guardian of an incapacitated member, any member who has been permanently incapacitated as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on the member's part, may be retired by the board of trustees for service-connected total disability provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer's report of the accident submitted to the director of labor and industrial relations;
- (2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workers' compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of the service performed by the member resulting in the member's disability and that the disability was not the result of wilful negligence on the part of the member; and
- (4) The medical board certifies that the member is incapacitated for gainful employment and that the member's incapacity is likely to be permanent.

(b) In the case of firefighters, police officers, and sewer workers, the effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the result of some occupational hazard for the purpose of determining total disability retirement under this section.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in permanent incapacity to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition."

SECTION 3. Section 88-79, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Upon application of a member, or [of the head of the member's department,] the person appointed by the family court as guardian of an incapacitated member, any member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on the member's part, may be retired by the board of trustees for service-connected occupational disability provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer's report of the accident submitted to the director of labor and industrial relations;
- (2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workers' compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of the service performed by the member resulting in the member's disability and that the disability was not the result of wilful negligence on the part of the member; and
- (4) The medical board certifies that the member is incapacitated for the further performance of duty[, ] and that the member's incapacity is likely to be permanent.

(b) In the case of firefighters, police officers, and sewer workers, the effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the result of some occupational hazard for the purpose of determining occupational disability retirement under this section.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in permanent incapacity to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition."



SECTION 4. Section 88-84, Hawaii Revised Statutes, is amended to read as follows:

“**§88-84 Ordinary death benefit.** (a) Upon receipt of proper proof of a member’s death occurring in service[,] or while on authorized leave without pay, there shall be paid to the member’s designated beneficiary an ordinary death benefit consisting of:

- (1) The member’s accumulated contributions and, if no pension is payable under section 88-85, [in addition thereto] an amount equal to fifty per cent of the compensation earned by the member during the year immediately preceding the member’s death if the member had at least one year but not more than ten full years of credited service, which amount shall increase by five per cent for each full year of service in excess of ten years, to a maximum of one hundred per cent of the compensation; provided that if the member had at least one year of credited service, the amount, together with the member’s accumulated contributions shall not be less than one hundred per cent of the compensation; or
- (2) If the member had ten or more years of credited service [but was ineligible for service retirement] at the time of death in service, and the death occurred after June 30, 1988, the member’s designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable [to the beneficiary] as if the member had retired the day prior to death under option 3 of section 88-83 and computed on the basis of section 88-76; or
- (3) If the member was eligible for service retirement at the time of death in service, the member’s designated beneficiary may elect to receive in lieu of any other [payments] payment provided in this section, the allowance that would have been payable as if the member had retired the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83.

(b) If the member’s designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, there shall be payable:

- (1) To the surviving spouse<sup>1</sup> [an allowance payable under option 3 of section 88-83 if the member had at least ten years of credited service but was ineligible for service retirement at the time of the<sup>2</sup> death in service, which allowance shall be computed on the basis of section 88-76; or if the member was eligible for service retirement at the time of death in service, the allowance that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83; or] a benefit as specified under subsection (a)(1)[;], (2), or (3);
- (2) To the deceased member’s dependent child, or children under age eighteen if there is no surviving spouse, an equally divided benefit as specified under subsection (a)(1); or
- (3) To the deceased member’s estate, if there is no surviving spouse or dependent child or children, a benefit as specified under subsection (a)(1).

(c) For the purposes of this section, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.”

SECTION 5. Section 88-261, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following words and phrases as used in this part shall have the following meanings, unless a different meaning is plainly required by the context:

“Accidental death”: death which is the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or due to the result of some occupational hazard, and not caused by recklessness on the part of the member.

“Board”: the board of trustees of the employees’ retirement system established by section 88-24.

“Member”: a class C member as described in section 88-47.

“Ordinary death”: death which is not accidental and which occurs [during] while in service[,] or on authorized leave without pay.”

SECTION 6. Section 88-284, Hawaii Revised Statutes, is amended to read as follows:

“§~~[[88-284]]~~ **Ordinary disability[,] retirement.** (a) Upon [the] application of a member in service or on leave without pay, or [of the head of the member’s department,] the person appointed by the family court as guardian of an incapacitated member, any member who has ten or more years of credited service shall be retired by the board of trustees on an ordinary disability retirement allowance if the medical board, after a medical examination of [such] the member, certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

(b) Retirement shall become effective upon the date specified by the [member on the written application,] board, which [date] shall be [not] no earlier than thirty days after the date [of filing of] the application[,] is filed.

(c) A member who is determined to be permanently incapacitated for the further performance of duty pursuant to subsection (a) shall receive an ordinary disability retirement allowance equal to the member’s accrued normal retirement allowance unreduced for age.”

SECTION 7. Section 88-286, Hawaii Revised Statutes, is amended to read as follows:

“§~~88-286~~ **Death benefit.** (a) The surviving spouse and dependent child or children of a member at the time of the member’s death shall be eligible for a death benefit if the member suffers either [an accidental death or] an ordinary death while in service or on authorized leave without pay after accumulating ten years of credited service[,] or an accidental death.

(b) In the case of ordinary death, the death benefit shall be as follows:

- (1) For the surviving spouse, an allowance equal to one-half of the member’s accrued normal retirement allowance unreduced for age, payable [to the surviving spouse] until remarriage[:] as if the member had retired the day prior to death; [or if the member was eligible for retirement at the time of the member’s death in service, and death occurred after June 30, 1990, the surviving spouse may elect the allowance that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option B and computed on the basis of section 88-283;
- (2) If there is a surviving spouse,] and for each dependent child [under age eighteen shall receive] an allowance equal to ten per cent of the member’s accrued normal retirement allowance unreduced for age,

payable [to each dependent child] until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age; [and] or

- (2) For the surviving spouse, if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, an allowance that would have been payable as if the member had retired the day prior to death and had elected to receive a retirement allowance under option B of section 88-283; and
- (3) If there is no surviving spouse, each dependent child [under age eighteen] shall receive an allowance equal to twenty per cent of the member's accrued normal retirement allowance unreduced for age, payable [to each dependent child] until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age.

For the purpose of determining eligibility for the ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

(c) In the case of accidental death, the death benefit shall be as follows:

- (1) For the surviving spouse, [the amount of the death benefit shall be] an allowance equal to thirty per cent of the member's average final compensation, payable until remarriage;
- (2) If there is a surviving spouse, each dependent child under eighteen shall receive an allowance equal to the greater of:
  - (A) Ten per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age; or
  - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed six per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen; and

- (3) If there is no surviving spouse, each dependent child under eighteen shall receive an allowance equal to the greater of:
  - (A) Twenty per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age; or
  - (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed twelve per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen."

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 16, 1997.)

Notes

1. Prior to amendment “;” appeared here.
2. So in original.

ACT 213

H.B. NO. 1814

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

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

SECTION 1. Section 88-46, Hawaii Revised Statutes, is amended to read as follows:

**“§88-46 Deducting employee contributions from salary and employer pick up of employee contributions.** (a) The head of each state department and the finance director of each county shall [cause to be deducted] deduct from the [salary] compensation of each class A or class B member on each and every payroll under [his] their respective jurisdiction, [for each and every payroll period,] the percentage of compensation of each member as provided under section 88-45. The total amount of deductions made from the salaries of employees and a record of the amount deducted from each member's compensation shall be transmitted to the system monthly or at such other times as may be agreed upon by the board of trustees. The amounts [so] deducted shall be paid into the annuity savings fund and shall be credited to the individual account of the member from whose compensation the deductions were made. Regular interest shall also be credited to the individual account of the member in the annuity savings fund.

(b) The State and each county, pursuant to section 414(h)(2) of the federal Internal Revenue Code of [1954,] 1986, as amended, shall pick up and pay the contributions which would otherwise be payable by each class A or class B member [for service], including contributions designated by the member relating to the acquisition of membership service as provided under section 88-59, from compensation paid after December 31, 1987. The contributions so picked up shall be treated as employer contributions for [purposes] the purpose of determining the [amounts] amount of federal income [taxes] tax to withhold from each class A or class B member's compensation.

(c) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each class A or class B member's compensation equal to the amount of the member's contributions picked up by the employer, provided that such deduction shall not reduce the member's compensation for [purposes] the purpose of computing benefits under this chapter.

(d) Member contributions picked up by the employer shall be transmitted to the system in accordance with subsection (a). Such contributions shall be credited to a separate account within [the] each member's individual [accounts] account in the annuity savings fund [and the post retirement fund], so that [amounts] the amount contributed by the member before January 1, 1988, may be distinguished from the member contributions picked up by the employer. Regular interest shall also be credited to the individual account of the member in the annuity savings fund.”

SECTION 2. Section 88-59, Hawaii Revised Statutes, is amended to read as follows:

“§88-59 Acquisition of [credit for previous] membership service. Under [such] rules as the board of trustees may adopt, any member may file with the board a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member’s last becoming a member which is not [otherwise] credited to the member, for which the member claims prior service credit, and also a statement of such services for which the member claims membership service credit and for which the member agrees to have additional deductions made from the member’s compensation or to make a lump sum payment as [hereinafter] described[.] in this section.

After the filing of the statement, the board shall verify the service [therein] claimed and determine the service credit allowable [therefor]. Verified prior service shall be credited [forthwith. Verified] and verified membership service shall be paid for by the member in any one of the following methods, at the member’s option:

(1) By deductions from the member’s compensation pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-46. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The member may elect to have:

[ (1) ] (A) [By deductions] Deductions from the member’s compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable[;] not to exceed sixty months; or

[ (2) ] (B) [By deductions] Deductions from the member’s compensation of one and one-half times the contribution rate provided for in section 88-45 over a period equal to twice the period for which membership service credit is allowable[;] not to exceed sixty months; or

[ (3) ] (2) By lump sum payment of contributions computed at the contribution rate provided for in section 88-45 applied to the member’s monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable; provided that after July 1, 1982, this method shall not be available to any new member with fewer than five years of membership service exclusive of any previous service acquired under [the provisions of paragraphs] paragraph (1) [and (2)].

The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member’s individual account and become part of the member’s accumulated contributions.

Membership service credit in addition to any other service credited to the member shall be allowed [the member] for the period for which the deductions from compensation or lump sum payment have been made as [hereinabove] described[.] in this section.

The contribution rates [provided for in] under section 88-45 shall be reduced by one and eight-tenths per cent for any service being claimed that was rendered prior to July 1, 1961.

Any member of the legislature who reenrolls as an active member in accordance with section 88-62 and who desires to obtain membership service for a period of service as a member of the legislature during which the member received a retirement allowance shall, in addition to complying with [the provisions of] this

section, refund while a reenrolled active member the retirement allowance received during the period of legislative service.”

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

SECTION 4. This Act shall take effect on January 1, 1998.

(Approved June 16, 1997.)

## ACT 214

H.B. NO. 1818

A Bill for an Act Relating to Prescription Drugs.

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

SECTION 1. Section 328-1, Hawaii Revised Statutes, is amended to read as follows:

**“§328-1 Definitions.** [For the purposes of this part:

- (1) “Department” means the department of health;
- (2) “Federal Act” means the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U.S.C. 301 et seq.);
- (3) “Food” means (A) articles used for food or drink by humans, dogs, or cats, (B) chewing gum, and (C) articles used for components of any such article;
- (4) “Drug” means (A) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; (C) articles (other than food) intended to affect the structure or any function of the body of humans or animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C), but does not include devices or their components, parts or accessories;
- (5) “Device”, except when used (e.g. as an identification device in labeling) in sections 328-3(a), 328-6(10), 328-10(6), 328-15(3), and 328-19(3), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (A) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or (B) to affect the structure or any function of the body of humans or animals;
- (6) “Cosmetic” means (A) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and (B) articles intended for use as a component of any such articles, except that the term shall not include soap intended for cleansing purposes only;
- (7) “Official compendium” means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;
- (8) “Pesticide chemical” means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an

- “economic poison” within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k) as now enacted or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities;
- (9) “Raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (10) “Food additive” means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use, except that the term does not include:
- (A) A pesticide chemical in or on a raw agricultural commodity; or
  - (B) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
  - (C) A color additive; or
  - (D) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 601 et seq.);
- (11) (A) “Color additive” means a material which:
- (i) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or
  - (ii) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that the term does not include any material which has been or hereafter is exempted under the Federal Act;
- (B) The term “color” includes black, white, and intermediate grays;
  - (C) Nothing in clause (A) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest;
- (12) “Consumer commodity” as herein defined means any food, drug, cosmetic or device as those terms are defined by this part or the Federal Act. Such term shall not include:
- (A) Any meat or meat products or poultry or poultry products, except as these products are sold at retail in stores and restaurants in

normal retail quantities, provided that any labeling requirements imposed under authority of this part shall comply with those established by the Secretary of Agriculture, United States Department of Agriculture;

- (B) Any tobacco or tobacco products;
  - (C) Any commodity subject to packaging and labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-158), commonly known as the Virus-Serum-Toxin Act;
  - (D) Any drug subject to the provisions of section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1) and 356);
  - (E) Any beverage subject to or complying with packaging and labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); or
  - (F) Any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1611).
- (13) "Director" means the director of health of the State of Hawaii;
  - (14) "Out-of-state practitioner" includes a physician, surgeon, osteopathic physician and surgeon, dentist, podiatrist, veterinarian, or any other person who is authorized to prescribe drugs to patients under the applicable laws of any state of the United States;
  - (15) "Pharmacist" means a person licensed under chapter 461 to practice in a pharmacy;
  - (16) "Practitioner" means an individual licensed by the State to prescribe prescription drugs within the scope of the person's practice; and
  - (17) "Pharmacy intern" means a student or graduate of a school or college of pharmacy issued a permit by the board of pharmacy to work under the immediate supervision of a pharmacist.]

For the purposes of this chapter:

"Color additive" means a material which:

- (1) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or
- (2) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto, except that the term does not include any material which has been or hereafter is exempted under the Federal Act;

The term "color" includes black, white, and intermediate grays.

Nothing in this definition shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

"Consumer commodity" means any food, drug, cosmetic, or device as those terms are defined by this part or the Federal Act. The term shall not include:

- (1) Any meat or meat products or poultry or poultry products, except as these products are sold at retail in stores and restaurants in normal retail quantities; provided that any labeling requirements imposed under



authority of this part shall comply with those established by the Secretary of Agriculture, United States Department of Agriculture;

- (2) Any tobacco or tobacco products;
- (3) Any commodity subject to packaging and labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. §§151-158), commonly known as the Virus-Serum-Toxin Act;
- (4) Any drug subject to section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§353(b)(1) and 356);
- (5) Any beverage subject to or complying with packaging and labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. §§201-219a); or
- (6) Any commodity subject to the Federal Seed Act (7 U.S.C. §§1551-1611).

"Cosmetic" means:

- (1) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; or
- (2) Articles intended for use as a component of any such articles, except that the term shall not include soap intended for cleansing purposes only.

"Department" means the department of health.

"Device", except when used (e.g., as an identification device in labeling) in sections 328-3(a), 328-6(10), 328-10(6), 328-15(3), and 328-19(3), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

- (1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or
- (2) To affect the structure or any function of the body of humans or animals.

"Director" means the director of health.

"Drug" means:

- (1) Articles recognized in the official United States Pharmacopoeia, official United States Pharmacopoeia Dispensing Information, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
- (2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- (3) Articles (other than food) intended to affect the structure or any function of the body of humans or animals; or
- (4) Articles intended for use as a component of any article specified in this definition above but not including devices or their components, parts, or accessories.

"Drug sample" means a unit of a prescription drug that is not to be sold and is distributed to promote the sale of the drug under requirements of Public Law No. 100-293.

"Federal Act" means the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040; 21 U.S.C. §§301-395).

"Food" means:

- (1) Articles used for food or drink by humans, dogs, or cats;
- (2) Chewing gum; or

(3) Articles used for components of any such article.

“Food additive” means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use, except that the term does not include:

- (1) A pesticide chemical in or on a raw agricultural commodity;
- (2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
- (3) A color additive; or
- (4) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act, the Poultry Products Inspection Act (21 U.S.C. §§451-470), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. §§601-695).

“Good manufacturing practices for drugs” means requirements for the manufacture, repacking, production, storage, and dispensing of drug products as stated in 21 C.F.R. Parts 207, 210, and 211.

“Official compendium” means the official United States Pharmacopoeia, official United States Pharmacopoeia Dispensing Information, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

“Out-of-state practitioner” means a physician, surgeon, osteopathic physician and surgeon, dentist, podiatrist, or veterinarian authorized to prescribe drugs to patients under the applicable laws of any state of the United States except the State of Hawaii, or a physician, surgeon, osteopathic physician and surgeon, dentist, podiatrist, or veterinarian authorized to prescribe drugs under the applicable laws of Hawaii, but practicing in a state other than Hawaii.

“Pesticide chemical” means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an “economic poison” within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§135-135k) as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

“Pharmacist” means a person licensed under chapter 461 to practice in a pharmacy.

“Pharmacy intern” means a student or graduate of a school or college of pharmacy issued a permit by the board of pharmacy to work under the immediate supervision of a pharmacist.

“Practitioner” means an individual licensed by the State or authorized by the laws of the State to prescribe prescription drugs within the scope of the person’s practice.

“Prescription” means an order or formula issued by a practitioner for the compounding or dispensing of drugs, or an order or formula issued by an out-of-state practitioner in compliance with section 328-17.6.

“Prescription drug” means any drug required by federal or state statutes, regulations, or rules to be dispensed only by a prescription, including finished

dosage forms and active ingredients subject to section 328-16 or section 503(b) of the Federal Act.

“Raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.”

SECTION 2. Section 328-6, Hawaii Revised Statutes, is amended to read as follows:

“§328-6 Prohibited acts. The following acts and the causing thereof within the State by any person are prohibited:

- (1) The manufacture, sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;
- (2) The adulteration or misbranding of any food, drug, device, or cosmetic;
- (3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 328-11, 328-12, or 328-17;
- (5) The dissemination of any false advertisement;
- (6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by sections 328-22, 328-23 to 328-27, or to permit access to or copying of any record as authorized by section 328-23;
- (7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom he received in good faith the food, drug, device, or cosmetic;
- (8) The removal or disposal of a detained or embargoed article in violation of sections 328-25 to 328-27;
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being adulterated or misbranded;
- (10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under this part or the Federal Act;
- (11) The using, on the labeling of any drug or in any advertisement relating to the drug, of any representation or suggestion that an application with respect to the drug is effective under section 328-17, or that the drug complies with the provisions of such section;
- (12) The using by any person to his own advantage, or revealing other than to the department of health or to the courts when relevant in any judicial proceeding under this part, any information acquired under authority of section 328-11, 328-12, 328-17, or 328-23, concerning any method or process which as a trade secret is entitled to protection;
- (13) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner [licensed by applicable law to administer the drug] who makes written request for information as to the drug, true and correct copies of all printed matter

which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this part;

- (14) (A) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or
- (B) Selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subparagraph (A) hereof; or
- (C) Making, selling, disposing of, or causing to be made, sold, or disposed of, or keeping in possession, control, or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;
- (15) Except as provided in part VI, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without express permission in each case of the person ordering or prescribing;
- (16) The distribution in commerce of a consumer commodity as defined in this part, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this part and of [regulations promulgated] rules adopted under authority of this part; provided that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons [(1) are]:
  - (A) Are engaged in the packaging or labeling of such commodities[, or (2) prescribe]; or<sup>1</sup>
  - (B) Prescribe or specify by any means the manner in which such commodities are packaged or labeled;
- (17) The selling or dispensing in restaurants, soda fountains, drive-ins, lunch wagons, or similar public eating establishments of imitation milk and imitation milk products in place of fresh milk and fresh milk products respectively; of liquid or dry products which simulate cream but do not comply with content requirements for cream in place of cream; of non-dairy frozen desserts which do not comply with content requirements for dairy frozen desserts in place of dairy frozen desserts; and of any other imitation food or one made in semblance of a genuine food in place of such genuine food, unless the consumer is notified by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements informing of such substitution, to include but not limited to the substitution of imitation milk in milk shake and malted milk drinks;
- (18) Wilfully and falsely representing or using any devices, substances, methods, or treatment as effective in the diagnosis, cure, mitigation, treatment, or alleviation of cancer. The provisions of this paragraph

shall not apply to any person who depends exclusively upon prayer for healing in accordance with teachings of a bona fide religious sect, denomination, or organization, nor to a [practitioner thereof;] person who practices such teachings;

- (19) The selling or offering for sale at any food facility which serves or sells over the counter directly to the consumer an unlabeled or unpackaged food that is a confectionery which contains alcohol in excess of one-half of one per cent by weight unless the consumer is notified of that fact by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements;
- (20) The sale to a person below the age of twenty-one years of any food which is a confectionery which contains alcohol in excess of one-half of one per cent by weight.”

SECTION 3. Section 328-15, Hawaii Revised Statutes, is amended to read as follows:

“§328-15 **Drugs or devices deemed misbranded when; prescriptions excepted, when.** A drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of section 328-19.1.
- (2) If in package form, unless it bears a label containing
  - (A) The name and place of business of the manufacturer, packer, or distributor; and
  - (B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, [except as exempted with respect to this clause by section 328-1(12)(C);] provided that under [clause (B) of] this [paragraph] subparagraph reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with [regulations prescribed] rules adopted by the director [of health]. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count shall not be required for any commodity subject to packaging and labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading “Bureau of Animal Industry” of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. §§151-158), commonly known as the Virus-Serum-Toxin Act.
- (3) If any word, statement, or other information required by or under authority of this part to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (4) If it is for use by a person and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, cabromal, chloral, coca, cocaine, codeine, heroin, [marihuana,] marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be and designated as[, habit-forming,] habit forming, by [regulations issued] rules adopted by the director under this part, or by regulations issued pursuant to section

502(d) of the Federal Act, unless its label bears the name and quantity or proportion of the substance or derivative and in juxtaposition therewith the statement “Warning—May be [habit-forming.]” habit forming.”

- (5) (A) If it is a drug unless [(1) its]:
- (i) Its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula), [(i)] the established name, as defined in subparagraph (B), of the drug, if such there be; and [(ii)] in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, anti-pyrene, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of these specifically named in this paragraph, shall apply only to prescription drugs; and [(2) for]
  - (ii) For any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; provided further that to the extent that compliance with the requirements of [clause (1)(ii) or clause (2) of] this subparagraph is impracticable, exemptions shall be allowed under [regulations promulgated] rules adopted by the director.
- (B) As used in this paragraph [(5)], the term “established name”, with respect to a drug or ingredient thereof, means:
- (i) The applicable official name designated pursuant to section 508 of the Federal Act[, or];
  - (ii) If there is no such name and the drug, or the ingredient, is an article recognized in an official compendium, then the official title thereof in the compendium[.]; or
  - (iii) If neither clause (i) nor clause (ii) of this subparagraph applies, then the common or usual name, if any, of such drug or of the ingredient; provided further that where clause (ii) of this subparagraph applies to an article recognized in the United States Pharmacopoeia, in the United States Pharmacopoeia Dispensing Information, and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.
- (6) Unless its labeling bears:
- (A) Adequate directions for use; and
  - (B) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or

against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided that where any requirement of [clause] subparagraph (A) [of this paragraph], as applied to any drug or device, is not necessary for the protection of the public health, the director shall [promulgate regulations] adopt rules exempting the drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the Federal Act may also be exempt.

- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided that the method of [packing] packaging may be modified with the consent of the director, or if consent is obtained under the Federal Act. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to the packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the Homeopathic Pharmacopoeia of the United States and not to [those of] the United States Pharmacopoeia; provided [further] that in the event of inconsistency between the requirements of this paragraph and those of paragraph (5) as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (5) shall prevail.
- (8) If it has been found by the director to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the [regulations issued] rules adopted by the director or regulations issued under the Federal Act require as necessary for the protection of public health. No such [regulation] rule shall be established for any drug recognized in an official compendium until the director shall have informed the appropriate body charged with the revision of the compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.
- (9) (A) If it is a drug and its container is so made, formed, or filled as to be misleading; [or]
  - (B) If it is an imitation of another drug; or
  - (C) If it is offered for sale under the name of another drug.
- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.
- (11) If it is, [or] purports to be, or is represented as a drug composed wholly or partly of insulin, unless:
  - (A) It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the Federal Act[,] and
  - (B) The certificate or release is in effect with respect to the drug.
- (12) If it is, [or] purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless:
  - (A) It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the Federal Act[,] and
  - (B) The certificate or release is in effect with respect to the drug; provided that this paragraph shall not apply to any drug or class

of drugs exempted by regulations promulgated under section 507(c) or (d) of the Federal Act.

For the purpose of this [subsection] paragraph, the term “antibiotic drug” means any drug intended for use by a person containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

- (13) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to such color additive prescribed under section 328-13(b).
- (14) In the case of any prescription drug distributed or offered for sale in this State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:
  - (A) The established name, as defined in paragraph (5)(B), printed prominently and in type at least half as large as that used for any trade or brand name thereof[.];
  - (B) The formula showing quantitatively each ingredient of the drug to the extent required for labels under section 502(e) of the Federal Act[.]; and
  - (C) Such other information in brief summary relating to side effects, contra-indications, and effectiveness as shall be required in [regulations issued] rules adopted by the director.
- (15) If a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.
- (16) Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this part[.]; provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with [regulations issued] rules adopted by the director.
- (17) If it has met or exceeded the expiration date established by the manufacturer or principal labeler.”

SECTION 4. Section 328-16, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) For the purposes of this section, a “prescription drug” is a drug intended for use by a person which:

- (1) Is a [habit-forming] habit forming drug to which section 328-15(4) applies;
- (2) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner [licensed by law to administer the drug]; or
- (3) Is limited by an approved application under section 505 of the Federal Act or section 328-17 to use under the professional supervision of a practitioner [licensed by law to administer the drug].

(d) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner [licensed by law to administer the drug] shall be exempt from the



requirements of section 328-15 (except paragraphs (1), (9), (11), and (12), and the packaging requirements of paragraphs (7) and (8)), if the drug bears a label containing: [the]

- (1) The name and address of the [dispenser, the] pharmacy;
- (2) The serial number and date of the prescription or of its filling[, the];
- (3) The name of the [prescriber] practitioner; and[, if]
- (4) If stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in the prescription.

This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsections (a) and (b) of this section.”

SECTION 5. Section 328-17.7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§328-17.7] Record of prescriptions.** Every [licensed physician] practitioner or pharmacist who compounds, sells, or delivers any prescription containing any poisonous drug, or substance deleterious to human life, to be used as medicine, shall enter upon the [physician’s] practitioner’s or pharmacist’s books the prescription written out in full, with the date thereof, with the [physician’s] practitioner’s or pharmacist’s own name appended thereto, or the name of the [physician] practitioner who prescribed the same, and the person to whom the same was delivered. No prescription shall be compounded, sold, or delivered unless the name of the person compounding, selling, or delivering the same, or the name of the [physician] practitioner prescribing the same, is appended to the prescription in full, and every prescription shall be preserved for a period of not less than five years. The books and prescriptions shall be subject at all times to the inspection of the director of health or the director’s agent.”

SECTION 6. Section 328-92, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In filling initial or original prescriptions, the pharmacist shall not substitute an equivalent drug product if the practitioner, and only the practitioner, handwrites “do not substitute” on the written prescription. The pharmacist shall not substitute an equivalent drug product if a prescription is ordered orally and the practitioner or authorized employee of the practitioner orally orders “do not substitute”.

The pharmacist shall note the practitioner’s instructions on the prescription record required to be maintained under section 328-17.7.

In refilling prior written prescriptions, the pharmacist shall not substitute an equivalent drug product if the oral prescription is a refill of a prior written prescription for which selection of an equivalent drug product was not permitted; provided that if the prior written prescription permitted the selection of an equivalent drug product, substitution shall be permitted. The pharmacist, however, shall not substitute an equivalent drug product if a refill of a prescription is ordered orally and the practitioner or authorized employee of the practitioner orally orders “do not substitute”.

The designation of “do not substitute” and the [physician’s] practitioner’s signature shall not be preprinted or stamped on the prescription.”

SECTION 7. Section 328-96, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The department of health shall provide for distribution of the formulary, revisions, and supplements to all [pharmacists and practitioners licensed and practicing in this] pharmacies in the State and to any other [appropriate] interested individuals. The department of health may establish fees to be charged to persons who receive the formulary, revisions, and supplements. The amounts of the fees charged for the formulary, revisions, and supplements shall be approximately the same as the costs of producing and distributing the formulary, revisions, and supplements.”

SECTION 8. Section 461-1, Hawaii Revised Statutes, is amended by amending the definitions of “practitioner” and “prescription” to read as follows:

““Practitioner” means an individual licensed by the State or authorized by the laws of the State to prescribe prescription drugs within the scope of the person’s practice.

“Prescription” means an order or formula issued by a practitioner licensed by the State or authorized by the laws of the State to prescribe prescription drugs within the scope of the practitioner’s practice, for the compounding or dispensing of drugs or an order or formula issued by an out-of-state practitioner in compliance with chapter 328.”

SECTION 9. Section 461-19, Hawaii Revised Statutes, is amended to read as follows:

“**§461-19 Application of law.** This chapter shall not apply to any practitioner legally licensed by the State or authorized by the laws of the State to prescribe prescription drugs within the scope of the practitioner’s practice when the practitioner is handling drugs in the course of the practitioner’s professional duties or prohibit the practitioner from personally supplying the practitioner’s own patients with such prescription drugs if the prescription drugs fall within the practitioner’s scope of authorized practice.”

SECTION 10. Section 328-91, Hawaii Revised Statutes, is amended as follows:

1. By repealing the definition of “pharmacist”.

[““Pharmacist” means a person licensed under chapter 461 to practice in a pharmacy.”]

2. By repealing the definition of “practitioner”.

[““Practitioner” means an individual licensed by the State to prescribe prescription drugs within the scope of the person’s practice.”]

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

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

(Approved June 16, 1997.)

#### Note

1. Should be underscored.

A Bill for an Act Relating to Prescription Drugs.

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

SECTION 1. Section 328-16, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A prescription drug shall be dispensed only if its label bears the following:

- (1) The name [and], business address, and telephone number of the seller[, the]. The business address shall be the physical location of the pharmacy or the dispensing practitioner’s office;
- (2) The name of the person for whom the drug was prescribed or the name of the owner of the animal for which the drug was prescribed;
- (3) The serial number [and] of the prescription;
- (4) The date of the prescription or of its filling[, the];
- (5) The name of the practitioner if the seller is not the practitioner[, the];
- (6) The name, strength, and quantity of the drug[, the];
- (7) The date the potency of the drug expires if the date is available from the manufacturer or principal labeler[, and the specific];
- (8) The number of refills available, if any; and
- (9) Specific directions for the drug’s use; provided that if the specific directions for use are too lengthy for inclusion on the label, the notation “take according to written instructions” may be used if separate written instructions for use are actually issued with the drug[,] by the practitioner or the pharmacist, but in no event shall the notation “take as directed,” referring to oral instructions, be considered acceptable.

If any prescription for the drug does not indicate the number of times it may be refilled, if any, the pharmacist shall not refill that prescription unless the pharmacist is subsequently authorized to do so by the practitioner. The act of dispensing a drug other than a professional [sampling] sample contrary to this subsection shall be deemed to be an act [which] that results in a drug being misbranded while held for sale.

(b) In addition to the requirements enumerated in subsection (a), a prescription drug shall be dispensed only:

- (1) By a pharmacist or a pharmacy intern upon a written prescription from a practitioner or an out-of-state practitioner as provided in section 328-17.6; provided that all valid written prescriptions shall include the following information:
  - (A) The date of issuance;
  - (B) The original signature of the practitioner;
  - (C) The practitioner’s printed name and business address;
  - (D) The name, strength, and quantity of the drug, and specific directions for the drug’s use;
  - (E) The name and address of the person for whom the prescription was written or the name of the owner of the animal for which the drug was prescribed, unless the pharmacy filling the prescription has the address on file;
  - (F) The room number and route of administration, if the patient is in an institutional facility; and
  - (G) The number of allowable refills, if the prescription is refillable. If the number of refills authorized by the practitioner is indicated

- using the terms “as needed” or “prn”, the prescription [shall not be filled after fifteen months from the date the original prescription was written.] may be refilled up to twelve months from the date the original prescription was written. After the twelve month period, the “as needed” or “prn” prescription may be refilled for a subsequent three month period; provided:
- (i) The prescription is refilled only once during the three-month period;
  - (ii) The refill does not exceed a thirty-day supply of the drug;
  - (iii) The refill does not provide any amount of the drug fifteen months beyond the date the original prescription was written; and
  - (iv) The provisions listed in this subparagraph shall apply only to pharmacies practicing in the State.
- (2) Upon an oral prescription from the practitioner; provided that:
- (A) The pharmacist or pharmacy intern shall promptly reduce to writing:
    - (i) The oral prescription in full;
    - (ii) The name, strength, and quantity of the drug, and specific directions for the drug’s use;
    - (iii) The date the oral prescription was received;
    - (iv) The name and oral code designation of the practitioner; and
    - (v) The name and address of the person for whom the drug was prescribed or the name of the owner of the animal for which the drug was prescribed, unless the pharmacy filling the prescription has the address on file; [and
    - (vi) The department of health assigning the oral code designation to that subscriber; and]
  - (B) The prescriptions and records described in subparagraph (A) shall be subject to the inspection of the department or its agents at all times; and
  - (C) The department of health assigns the oral code designation to the practitioner;
- (3) By a practitioner, other than a pharmacist, to an ultimate user; provided that:
- (A) The practitioner shall promptly record in the practitioner’s records:
    - (i) The prescription in full;
    - (ii) The name, strength, and quantity of the drug, and specific directions for the drug’s use;
    - (iii) The date the drug was dispensed; and
    - (iv) The name and address of the person for whom the drug was prescribed or the name of the owner of the animal for which the drug was prescribed; and
  - (B) The records described in subparagraph (A) shall be subject to the inspection of the department or its agents at all times; and
- (4) By refilling any written or oral prescription if that refilling is authorized by the practitioner either:
- (A) In the original prescription; or
  - (B) By oral order, which shall be reduced promptly to writing and filed by the pharmacist or pharmacy intern.”

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 16, 1997.)

ACT 216

H.B. NO. 1829

A Bill for an Act Relating to Fees Collected by the Department of Health.

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

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Domestic violence prevention special fund. (a) There is established within the state treasury a special fund to be known as the domestic violence prevention special fund to be administered and expended by the department of health.

(b) The moneys in the special fund shall be reserved for use by the department of health for staff programs and grants or purchases of service consistent with chapter 42D that support or provide domestic violence intervention or prevention as authorized by law. Moneys in the special fund shall be used for new or existing programs and shall not supplant any other moneys previously allocated to these programs.

(c) Fees remitted pursuant to section 338-14.5, interest and investment earnings attributable to the moneys in the special fund, and grants, donations, and contributions from private or public sources for the purposes of the fund, shall be deposited into the special fund.

(d) The department of health shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session; providing an accounting of the receipts of, and expenditures from, the special fund.”

SECTION 2. Chapter 338, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§338- Vital statistics improvement special fund. (a) There is established within the state treasury a special fund to be known as the vital statistics improvement special fund. The fund shall be administered and expended by the department of health.

(b) Moneys in the fund shall be used by the department of health for the modernization and automation of the vital statistics system in this State. These proceeds shall not be used to supplant any other moneys previously allocated to this program necessary for the daily operation of the system of vital statistics.

(c) The fund shall consist of fees remitted pursuant to section 338-14.5. All realizations of the fund shall be subject to the conditions specified in subsection (b).”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the

prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the community colleges and the department of education;
- (3) Special funds of the student housing, summer session, college of continuing education and community service, campus center, and bookstores of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-\_\_\_;
- [(10)] (11) Spouse and child abuse special account under section 346-7.5;
- [(11)] (12) Spouse and child abuse special account under section 601-3.6;
- [(12)] (13) Funds of the employees' retirement system created by section 88-109;
- [(13)] (14) Unemployment compensation fund established under section 383-121;
- [(14)] (15) Hawaii hurricane relief fund established under chapter 431P;
- [(15)] (16) The University of Hawaii tuition and fees special fund; and
- [(16)] (17) Division of community hospitals' special funds,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 26D-1;<sup>1</sup>
  - (2) Special summer school and intersession fund under section 302A-1310;
  - (3) School cafeteria special funds of the community colleges, and the department of education;
  - (4) Special funds of the student housing, summer session, college of continuing education and community service, campus center, and bookstores of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Domestic violence prevention special fund under section 321-\_\_\_;
  - [(8)] (9) Spouse and child abuse special account under section 346-7.5;
  - [(9)] (10) Spouse and child abuse special account under section 601-3.6;

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[(10)] (11) Funds of the employees' retirement system created by section 89-109;

[(11)] (12) Unemployment compensation fund established under section 383-121;

[(12)] (13) Hawaii hurricane relief fund established under chapter 431P;

[(13)] (14) Convention center capital and operations special fund established under section 206X-10.5;

[(14)] (15) The University of Hawaii tuition and fees special fund; and

[(15)] (16) Division of community hospitals' special funds,

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

SECTION 5. Section 338-14, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The department shall keep an account of all fees collected and shall deposit them to the general fund of the State[,] except as provided in sections 321-\_\_\_\_, 338-14.5, 338-\_\_\_\_, 346-7.5, and 601-3.6.

(d) Any fee established by the department pursuant to this section shall be adopted in accordance with chapter 91. In establishing a fee, the amount shall be sufficient to cover the expenses involved in searching for, cost of a copy of, or correction of the certificate, file, or record, as the case may be. The department may raise the fees up to ten per cent per year without being subject to the provisions of chapter 91.”

SECTION 6. Section 338-14.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§338-14.5]] Copies of certificate; fees. The fees for certified copies of birth, marriage, or death certificates issued by the department of health shall consist of \$10 for the first copy issued and \$4 for each copy issued thereafter. These fees shall be collected for each single request for certified copies. All fees received for the issuance of certified copies of birth, marriage, or death certificates shall be remitted to the director of health. Upon the receipt of remittances under this section, the director of health shall deposit [\$1.50]:

(1) \$1 for each certified copy to the credit of the spouse and child abuse special account established under section 346-7.5[, shall deposit \$1.50];

(2) \$1 for each certified copy to the credit of the spouse and child abuse special account established under section 601-3.6[.];

(3) \$1 for each certified copy to the credit of the domestic violence prevention special fund established under section 321-\_\_\_\_ ;

(4) \$1 for each certified copy to the credit of the vital statistics improvement special fund established under section 338-\_\_\_\_ ; and [shall deposit the]

(5) The remainder of the fee for each certified copy to the credit of the state general fund.”

SECTION 7. Act 232, Session Laws of Hawaii 1994, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on July 1, 1994[, except that section 1 shall not take effect until the effective date of the amendments to the rules of the department of health required by section 7 of the Act].”

SECTION 8. Act 232, Session Laws of Hawaii 1994, is amended by repealing section 7.

[“SECTION 7. The department of health shall amend section 2.10 of chapter 8b, of the department’s rules, by increasing the fee charged for the issuance of certified copies of any birth, death, or marriage certificates from \$2 to not less than \$5.”]

SECTION 9. Section 338-42, Hawaii Revised Statutes, is repealed.

SECTION 10. There is appropriated out of the domestic violence prevention special fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$250,000 or so much thereof as may be necessary for fiscal year 1998-1999 to carry out the purposes of the special fund.

The sums appropriated shall be expended by the department of health.

SECTION 11. There is appropriated out of the vital statistics improvement special fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$250,000 or so much thereof as may be necessary for fiscal year 1998-1999 to carry out the purposes of the special fund.

The sums appropriated shall be expended by the department of health.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 13. This Act shall take effect on July 1, 1997, and shall be repealed on June 30, 2000; provided that any statutory or session law material in this Act in existence on June 30, 1997, shall be reenacted on July 1, 2000, in the same form in which it existed on June 30, 1997.

(Approved June 16, 1997.)

#### Notes

1. Should probably be “261D-1”.
2. Edited pursuant to HRS §23G-16.5.

## ACT 217

H.B. NO. 1831

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 302A-1155, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A child may enter school provisionally upon submitting written proof from a licensed physician or an authorized representative of the department of health stating that the child is in the process of receiving the required immunizations. Further certification showing that the required immunizations have been completed must be submitted to the appropriate school official no later than three months after the child first entered the school. If all of the required immunizations cannot be



completed within three months due to the length of the minimum intervals between doses of a particular vaccine required by the department of health, provisional admission may be extended so long as the child's parent or guardian provides proof that appointments for required immunizations have been made and that progress toward completing the immunizations continues in accordance with the requirements of the department of health."

SECTION 2. Section 302A-1161, Hawaii Revised Statutes, is amended to read as follows:

**"§302A-1161<sup>1</sup> Notification for noncompliance.** If a child does not complete the immunizations required under section 302A-1154 or the physical examination required under section 302A-1159 within the [three-month] period provided by section 302A-1155 after provisional entry into school, the [department of education shall refer the child to the department of health. The department of health] administrator of the school shall cause a notice to be sent to the parent or guardian of the child stating that if the required immunizations or physical examination is not completed within thirty days of the date of the notice, the child shall not be admitted to school."

SECTION 3. Section 321-242, Hawaii Revised Statutes, is amended to read as follows:

**"§321-242 Department of health; implementation.** The department of health shall implement this program with the present health services now provided to those schools under the pilot project established under Act 130, Session Laws of Hawaii 1970, to each public school, and shall further provide the necessary number of health aides in order to service each public school. The department of health may provide health related screening services at each public school.

School health aides may assist the student by administering oral and topical medication, and in emergency situations, other premeasured medication; provided that:

- (1) If the student receiving the medication is a minor, a parent or guardian requests and authorizes such administration of medication;
- (2) The medication has been prescribed by a licensed physician[;], as defined in 334-1 or by a practitioner with prescriptive authority;
- (3) The administration of such medication is with the approval of the department of health; and
- (4) The administration of the medication is necessary for the health of the student and for the student's attendance at school."

SECTION 4. Section 325-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"(a)** All laboratories performing screening and diagnostic tests for the presence of the antibody to HIV (Human Immunodeficiency Virus) shall follow the recommended protocols as set forth below. Any test used for other than experimental purposes shall be approved by the Food and Drug Administration (FDA) of the United States for the use to which it is put. Any initially reactive [ELISA (Enzyme-linked Immunosorbant Assay)] FDA-approved screening test must be confirmed by a second [ELISA.] test of the same type. Any [sera] specimen yielding reactive results to both [ELISA] FDA-approved screening tests must have a supplemental test performed such as a Western Blot, an IFA (Immunofluorescence Assay), or an

antigen detection assay; provided that these standards may be superseded by rules adopted by the department pursuant to chapter 91.”

SECTION 5. Section 325-35, Hawaii Revised Statutes, is amended to read as follows:

“**§325-35 Forms and procedures.** The department of health may prescribe forms and procedures to achieve the purposes of sections 325-32 to 325-34 and shall maintain [in the offices of the department in Honolulu, Hilo, Wailuku, Lihue, and Kaunakakai,] a complete roster of all exemptions from vaccination or immunization [granted by that office].”

SECTION 6. 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 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 completion of (A) or (B), the candidate 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;
- (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 and in emergency situations, other premeasured medication, by school health aides as provided in section 321-242.”

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 16, 1997.)

**Note**

1. So in original.

A Bill for an Act Relating to Drinking Water.

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

SECTION 1. The legislature finds and declares that:

- (1) The protection of public health by the provision of safe drinking water and the prevention, reduction, and elimination of contaminants in drinking water is a public purpose;
- (2) Congress has provided for the funding of loans and other specified financial assistance for improvements to public water systems through the Safe Drinking Water Act Amendments of 1996, Public Law 104-182 (federal act);
- (3) Coordination of state and federal efforts to protect and improve drinking water quality should be encouraged;
- (4) The protection and improvement of the quality of drinking water supplied by public water systems can be encouraged, initiated, or financed with loans and other financial assistance; and
- (5) The state effort to protect and improve the quality of drinking water supplied by public water systems, including the provision of loans and other financial assistance to public water systems, including such systems that are privately owned, is a public purpose.

SECTION 2. Chapter 340E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . DRINKING WATER FINANCING**

**§340E-A Definitions.** As used in this part, unless the context otherwise requires:

“Drinking water fund” means the drinking water treatment revolving loan fund established by section 340E-E.

**§340E-B Declaration of policy.** The State’s policy is to protect and improve drinking water quality by financing eligible projects consistent with applicable federal and state laws.

**§340E-C Powers and duties.** (a) The director may approve grants, loans, and other financial assistance consistent with this part and the Federal Act to eligible public water systems in the State.

(b) The director may enter into any necessary or required agreement and give or make any necessary or required assurance, designation, or certification with or to any person in order to receive payments or to make or provide any financial assistance in conformance with the Federal Act.

(c) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept drinking water fund capitalization and other grants. Federal capitalization grants shall be used only for the drinking water fund and other uses allowed by the Federal Act (e.g., section 1452(a)(2), (a)(3), (d), (g)(2), and (k) of the Federal Act).

(d) The director may adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans and other financial assistance issued through the drinking water fund and penalties for default of loans or other financial assistance.

(e) The director shall establish fiscal controls and accounting procedures at least sufficient to assure proper accounting for appropriate accounting periods of payments, disbursements, revenues, and fees received and made for fund balances at the beginning and end of the accounting period. Federal funds in the drinking water fund shall be kept in a separate account or series of accounts from the account or accounts for state funds in the drinking water fund.

(f) The director may perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part.

(g) The director may create one or more separate accounts or subaccounts within the drinking water fund and may specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts.

(h) The director may create one or more separate accounts or subaccounts outside the drinking water fund to handle funds for programs and administrative expenses consistent with the Federal Act, and the director may specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts and to the drinking water fund.

(i) Moneys in accounts outside the drinking water fund may be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to accounts established under this part as the director considers appropriate.

(j) Not less than twenty days prior to the convening of each regular session of the legislature, the director shall submit to the legislature a financial report addressing the operations of the drinking water fund during the last completed fiscal year, including information on each grant, loan, or other financial assistance made during that year. The report shall include:

- (1) The name of the recipient;
- (2) The effective date of the financial assistance;
- (3) The amount provided; and
- (4) The intended or actual use of the funds.

**§340E-D Grants.** (a) The director may make grants to public water systems from state funds as authorized and appropriated by the legislature for the construction of necessary water treatment works or other related drinking water projects. Grants shall not be made from the drinking water fund.

(b) The director shall coordinate the granting of state funds with available federal funds for the same purpose. Grants involving federal funds shall be consistent with federal law.

(c) The director may allocate grants to drinking water projects on the basis of existing health concerns. No grant shall be made for any project unless:

- (1) The project conforms with the state grant plan to provide safe drinking water;
- (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 drinking water quality needs; and
- (3) In the case of water treatment works, the applicant for the grant commits to maintain the water treatment plant efficiently and properly after its construction.

**§340E-E Drinking water treatment revolving loan fund; establishment, purpose.** There is established in the state treasury a fund to be known as the drinking water treatment revolving loan fund to be administered by the director. The fund shall be administered, operated, and maintained to remain available in perpetuity to

provide loans and other financial assistance to eligible public water systems for projects or activities eligible under this part and the Federal Act.

**§340E-F Drinking water fund; uses and limitations; types of assistance.**

(a) Moneys in the drinking water fund may be used only as allowed and limited by sections 1452(a)(2) and (3), 1452(d), and 1452(k)(1) and (2) of the Federal Act and this part. Such uses include loans and other financial assistance for facilitating compliance with applicable national primary drinking water regulations or otherwise significantly furthering the health protection objectives of the Federal Act.

(b) Moneys in the drinking water fund may be used only:

- (1) To provide, make, and condition loans;
- (2) To buy or refinance debt obligations of a municipality as defined by the Federal Act at or below market interest rates if the debt obligation is incurred after July 1, 1993;
- (3) To guarantee or purchase or provide insurance for a public water system obligation if such action would improve credit market access or reduce interest rates applicable to the obligation;
- (4) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the drinking water fund; and
- (5) To earn interest on the amounts deposited into the drinking water fund.

(c) Five per cent of the moneys in the drinking water fund shall be set aside for use in the geographic areas of the State serviced by water catchment systems for the purposes identified in subsection (b); provided, if no such area qualifies for use of the moneys in the drinking water fund, the moneys shall no longer be set aside and revert back as unrestricted moneys to the fund.

**§340E-G Drinking water fund; conditions.** (a) No loan or other financial assistance shall be made from the drinking water fund for any project unless:

- (1) The project conforms with the state intended use plan to provide safe drinking water which meets section 1452 of the Federal Act;
- (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 drinking water quality needs; and
- (3) In the case of water treatment works, the applicant for the loan or other financial assistance commits to maintain the water treatment works efficiently and properly after its construction.

(b) Except for subsidies to disadvantaged communities made consistently with section 1452(d) of the Federal Act, all loans from the drinking water fund shall:

- (1) Be made at or below market interest rates, including interest free loans;
- (2) Require 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 be fully amortized not later than twenty years after project completion, except that for disadvantaged communities an extended repayment term may be provided as allowed by the Federal Act;
- (3) Require the recipient of the loan to establish a dedicated source of revenue (or in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loans. For a county, the dedicated source may be a pledge of the county's full faith and credit (a general obligation payable from its general fund), of special assessments, of revenues from an undertaking, system or improvements, including user charges, or of any other source of revenue; and

- (4) Be repaid, both principal and any interest, to the credit of the drinking water fund.

**§340E-H Drinking water fund; deposits.** The following may be deposited into the drinking water fund:

- (1) Federal capitalization grant funds and other federal grants, loans, or appropriations;
- (2) Appropriations by the legislature to the drinking water fund;
- (3) Payments of principal and interest, matching funds, and other amounts made by public water systems under loans or other agreements entered into with the director under this part;
- (4) Fees for loans and other items;
- (5) Moneys paid to the drinking water fund as a result of court-ordered awards of judgments;
- (6) Moneys paid to the drinking water fund in court-approved or out-of-court settlements;
- (7) All interest attributable to investment of moneys deposited in the drinking water fund; and
- (8) All moneys allotted or directed to the drinking water fund from other sources.

**§340E-I Drinking water fund; fees.** (a) If established, fees shall cover the costs of current activities, including the issuance of loans and other financial assistance, monitoring of loans and other financial assistance repayments and conditions, technical review of the planning and design documents, monitoring of construction activities, conducting operation and maintenance inspections of drinking water facilities, and activities of the drinking water fund under the Federal Act and shall be used exclusively to support the activities of the drinking water fund.

(b) All moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with the Federal Act and shall be used exclusively to support the activities of the drinking water fund.

**§340E-J Drinking water fund; interest and investment on accounts.** Moneys in the drinking water fund shall be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the drinking water fund.

**§340E-K Compliance.** The failure or inability of any public water system to receive funds under this part or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the public water system to comply in a timely manner with all applicable requirements of this chapter or rules adopted under this chapter.”

SECTION 3. Chapter 340E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§340E- Water catchment systems.** (a) The department shall establish a program to conduct annual testing of water from water catchment systems for lead and copper. Any resident residing in a legal dwelling which relies on a water catchment system for the resident’s water needs shall be eligible to participate in the program, subject to the department’s procedures and guidelines and the availability of program funds. Residents shall utilize a certified private analytical laboratory specified by the department or the department may conduct the tests. Participating

residents shall pay \$25 for the tests and the department shall cover the remainder of the testing cost. One set of tests a year for each legal dwelling may be requested under this program.

(b) The department shall establish procedures and guidelines for the testing which shall:

- (1) Identify sampling and analytical protocols;
- (2) Specify report and notice requirements; and
- (3) Determine participation eligibility procedures and requirements.

(c) The department shall establish a nonregulatory program that provides technical assistance to any resident residing in a legal dwelling which relies on a water catchment system for the resident's water needs for the purpose of improving water quality in that system. To the extent practicable, the department shall assist the resident by recommending practical and affordable methods to improve water quality, based on the specific design and conditions of the water catchment system.

**§340E- Capacity development.** The director may adopt rules to ensure that public water systems demonstrate technical, managerial, and financial capacity with respect to each state primary drinking water regulation in effect, or likely to be in effect, when the systems supply drinking water or commence operations."

SECTION 4. Section 340E-1, Hawaii Revised Statutes, is amended to read as follows:

**“§340E-1 Definitions.** As used in this [part:] chapter:

[(1)] “Department” means the department of health.

[(2)] “Director” means the director of [the department of] health or the director’s authorized agent.

[(3)] “Public water system” means a system which provides [piped] water for human consumption through pipes or other constructed conveyances if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:

[(A)] (1) Any collection, treatment, storage, and distribution facilities controlled by the system and used primarily in connection with the system; and

[(B)] (2) Any collection or pretreatment storage facilities not under the control of, but which are used primarily in connection with the system.

[(4)] “Person” means an individual, corporation, company, association, partnership, county, city and county, state, or federal agency.

[(5)] “Federal agency” means any department, agency, or instrumentality of the United States.

[(6)] “Supplier of water” means any person who owns or operates a public water system.

[(7)] “Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

[(8)] “Administrator” means the administrator of the United States Environmental Protection Agency.

[(9)] “Federal Act” means the Safe Drinking Water Act, Public Law 93-523, as amended by the Safe Drinking Water Act Amendments of 1986, Public Law 99-339[.], and the Safe Drinking Water Act Amendments of 1996, Public Law 104-182. This Act is also known as Title XIV of the Public Health Service Act (42 U.S.C. §§300f et seq).

[(10)] “Primary [Drinking Water Regulation] drinking water regulation” means a regulation or rule which:

- [(A)] (1) Applies to public water systems;
- [(B)] (2) Specifies contaminants which, in the judgment of the director, may have any adverse effect on the health of persons;
- [(C)] (3) Specifies for each contaminant either:
- [(i)] (A) A maximum contaminant level if, in the judgment of the director, it is economically and technologically feasible to ascertain the level of such contaminant in public water systems; or
- [(ii)] (B) If, in the judgment of the director, it is not economically or technologically feasible to ascertain the contaminant level<sup>1</sup> each treatment technique known to the director which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 340E-2; and
- [(D)] (4) Contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, [it includes] including accepted methods for quality control and testing procedures to insure compliance with such levels and proper operation and maintenance of the system, and requirements as to:
- [(i)] (A) The minimum quality of water which may be taken into the system; and
- [(ii)] (B) Siting for new facilities for public water systems. Quality control and testing procedures published in the Federal Register as guidance by the administrator may be adopted by the director by rule as an alternative for public water systems to the quality control and testing procedures listed in the corresponding and previously promulgated federal primary drinking water regulation.

[(11)] “Secondary [Drinking Water Regulation] drinking water regulation” means a regulation or rule which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the director, are requisite to protect the public welfare.

[(12)] “National [Primary Drinking Water Regulations] primary drinking water regulations” means primary drinking water regulations promulgated by the administrator pursuant to the Federal Act.

[(13)] “Injection” means the subsurface emplacement of any material, liquid, semi-solid, or solid, or any admixture thereof, which may add a contaminant to underground waters.”

SECTION 5. Section 340E-6, Hawaii Revised Statutes, is amended to read as follows:

“**§340E-6 Notification of users and department.** (a) Whenever a public water system:

- (1) Fails to comply with an applicable maximum contaminant level, treatment technique, or testing procedure requirement of a state primary drinking water regulation;
- (2) Fails to perform monitoring required by regulations adopted by the director;
- (3) Is subject to a variance granted for an inability to meet a maximum contaminant level requirement;
- (4) Is subject to an exemption; or
- (5) Fails to comply with the requirements of any schedule prescribed by such a variance or exemption;



the public water system shall promptly notify the department, and in the case of a violation under subsection (a)(1), the local communications media, of the conditions and the extent to which they may impose adverse effects on public health and the corrective action being taken when appropriate.

(b) [Notification shall be provided as follows:

- (1) Notice of any violation of a maximum contaminant level or any other violation determined by the director as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than fourteen days after the violation;
- (2) Notice of a continuous violation of subsection (a) other than a violation of a maximum contaminant level shall be given not less frequently than every three months;
- (3) Notice of a variance or exemption shall be given not less frequently than every three months;
- (4) The public water system shall also publish notice in a newspaper of general circulation within the areas served by the public water system. The notice shall also accompany the water bills of the public water system so long as the violation, variance, or exemption continues; and] Notice of any violation determined by the director as posing a serious adverse health effect as a result of short term exposure shall be given as soon as practicable, but not later than twenty four hours after the violation.

[(5)] (c) The director shall prescribe by rules the form, content, and manner for giving [such] notice. The rules may contain such additional public notification requirements as the director determines are necessary to best effectuate the purpose of this [section] chapter, including consumer confidence reports, and may also contain alternative notice requirements [for systems principally serving nonresident users.] as allowed by the Federal Act.”

SECTION 6. Section 340E-7, Hawaii Revised Statutes, is amended to read as follows:

“**§340E-7 Prohibited acts.** (a) No supplier of water shall violate any rule adopted pursuant to section 340E-2.

(b) No supplier of water shall violate any condition or provision of a variance, exemption, permit, or other written authorization issued under this part.

(c) No supplier of water shall violate any requirement of an emergency plan promulgated pursuant to section 340E-5.

(d) No supplier of water shall violate any rule adopted under section 340E-6 or disseminate any false or misleading information with respect to notices required pursuant to section 340E-6 or with respect to remedial actions undertaken to achieve compliance with state primary drinking water regulations.

(e) No person shall violate any order issued by the director pursuant to this part.

(f) No person shall cause a public water system to violate the state primary drinking water regulations.

(g) No person shall violate underground injection control rules adopted pursuant to this part.

(h) No person shall fail or refuse to comply with the director’s authority to inspect the premises of a supplier of water pursuant to section 340E-4.6.

(i) No person shall install or repair any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system with any pipe, solder, or flux that is not lead free. “Lead free” with respect to solders and flux means containing not more

than 0.2 per cent lead and with respect to pipes and pipe fittings means containing not more than 8.0 per cent lead. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

(j) No person shall violate rules on public water system capacity adopted pursuant to this part.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date. Rules adopted pursuant to chapter 340E, Hawaii Revised Statutes, shall remain in effect until the rules are amended, repealed, or replaced.

SECTION 8. This Act shall not be construed to limit powers set forth in chapter 340E, Hawaii Revised Statutes, and not amended or repealed by this Act.

SECTION 9. In codifying the new part added to chapter 340E, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections' designations in this Act.

SECTION 10. In revising the statutes, the revisor of statutes shall alphabetize the definitions in section 340E-1, Hawaii Revised Statutes.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved June 16, 1997.)

#### Notes

1. Prior to amendment “,” appeared here.
2. Edited pursuant to HRS §23G-16.5.

## ACT 219

H.B. NO. 1838

A Bill for an Act Relating to the Environment.

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

SECTION 1. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

**“§321-11 Subjects of health rules, generally.** The department of health pursuant to chapter 91 may adopt rules as it deems necessary for the public health and safety respecting:

- (1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;
- (2) Adulteration and misbranding of food or drugs;
- (3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;
- (4) Privy vaults and cesspools;

- (5) Fish and fishing;
- (6) Interments and dead bodies;
- (7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of these bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead human body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
- (9) Laundries, and the laundering, sanitation, and sterilization of articles including linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, electrology shops, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bathhouses, midwives, masseurs, and others in similar calling, public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of laundering, sanitation, and sterilization by those conducting any of these businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;
- (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, assisted living facilities, special treatment facilities and programs, home health agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child care institution". For the purpose of this paragraph, "adult foster home" has the same meaning as provided in section 321-11.2;
- (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including, but not limited to, those built under federal funding;
- (12) Laboratories;
- (13) Any place or building where noisome or noxious trades or manufacturers are carried on, or intended to be carried on;
- (14) Milk;
- (15) Poisons and hazardous substances, the latter term including, but not limited to, any substance or mixture of substances which (A) is corrosive, (B) is an irritant, (C) is a strong sensitizer, (D) is inflammable, or (E) generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
- (16) Pig and duck ranches;
- (17) Places of business, industry, employment, commerce, and processes, materials, tools, machinery, and methods of work done therein, and places of public gathering, recreation, or entertainment;
- (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufac-

- tured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;
- (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale or for consumption or use of any food, drug, or cosmetic;
  - (20) Devices as defined in section 328-1;
  - (21) Sources of ionizing radiation;
  - (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to medical examination, vaccination, revaccination, or immunization, whose parent or guardian objects in writing thereto on grounds that the requirements are not in accordance with the religious tenets of an established church of which the parent or guardian is a member or adherent, but no objection shall be recognized when, in the opinion of the department, there is danger of an epidemic from any communicable disease;
  - (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
  - (24) Fumigation. The process by which substances emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department, may be lethal, poisonous, noxious, or dangerous to human life;
  - (25) Ambulances and ambulance equipment; [and]
  - (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519[.]; and
  - (27) Development, review, approval, or disapproval of an accreditation program for specially trained persons pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992, Public Law 102-550.

The department may require any certificates, permits, or licenses that it may deem necessary to adequately regulate the conditions or businesses referred to in this section.”

SECTION 2. Section 321-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) The occupations or practices of laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, sanitarians, asbestos inspectors, asbestos management planners, [and] asbestos abatement project designers[;], lead inspectors, lead risk assessors, lead abatement workers, lead abatement supervisors, and lead abatement project designers;
- (2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for these occupations or practices may be issued;
- (3) The health, habits, character, practices, standards, or conduct of persons holding these certificates or permits; or
- (4) The grounds or causes for revoking or suspending these certificates or permits.

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

## ACT 220

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 16, 1997.)

## ACT 220

H.B. NO. 1842

A Bill for an Act Relating to the Community Residential Treatment System.

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

SECTION 1. Section 334-1, Hawaii Revised Statutes, is amended by adding the definition of "therapeutic living program" to be appropriately inserted and to read as follows:

"“Therapeutic living program” means a supervised living arrangement that provides mental health or substance abuse services for individuals or families who do not need the structure of a special treatment facility and are transitioning from a more restrictive treatment setting to independent living. The program aids residents in meeting basic needs and provides supportive services through a required service plan.”"

SECTION 2. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

**"§321-11 Subjects of health rules, generally.** The department [of health] pursuant to chapter 91 may adopt rules [as] that it deems necessary for the public health and safety respecting:

- (1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;
- (2) Adulteration and misbranding of food or drugs;
- (3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;
- (4) Privy vaults and cesspools;
- (5) Fish and fishing;
- (6) Interments and dead bodies;
- (7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of these bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead human body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
- (9) Laundries, and the laundering, sanitation, and sterilization of articles including linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, electrology shops, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bathhouses, midwives, mas-

seurs, and others in similar calling, public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of laundering, sanitation, and sterilization by those conducting any of these businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;

- (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, assisted living facilities, special treatment facilities and programs, home health agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, and therapeutic living programs, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child care institution". For the purpose of this paragraph, "adult foster home" has the same meaning as provided in section 321-11.2;
- (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including, but not limited to, those built under federal funding;
- (12) Laboratories;
- (13) Any place or building where noisome or noxious trades or manufacturers are carried on, or intended to be carried on;
- (14) Milk;
- (15) Poisons and hazardous substances, the latter term including[,] but not limited to[,] any substance or mixture of substances which:
  - (A) [is] Is corrosive[.];
  - (B) [is] Is an irritant[.];
  - (C) [is] Is a strong sensitizer[.];
  - (D) [is] Is inflammable[.]; or
  - (E) [generates] Generates pressure through decomposition, heat, or other means,

if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
- (16) Pig and duck ranches;
- (17) Places of business, industry, employment, and commerce, and the processes, materials, tools, machinery, and methods of work done therein[.]; and places of public gathering, recreation, or entertainment;
- (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;
- (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale [or for] consumption, or use of any food, drug, or cosmetic;
- (20) Devices as defined in section 328-1;
- (21) Sources of ionizing radiation;
- (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to medical examination, vaccination, revaccination, or immunization, whose parent or guardian objects in writing thereto on grounds that the requirements are not in

accordance with the religious tenets of an established church of which the parent or guardian is a member or adherent, but no objection shall be recognized when, in the opinion of the department, there is danger of an epidemic from any communicable disease;

- (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
- (24) Fumigation[. The], including the process by which substances emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department, may be lethal, poisonous, noxious, or dangerous to human life;
- (25) Ambulances and ambulance equipment; and
- (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519.

The department may require any certificates, permits, or licenses that it may deem necessary to adequately regulate the conditions or businesses referred to in this section.”

SECTION 3. Section 334-103, Hawaii Revised Statutes, is amended as follows:

“**§334-103 Program elements.** The following shall be the program elements of the system. These shall be designed to provide, at every level, alternatives to institutional settings. Applicants applying to operate program elements shall show how each of these elements works with the current programs in the community the facility will serve. Applicants may apply for operation under the following program elements:

- (1) A short-term crisis residential alternative to hospitalization for individuals experiencing an acute episode or situational crisis. The program shall be available for admissions twenty-four hours a day, seven days a week. The primary focus of this element shall be on reduction of the crisis, stabilization, diagnostic evaluation, and assessment of the person’s existing support system, including recommendations for referrals upon discharge. This service in the program shall be designed for persons who would otherwise be referred to an acute inpatient psychiatric unit[.];
- (2) A long-term residential treatment program for clients who would otherwise be living marginally in the community with little or no service support, and who would return many times to the hospital for treatment. It also will serve those who are referred to, and maintained in, state hospitals or nursing homes because they require long-term, intensive support. This service shall be designed to provide a rehabilitation program for the so-called “chronic” patient who needs long-term support in order to develop independent living skills. This program goes beyond maintenance to provide an active rehabilitation focus for these individuals[.];
- (3) A transitional residential program designed for persons who are able to take part in programs in the general community, but who, without the support of counseling, as well as the therapeutic community, would be at risk of returning to the hospital. These programs may employ a variety of staffing patterns and are for persons who are expected to

move toward a more independent living setting. The clients shall be expected to play a major role in the functioning of the household, and shall be encouraged to accept increasing levels of responsibility, both in the residential community, and in the community as<sup>1</sup> whole. Residents are required to be involved in daytime activities outside of the facility which are relevant to their personal goals and conducive to their achieving more self-sufficiency[.]; or

- (4) A semisupervised, independent, but structured living arrangement for persons who do not need the intensive support of the system elements of paragraph (1), (2), or (3), but who, without some support and structure, are at risk of requiring hospitalization. The small cooperative housing units shall function as independent households with direct linkages to staff support in case of emergencies, as well as for regular assessment and evaluation meetings. Individuals may use satellite housing as a transition to independent living, or may remain in this setting indefinitely in order to avoid the need for more intensive settings. This element is for persons who only need minimum professional or paraprofessional support in order to live in the community. These units should be as normative as the general living arrangements in the communities in which they are developed.
- [(5) An unsupervised, independent living arrangement for persons who do not need professional or paraprofessional support or supervision or assistance in daily living activities, but for whom the daily presence of peers is desirable for a transition period immediately prior to full release into the community. The living arrangement shall be in a private residence shared by three or more unrelated persons served by any mental health or substance abuse treatment program, including the system elements of paragraph (1), (2), (3), or (4) within a prior twelve-month period. The persons shall be responsible for the payment of all rent, food, utilities, and other necessities, commodities, or services used or consumed, whether payment is made from the persons' own resources or public assistance grants. No service or support shall be provided other than periodic monitoring to determine if the persons are progressing satisfactorily toward full release into the community; except that section 334-102(3)(C) shall apply. The department of health may oversee the operational, fiscal, and resident selection policies for each living arrangement. This element shall be designed and intended to allow persons to be fully released into the community.]”

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 16, 1997.)

**Note**

1. Prior to amendment “a” appeared here.



A Bill for an Act Relating to Water Pollution Control.

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

SECTION 1. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . WATER POLLUTION CONTROL FINANCING**

**§342D-A Definitions.** As used in this part, unless the context otherwise requires:

“Corpus allocation” means the amount of moneys in the revolving fund which is allocated by the director to provide earnings to reduce a county or state agency’s total financing costs for one or more eligible projects.

“Revolving fund” means the water pollution control revolving fund established by section 342D-D.

**§342D-B Declaration of policy.** The State’s policy is to promote water pollution prevention and control by financing county and state agency eligible projects consistent with applicable federal and state laws. The State intends such financing to occur through a revolving fund loan program that makes loans to counties and state agencies at or below market rates and a leveraging program that uses revenue bonds and revolving fund loan programs together in a coordinated manner that does not cause the state debt ceiling to be exceeded.

**§342D-C Powers and duties.** (a) In addition to any other power or duty prescribed by law, the director shall:

- (1) Establish fiscal controls and accounting procedures at least sufficient to assure proper accounting for appropriate accounting periods of payments, disbursements, revenues, and fees received and made for fund balances at the beginning and end of the accounting period;
  - (2) Comply with sections 39-61 and 39-62 and ensure that any revenue bonds issued are excluded from the state constitutional debt ceiling. The revolving fund is a “special fund” within the meaning of Article VII, section 13, of the State Constitution and part III of chapter 39. The revolving fund is not a “special fund” within the meaning of sections 36-27 and 36-30; and
  - (3) No later than twenty days prior to the convening of each regular session of the legislature, submit to the legislature a financial report addressing the operations of the revolving fund during the last completed fiscal year.
- (b) The director may:
- (1) Provide financial assistance consistent with this part to any county or state agency for the prevention, control, and abatement of water pollution in the State;
  - (2) Enter into any necessary or required agreement and give or make any necessary or required assurance, designation, or certification with or to any person in order to receive payments or to make or provide any financial assistance in conformance with title 33 United States Code sections 1329, 1330, and 1383 to 1387;
  - (3) Enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants;

- (4) Adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans issued through the revolving fund and penalties for default of loan repayments;
- (5) Pledge funds, loans, and accounts or subaccounts in the revolving fund to the payment or security of revenue bonds or loans issued under this part and make such corpus allocations as the director deems appropriate. The pledge shall constitute a lien and security interest on such funds and loans to the extent and with the priority as set forth in the document establishing the pledge, without physical delivery, recording, or other further act;
- (6) Perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part; and
- (7) Direct the creation of one or more separate accounts or subaccounts within the revolving fund and specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts.

**§342D-D Revolving fund; establishment, purposes, coordination.** (a)

There is established in the state treasury a fund to be known as the water pollution control revolving fund to be administered by the director. The revolving fund shall be administered, operated, and maintained to remain available in perpetuity for its stated purpose.

(b) The purpose of the revolving fund is to provide financial assistance to counties and state agencies for projects or activities to:

- (1) Plan, design, and construct publicly owned wastewater treatment works in accordance with title 33 United States Code sections 1381 to 1387;
- (2) Implement management programs established under title 33 United States Code section 1329; and
- (3) Implement conservation and management plans established under title 33 United States Code section 1330.

**§342D-E Revolving fund; uses.** (a) Moneys in the revolving fund, if consistent with the purpose of the revolving fund stated in section 342D-D(b), may be used to:

- (1) Provide, make, and condition loans;
- (2) Guarantee county or state agency loans and bonds and to purchase or provide bond insurance or other credit enhancement or liquidity support for county or state agency debt service payments where such action would improve credit market access or reduce interest rates;
- (3) Buy or refinance debt obligations of counties or state agencies at or below market rates, where such debt obligations were incurred after March 7, 1985;
- (4) Support and pay the reasonable costs of administering the revolving fund, including operation and maintenance of the revolving fund, subject to the limits in title 33 United States Code section 1383(d)(7) and title 40 Code of Federal Regulations section 35.3120(g), and to provide a source of revenue or security for such support and payment;
- (5) Pay the principal, interest, and redemption premium, if any, on revenue bonds issued by the director if the proceeds of such revenue bonds will be deposited in the revolving fund; and
- (6) Provide interest rate subsidies from earnings on corpus allocation to subsidize loans to counties and state agencies made from the proceeds of the revenue bonds of the department.

(b) The entire water pollution control loan program, and not only those accounts or subaccounts funded by revenue bond proceeds, shall be subject to section 39-61 for the purposes of accomplishing leveraging and exclusion of the revenue bonds from the state constitutional debt ceiling.

**§342D-F Revolving fund; deposits.** The following may be deposited into the revolving fund:

- (1) Federal capitalization grant funds and other federal grants, loans, or appropriations;
- (2) Appropriations by the legislature to the revolving fund;
- (3) Payments of principal and interest and other amounts made by counties and state agencies pursuant to loans or other agreements entered into with the director pursuant to this part; provided that if such loans were financed by proceeds of revenue bonds of the director, the deposit of such payments into the revolving fund shall be subject to the rights of the holders of the bonds to receive such moneys;
- (4) Fees for loans and other items under section 342D-G;
- (5) Proceeds of revenue bonds issued by the director for the purpose of providing financial assistance to counties and state agencies;
- (6) Moneys paid to the revolving fund as a result of court ordered awards of judgments;
- (7) Moneys paid to the revolving fund in court-approved or out-of-court settlements;
- (8) All interest attributable to investment of moneys deposited in the revolving fund; and
- (9) All moneys allotted or directed to the revolving fund from other sources.

**§342D-G Revolving fund; fees, interest, and investment on accounts.** (a) The director may establish fees for loans, loan and bond guarantees, debt purchase and refinancing, interest rate subsidies, and other credit enhancement or liquidity support issued or provided through the revolving fund.

(b) The director shall adopt rules pursuant to chapter 91 for the purposes of this part, including fees for loans and other financial assistance, and penalties for default of loan and other financial assistance repayments.

(c) If established, fees shall cover the costs of current activities, including the issuance of loans and other financial assistance, monitoring of loans and other financial assistance repayments and conditions, technical review of the planning and design documents, monitoring of construction activities, conducting operation and maintenance inspections of wastewater facilities, and other activities of the revolving fund pursuant to title 33 United States Code sections 1381 to 1387.

(d) All moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with title 33 United States Code section 1383(d)(7) and shall be used exclusively to support the activities of the revolving fund.

(e) Moneys in the revolving fund shall be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the revolving fund; provided that moneys which are pledged as security for payment of revenue bonds may be invested as provided in section 342D-L.

**§342D-H Revolving fund; conditions.** (a) The following conditions shall apply to each project receiving water pollution control financing under this part:

- (1) The project shall conform with the state water quality management plan developed under title 33 United States Code section 1285(j), 1288, 1313(e), 1329, or 1330;
- (2) The project shall be certified by the director as entitled to priority over other eligible projects on the basis of financial and water pollution control needs;
- (3) In the case of wastewater treatment works construction projects, the application or agreement for the loan shall contain:
  - (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction;
  - (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to ensure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties; and
  - (C) Such other provisions required by federal or state law or deemed necessary or convenient by the director;
- (4) The county or state agency receiving these funds for a construction project shall require the installation of the low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects; provided that the 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; and
- (5) The county receiving these funds shall take specific steps to reduce polluted runoff into state waters through educational and regulatory programs.
  - (b) The use of federal funds and state matching funds in the revolving fund shall be in conformance with title 33 United States Code sections 1381 to 1387.
  - (c) The director may make and condition loans from the revolving fund which shall:
    - (1) Be made at or below market interest rates;
    - (2) Require periodic 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
    - (3) Be fully amortized not later than twenty years after project completion.
  - (d) No loan of funds from the revolving fund shall be made unless the loan recipient pledges a dedicated source of revenue for the repayment of the loans. This pledge may be a county's full faith and credit (a general obligation payable from its general fund), special assessments, revenues from an undertaking, system, or improvements, including user charges, or any other source of revenue.

**§342D-I Revenue bonds; authorization.** (a) The director of health, with the approval of the governor and the director of budget and finance, may 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 part.

(b) All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) 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 shall be held and invested in a separate account or accounts until used in accordance with section 342D-E.

**§342D-J Revenue bonds; payment and security.** (a) The revenue bonds shall be payable from and secured by the revenues derived from the benefits of the water pollution control loan program for which the revenue bonds are issued, including:

- (1) Any repayment of eligible loans or other agreements entered into for the water pollution control loan programs;
- (2) Revenues derived from insurance proceeds; and
- (3) Reserve accounts and earnings thereon.

(b) The director may pledge any and all revenues derived from the water pollution control loan program to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note, other undertaking, or obligation held by the director or the department to secure the loans.

(d) The director may issue such types of bonds as the director may determine, including bonds on which the principal and interest are payable exclusively from the income and revenues of the water pollution control loan program.

**§342D-K Revenue bonds; amount issued.** The director may include the costs of undertaking, administering, operating, and maintaining the water pollution control loan programs for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the cost of undertaking, administering, operating, and maintaining the loan programs, the director may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultants, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year beyond the estimated completion of the loan projects for which the bonds are issued.

**§342D-L Revenue bonds; investment of proceeds, and redemption.** Subject to any agreement with the holders of its revenue bonds, the director may:

- (1) Invest moneys not required for immediate use, including proceeds from the sale of any revenue bonds, funds held in reserve or sinking funds or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the investment of moneys or the acquisition, operation, or disposition of property by other public bodies shall be applicable to the director or department unless the legislature shall specifically so state; and
- (2) Purchase revolving fund revenue bonds out of any fund or money available therefor, and hold, cancel, or resell the revenue bonds.

**§342D-M Trustee; designation; duties.** The director may designate a trustee for each issue of revenue bonds secured under the same indenture; provided that the trustee may be approved by the director of finance. The trustee may have any duties and functions authorized by part III of chapter 39, as deemed necessary, advisable, or expedient by the director for the purposes of this part.

**§342D-N Trust indenture.** (a) Any trust indenture entered into by the director may contain covenants and provisions as authorized by part III of chapter 39, and approved by the director of finance, as deemed necessary, advisable, or expedient by the director for the purposes of this part.

(b) A trust indenture may also contain provisions deemed necessary, advisable, or expedient by the director to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the water pollution control

loan program or in the financing of the costs of administering, operating, or maintaining the water pollution control loan program to which such trust indenture relates.’’

SECTION 2. Section 342D-54, Hawaii Revised Statutes, is amended to read as follows:

“**§342D-54 Wastewater treatment works; financial assistance; [state revolving fund.] grants.** (a) The director may make grants [or loans, or both,] to any county or state [or county] agency [of state funds as authorized and appropriated by the legislature] for the construction of necessary wastewater 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].

(b) 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;
- (3) In the case of wastewater treatment works, the application for the grant [or loan, or both,] contains the following:
  - (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the wastewater treatment works after its construction; and
  - (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to [insure] ensure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties; [and]
- (4) The county or state [or county] agency receiving these state funds requires the installation of the low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects, and the 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 other standards as may be required by the respective county for all new residential and public buildings[.]; and
- (5) The department, where appropriate, determines that the county receiving these funds has taken specific steps to reduce polluted runoff into state waters through educational and regulatory programs.

[(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.]

(c) 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 wastewater treatment works as defined by title 33 United States Code

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 providing financial assistance to governmental agencies for the planning, design, and construction of wastewater treatment works owned by a governmental agency, and for programs and plans under 33 United States Code section 1383(c); provided that:

- (1) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants that shall be deposited into the revolving fund;
- (2) The financial assistance that may be provided to governmental agencies from federal funds and matching state funds in the revolving fund shall be limited to those projects and types of assistance allowed under 33 United States Code section 1383. 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 and other financial assistance 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. 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 33 United States Code sections 1381 to 1387;
- (7) No loan from the revolving fund shall be made unless the loan recipient establishes a dedicated source of revenue for the repayment of the loan;
- (8) The director shall adopt rules pursuant to chapter 91 for the purposes of this section, including but not limited to fees for loans and other financial assistance, and penalties for default of loan and other financial assistance repayments;
- (9) If established, fees shall cover the costs of current activities including the issuance of loans and other financial assistance, monitoring of loans and other financial assistance repayments and conditions, technical review of the planning and design documents, monitoring of construction activities, conducting operation and maintenance inspections of wastewater facilities, and other activities of the revolving fund pursuant to 33 United States Code sections 1381 to 1387; all moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with 33 United States Code section

1383(d)(7) and shall be used exclusively to support the activities of the revolving fund; and

- (10) 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 or loans 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 or loan, the report shall include:
- (A) The name of the recipient;
  - (B) The effective date of the grant or loan;
  - (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 wastewater treatment works or projects granted waivers under title 33 United States Code 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.]

(e) No moneys used or available for financing under part shall be used for grants under this section.

(f) No later than twenty days prior to the convening of each regular session of the legislature, the director shall submit to the legislature a financial report addressing the status of each grant made during the last completed fiscal year."

SECTION 3. All grants, loans, agreements, and acts which were made before the effective date of this Act under section 342D-54, Hawaii Revised Statutes, are hereby preserved.

SECTION 4. In codifying the new part added to chapter 342D, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections' designations in this Act.

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

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

(Approved June 16, 1997.)



A Bill for an Act Relating to Hawaii Hurricane Relief Fund Bonds.

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

SECTION 1. Act 339, Session Laws of Hawaii 1993, as amended by Act 17, Special Session Laws of Hawaii 1995, is amended by amending subsection (d) of section 10 to read as follows:

“(d) The director of finance is authorized to issue reimbursable general obligation bonds in the principal amount of \$200,000,000, or so much thereof as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund, and the same sum is appropriated for each of the fiscal years [1994-1995, 1995-1996, and] 1996-1997, 1997-1998, and 1998-1999 for deposit into the hurricane reserve trust fund. The commissioner, upon the commissioner’s determination that it is advisable to transfer funds from the hurricane reserve trust fund, shall reimburse the state general fund for payment of debt service on reimbursable general obligation bonds authorized and issued under this section.”

SECTION 2. Act 339, Session Laws of Hawaii 1993, as amended by Act 307, Session Laws of Hawaii 1996, is amended by adding a new section to be designated and to read as follows:

“SECTION 11. The state supreme court shall have exclusive and original jurisdiction over any actual controversy or dispute concerning the applicability of article VII of the state constitution to the financing of the Hawaii hurricane relief fund and the hurricane reserve trust fund through the issuance of revenue bonds or reimbursable general obligation bonds, and the security provisions thereof and the imposition and collection of any rates and charges to repay or provide security for the bonds.”

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 16, 1997.)

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

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

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

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs[, other than chapter 468,] and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure

that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and 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 in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee 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, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, 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 known as the compliance resolution fund to be expended by the director's designated 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, section 514A-95, penalties or fines assessed as a result of action brought by department personnel, and penalties, fines, or reimbursement of costs or attorneys' fees assessed as a result of actions brought for violations of chapters 480 and 487. Any law to the contrary notwithstanding, 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 to implement this subsection. In addition, the moneys in the fund shall defray all other administrative costs, including personnel costs of operating the regulated industries complaints office and costs incurred by supporting offices and divisions. The moneys in the fund may be used to train personnel as the director deems 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 the jurisdiction of the department of commerce and consumer affairs[, other than chapter 468,] has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter;
- (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; or
- (5) Any person subject to chapter 467B has complied with that chapter.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses. [This subsection shall be repealed effective July 1, 2001.]"

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved June 16, 1997.)

A Bill for an Act Relating to Limited Liability Companies.

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

SECTION 1. Section 480-17, Hawaii Revised Statutes, is amended to read as follows:

**“§480-17 Individual liability for corporate or company act.** (a) Whenever a corporation violates any of the penal provisions of this chapter, the violation shall be deemed to be also that of the individual directors, officers, or agents of the corporation who have authorized, ordered, or done any of the acts constituting in whole or in part [such] the violation.

(b) Whenever a limited liability company violates any of the penal provisions of this chapter, the violation shall be deemed to be also that of the individual members, managers, or agents of the limited liability company who have authorized, ordered, or done any of the acts constituting in whole or in part the violation.”

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

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

(Approved June 16, 1997.)

A Bill for an Act Relating to Consumer and Business Education.

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

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

“(1) Any law to the contrary notwithstanding, the director of commerce and consumer affairs may:

- (1) Establish, increase, decrease, or repeal fees relating to any aspect of the registration, certification, licensure, or any other administrative 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; [and]
- (2) Assess fees for copies in any form of media of the computerized records of the business registration division or for electronic access to the computerized information on a one-time or on-going basis. The fees charged for the copies or access may include billing service fees, network usage fees, and computer consultant fees. In adopting these fees, the [division] director shall [continue in its attempt to be] take into account the intent to make the division self-supporting. To this end, the fees may reflect the commercial value of the service or information provided. In the case of requests for records by a nonprofit organization, the [department] director may reduce or waive the fees. This

- [provision] paragraph shall control in any instance where there is a conflict between this [provision] paragraph and any other statute[.]; and
- (3) Assess fees for copies of consumer and business educational publications prepared or issued by the department. Fees collected under this paragraph shall be deposited into the compliance resolution fund under subsection (o). The fees assessed shall bear a reasonable relationship between the revenue derived from the fee and the cost of producing the materials issued. In the case of requests for copies by a nonprofit organization, the director may reduce or waive the fees. For purposes of this paragraph, "consumer and business educational publications" does not include copies of statutes or administrative rules.

[Effective July 1, 1994, the] The fees collected by the professional and vocational licensing division and the business registration division shall be deposited into the compliance resolution fund under subsection (o) and shall be used to defray administrative costs, including personnel costs associated with these two programs and costs incurred by supporting offices and divisions.

The director may appoint program specialists, not subject to chapters 76 and 77, to assist with the activities of the professional and vocational licensing division."

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 16, 1997.)

## ACT 226

H.B. NO. 1864

A Bill for an Act Relating to Acupuncture Practitioners.

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

SECTION 1. Section 436E-5, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

"(b) [Before] Prior to September 1, 2000, and except as provided in subsection (c), before any applicant shall be eligible for the examination, the applicant shall furnish satisfactory proof to the board that the applicant has received a total of not less than one thousand five hundred hours of education and training consisting of:

- (1) A formal program in the science of acupuncture (traditional oriental medicine) at an institute or school approved by the board that:
  - (A) Shall be for a period of not less than two academic years (not less than six hundred hours); and
  - (B) Shall result in the award of a certificate or diploma; and
- (2) One clinical year in a clinical internship program (not less than twelve months and not less than nine hundred hours) supervised by a licensed acupuncturist [(not less than twelve months and not less than nine hundred hours)]; provided that the nine hundred hours of the clinical internship program may be obtained from the institute or school awarding the certificate or diploma or may be obtained under the supervision of a licensed acupuncturist not affiliated with an institute or school.

(c) Students who started training prior to December 31, 1984, in a school approved by the board prior to December 31, 1984, and who complete their training by December 31, 1989[:], and who file an application with the board before September 1, 2000 shall:

- (1) [Shall not] Not lose their rights of continued education, and earned or accumulated credits; and
- (2) [Shall, for] For the purposes of this chapter, meet requirements for examination and licensure as provided in chapter 436D and rules adopted by the board as they existed on December 31, 1984[.]; provided that the school has not altered its program so as to lower the standards for completion of the program. These students may qualify for examination if they submit evidence of having completed:
  - (A) At least eighteen months (not less than five hundred seventy-six hours) of academic training; and
  - (B) At least six months (not less than four hundred eighty hours) of clinical training in the practice of acupuncture on human subjects under the supervision of a licensed acupuncturist.

(d) [Students who started training prior to December 31, 1984, in a tutorship program approved by the board prior to December 31, 1984, who completed their training by December 31, 1989, and who file an application with the board by June 30, 1994:

- (1) Shall not lose their rights of continued education earned or accumulated credits; and
- (2) Shall, for purposes of this chapter, meet requirements for examination and licensure as provided in chapter 436D and rules adopted by the board as they existed on December 31, 1984; provided that the tutorship has not altered its program so as to lower the standards for completion of the program.] Notwithstanding

subsections (b) and (c), effective September 1, 2000, before any applicant shall be eligible for the examination, the applicant shall furnish satisfactory proof to the board that the applicant has completed a formal acupuncture program and has received a total of not less than two thousand, one hundred seventy-five hours of academic and clinical training consisting of an academic program of not less than one thousand, five hundred fifteen hours in the science of acupuncture (traditional oriental medicine) and a clinical training program of not less than six hundred sixty hours under the supervision of a licensed acupuncturist, which shall result in the award of a certificate or diploma at an institute, school, or college, accredited or recognized as a candidate for accreditation by any acupuncture or oriental medicine accrediting body recognized by the United States Department of Education or at a foreign institute, school, or college with a formal program in the science of acupuncture licensed, approved, or accredited by the appropriate governmental authority or an agency recognized by a governmental authority in that jurisdiction and whose curriculum is approved 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 June 16, 1997.)

## ACT 227

A Bill for an Act Relating to Public Accountancy.

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

SECTION 1. Section 466-8, Hawaii Revised Statutes, is amended to read as follows:

“**§466-8 Fees.** (a) An application for admission to the examination described in section 466-5(f) shall be accompanied by the application and examination fees. The board may prescribe by rule the terms and conditions upon which an applicant who is unable to attend the examination may receive a credit in the amount of the fee paid toward a subsequent examination.

(b) An application for the issuance of a license of certified public accountant under section 466-5(a) or a license of public accountant under section 466-6(a) shall be accompanied by a license fee.

(c) An applicant for the renewal of a current license of certified public accountant under section 466-5 or for the renewal of a license of public accountant under section 466-6 shall pay a fee biennially in each odd-numbered year on or before December 31. An applicant for the [renewal of a] restoration of a forfeited license of certified public accountant or public accountant [which is not current under this chapter or under the laws of this State theretofore existing] shall [pay a fee] submit with the application [for renewal in an amount equal to twice the amount of the fees which the applicant would have paid had the applicant timely renewed the license since the date it was last current.] for restoration of the forfeited license the renewal fee, a penalty fee equal to the amount of the renewal fee, and a recordkeeping fee for each biennium the license was on forfeited status.

(d) An application for the issuance of a biennial permit to practice for an individual or firm under section 466-7(a) and (d) shall be accompanied by the application and permit to practice fees. [An applicant for the restoration of a forfeited permit shall pay a fee with the application for restoration in an amount equal to twice the amount of the fees which the applicant would have paid had the applicant renewed the permit by December 31 of every odd-numbered year.]

(e) An application for the issuance of a temporary permit to practice under section 466-7(c) shall be accompanied by the application and temporary permit to practice fees.

(f) Any person requesting the board to proctor the certified public accountant examination for another state shall pay a proctoring fee.

(g) All fees shall be established and adopted by the director in accordance with chapter 91 and shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).”

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 16, 1997.)

A Bill for an Act Relating to the Western Governors University.

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

SECTION 1. The legislature finds that the initiative of the Western Governors' Association, which has resulted in the creation of the Western Governors University, sometimes known as the "Virtual University", offers great promise for the State. The Western Governors University is being designed to provide competency-based education to citizens throughout the western United States through the use of modern information and telecommunications technologies. Further, the Western Governors University is based on the premise of cooperation within the region to ensure that scarce educational resources within participating states are leveraged to maximize efficiency. The Western Governors University offers an opportunity for Hawaii to share its own high-quality educational programs throughout the region, and at the same time, it offers Hawaii's citizens access to educational programs that may have previously been unavailable. The legislature further finds and declares that membership in the Western Governors University is in the public interest.

On January 15, 1997, the Western Governors University was established as a Utah nonprofit corporation to operate exclusively for educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and to carry out, among other activities, the establishment, operation, and administration of an institution of higher education to be known as the Western Governors University. The corporation has one class of members consisting of the governor of each state that is a participant in the program of the corporation.

The purpose of this Act is to authorize the board of regents of the University of Hawaii to do all things requisite for the State's participation in the program of the Western Governors University and to appropriate moneys for the initial membership fee to ensure participation in the program.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . WESTERN GOVERNORS UNIVERSITY**

**§304- Participation and membership in the Western Governors University.** On behalf of the State of Hawaii, the governor shall serve as a member of the Western Governors University, a Utah nonprofit corporation. The board of regents of the University of Hawaii is authorized to participate in the activities of the Western Governors University. The board of regents shall perform any act that may be deemed requisite for membership in the Western Governors University.

**§304- Western Governors University special fund.** There is established in the treasury of the State a Western Governors University special fund into which shall be deposited all revenues derived from the State's participation in the Western Governors University, except University of Hawaii income from regular credit tuition and tuition-related course and fee charges to students. The fund shall be administered by the board of regents of the University of Hawaii and shall be used for the State's membership and participation in the Western Governors University. 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 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 1997-1998 to UOH-900, systemwide support, to be expended by the board of regents to the Western Governors University for purposes of membership in the Western Governors University.

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, 1997.

(Approved June 17, 1997.)

## ACT 229

H.B. NO. 1893

A Bill for an Act Relating to Physical Therapy Board Appointments.

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

SECTION 1. Section 461J-4, Hawaii Revised Statutes, is amended to read as follows:

**“§461J-4 Board of physical therapy; establishment, appointment, membership.** (a) There is established within the department of commerce and consumer affairs for administrative purposes the board of physical therapy. The board shall consist of seven members. Four members shall be physical therapists, one member shall be a physician or surgeon with a permanent license under chapter 453 or 460, or a dentist with a permanent license under chapter 448, and two members shall be consumers. All members shall be at least eighteen years of age and residents of the State.

(b) Each physical therapist member of the board shall possess a valid permanent license as a physical therapist and shall have, after graduation from a school of physical therapy, at least three years of full-time experience or the equivalent in any of the following areas or in any combination of the following: clinical physical therapy services, administration in physical therapy or related health fields, or teaching in an educational program to prepare practitioners of physical therapy.

(c) The governor may appoint and fill each vacancy [for a physical therapist member from a recommendation list of at least two or more persons submitted by the Hawaii Chapter of the American Physical Therapy Association.] on the board pursuant to section 26-34.”

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 17, 1997.)



A Bill for an Act Relating to the Membership of the Elevator Mechanics Licensing Board.

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

SECTION 1. Section 448H-3, Hawaii Revised Statutes, is amended to read as follows:

**“§448H-3 Elevator mechanics licensing board; appointment; organization.** There is created an elevator mechanics licensing board within the department of commerce and consumer affairs for administrative purposes. The board shall consist of seven members[.]; four [of whom] shall be licensed elevator mechanics, two [others of whom] shall be [lay] public members[.] not connected or associated with the elevator or building industry, and one [of whom] shall be the [branch manager of the boiler and elevator inspection bureau, division of occupational safety and health, department of] director of labor and industrial relations[.] or the director’s designee who is an employee of the department of labor and industrial relations and has expertise in elevator and escalator installation and maintenance.”

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 17, 1997.)

A Bill for an Act Relating to Appointment of Advisory Committees for Regulatory Programs.

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

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

**“(s)** The director of commerce and consumer affairs may establish advisory committees, the members of which shall serve as consultants to the boards and to the director in their review of licensees referred for possible disciplinary action and as experts to the department for investigations[.] and professional vocational licensing matters. Each advisory committee shall be appointed by the director from a list of licensees submitted annually by the board or by referral from the regulated industry for which an advisory committee is appointed. Each member of the committee shall serve until a new committee is established or until the particular case for which the member was designated a consultant or expert has been concluded.

All members of the advisory committee shall serve voluntarily and without compensation, but shall be paid reasonable allowances for travel and expenses that may be incurred as a result of performance of their duties on the committee. The costs shall be paid by the department.

Any member of the advisory committee shall be immune from civil liability for any act done in connection with this subsection.”

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

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

(Approved June 17, 1997.)

## ACT 232

H.B. NO. 1896

A Bill for an Act Relating to the Deposit of Professional and Vocational License Fees.

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

SECTION 1. Section 436B-15, Hawaii Revised Statutes, is amended to read as follows:

“**§436B-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 with the director [of finance] to the credit of the [general fund of the State.] compliance resolution fund established pursuant to section 26-9(o).”

SECTION 2. Section 438-11, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) All fees required by this chapter shall be as provided in rules adopted by the director pursuant to chapter 91 and shall be deposited with the director [of finance] to the credit of the [general fund,] compliance resolution fund established pursuant to section 26-9(o), except that the examination fee required in section 438-8 may be paid directly to the professional testing service by the department or examinee.”

SECTION 3. Section 439-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Every applicant who is required by the board to be examined shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91. The examination fee may be paid directly to the professional testing service by the director or the examinee or deposited with the director of [finance] commerce and consumer affairs to the credit of the [general fund.] compliance resolution fund established pursuant to section 26-9(o).”

SECTION 4. Section 440-13, Hawaii Revised Statutes, is amended to read as follows:

“**§440-13 License fees.** License fees shall be paid annually to the State by every applicant to whom a license is issued to participate in the conduct of professional boxing in any of the capacities set forth in this section: physician,

referee, judge, matchmaker, manager, timekeeper, second, and professional boxer. The charge for a duplicate of a license and all fees required by this chapter shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of [finance] commerce and consumer affairs to the credit of the [general fund.] compliance resolution fund established pursuant to section 26-9(o).

The director of commerce and consumer affairs may establish a schedule of license fees for participation in amateur boxing contests, and may waive payment of license fees for amateur boxing contests.”

SECTION 5. Section 442-18, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All moneys received by the board [of chiropractic examiners] under this chapter shall be paid to the director of commerce and consumer affairs and shall be deposited [with the director of finance] to the credit of the [general fund.] compliance resolution fund established pursuant to section 26-9(o).”

SECTION 6. Section 447-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person:

- (1) Eighteen years of age or over;
- (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;
- (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
- (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 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 the 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 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.] compliance resolution fund established pursuant to section 26-9(o).”

SECTION 7. Section 452-17, Hawaii Revised Statutes, is amended to read as follows:

“**§452-17 Fees.** (a) The fees for application, licensing, and other registrations shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be paid in advance and deposited with the director of [finance] commerce and consumer affairs to the credit of the [general fund.] compliance resolution fund established pursuant to section 26-9(o).”

(b) Every applicant who is required by the board to be examined shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91. The examination fee may be paid directly to the testing agency by the director or the examinee or deposited with the director of [finance] commerce and consumer affairs to the credit of the [general fund.] compliance resolution fund established pursuant to section 26-9(o).”

SECTION 8. Section 454-3, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The license fee for a license calendar year or any part thereof shall be \$100 for a mortgage broker and \$25 for a mortgage solicitor, which fees shall be deposited by the commissioner [with the director of finance] to the credit of the [general fund.] compliance resolution fund established pursuant to section 26-9(o). Failure of any mortgage broker or mortgage solicitor to pay the license fee for a license calendar year on or before December 31 of the preceding calendar year shall constitute an automatic forfeiture of the broker’s or solicitor’s license. A broker’s or solicitor’s license which is forfeited for nonpayment of the license fee may be restored; provided that application for restoration is made within six months of the forfeiture and a penalty fee in the amount of \$100 for mortgage brokers and \$25 for mortgage solicitors is paid in addition to the delinquent license fee.”

SECTION 9. Section 467-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All fees for applications, registrations, certificates, and any license prescribed by this chapter shall be deposited to the credit of the [general fund.] compliance resolution fund established pursuant to section 26-9(o). 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.”

SECTION 10. Section 467-30, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, or corporation and 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 on or before December 31 of each year as a condominium hotel operator with the commission; provided that after December 31, 1996, registration shall be on a biennial basis on or before December 31 of each even-numbered year. Registration information shall include but not be limited to the number of apartments managed for others as well as the number of apartments 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 apartments being utilized as a condominium hotel. Each month or fraction of a month of non-compliance 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 apartments 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 apartments excludes the num-

ber of apartments owned by the condominium hotel operator either as a sole proprietor, partnership, or corporation or those apartments 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. The commission may adopt rules establishing conditions and terms by which it may grant an exemption or bond alternative, or permit deductibles. No fidelity bond exemption shall be granted to a condominium hotel operator who is exempt from paragraph (1); and

(4) Pay an application fee and upon approval an initial 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] commerce and consumer affairs to the credit of the [general fund;] compliance resolution fund established pursuant to section 26-9(o);

provided that this subsection shall not apply to persons who are subject to section 467-2."

SECTION 11. 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.] compliance resolution fund established pursuant to section 26-9(o)."

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.  
(Approved June 17, 1997.)

**ACT 233**

H.B. NO. 1899

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 two new sections to article 6 to be appropriately designated and to read as follows:

**"§431:6- Insurer investment pools.** (a) For purposes of this section:

"Business entity" means a corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund trust, or other similar form of business organization, whether organized for-profit or not-for-profit.

"Class one money market mutual funds" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the SVO or any successor publication.

"Government money market mutual fund" means a money market mutual fund that at all times:

- (1) Invests only in obligations issued, guaranteed, or insured by the government of the United States or collateralized repurchase agreements composed of these obligations; and
- (2) Qualifies for investment without a reserve under the Purposes and Procedures of the SVO or any successor publication.

“Money market mutual funds” means a mutual fund that meets the conditions of 17 Code of Federal Regulations Par. 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. §80a-1 et seq.), as amended, or renumbered.

“Obligation” means a bond, note debenture, trust certificate, including equipment certificate, production payment, negotiable bank certificate of deposit, bankers’ acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money (or participation, certificates, or other evidence of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

“Qualified bank” means a national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by the standards adopted by the United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System.

“Repurchase transaction” means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

“Reverse repurchase transaction” means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

“Securities lending transaction” means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loans, securities, or equivalent securities to the insurer, either within a specified period of time or upon demand.

“SVO” means the Securities Valuation Office of the National Association of Insurance Commissioners.

(b) An insurer may acquire investments in investment pools that:

(1) Invest only in:

(A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally-recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate (“LIBOR”) or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(B) Government money market mutual funds or class one money market mutual funds; or

(C) Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of section 431:6-322;

or

(2) Invest only in investments which an insurer may acquire under this article, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article.

(c) For an investment in an investment pool to be qualified under this article, the investment pool shall not:

(1) Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;

(2) Borrow or incur an indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of this article; or

(3) Permit the aggregate value of securities then loaned or sold to, purchased from or invested in any one business entity under this section to exceed ten per cent of the total assets of the investment pool.

(d) The limitations of sections 431:6-105 and 431:6-402 shall not apply to an insurer's investment in an investment pool; however, an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(1) In any one investment pool would exceed ten per cent of its admitted assets;

(2) In all investment pools investing in investments permitted under subsection (b)(2) would exceed twenty-five per cent of its admitted assets; or

(3) In all investment pools would exceed thirty-five per cent of its admitted assets.

(e) For an investment in an investment pool to be qualified under this section, the manager of the investment pool shall:

(1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(2) Be the insurer, an affiliated insurer, or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. §80A-1 et seq.), as amended, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(3) Compile and maintain detailed accounting records setting forth:

(A) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any), and other appropriate designations); and

(C) Other records which, on a daily basis, allow third parties to verify each participant's investment in the investment pool;

and

(4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:

(A) State and recognize the claims and rights of each participant;

(B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to

the aggregate amount of its investments in the investment pool; and

- (C) Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.

(f) The pooling agreement for each investment pool shall be in writing and shall provide that:

- (1) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subsection (b)(1), the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, at all times, shall hold one hundred per cent of the interests in the investment pool;
- (2) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;
- (3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:
  - (A) Each participant owns an undivided interest in the underlying assets of the investment pool; and
  - (B) The underlying assets of the investment pool are held solely for the benefit of each participant;
- (4) A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the pool under the terms of the pooling agreement;
- (5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:
  - (A) In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;
  - (B) In kind, a pro rata share of each underlying asset; or
  - (C) In a combination of cash and in kind distributions, a pro rata share in each underlying asset;

and

- (6) The pool manager shall make the records of the investment pool available for inspection by the commissioner.

(g) The investment pool authorized under these provisions shall be a business entity.

(h) Transactions between the pool and its participants shall not be subject to section 431:11-106. Investment activities of pools and transactions between pools and participants shall be reported annually in the registration statement required by section 431:11-105.

**§431:6- Securities lending, repurchase, reverse repurchase, and dollar roll; investment pools.** (a) For purposes of this section, "business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for-profit or not-for-profit.



(b) This section is applicable to investment pools under section 431:6-

(c) An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the requirements of this section.

(d) The board of directors shall adopt a written plan which shall include at least the following:

(1) A description of how cash received will be invested or used for general corporate purposes of the insurer;

(2) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(3) The extent to which the insurer may engage in these transactions.

(e) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate no more than one year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

(1) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(2) Prohibits securities lending transactions under the agreement with the agent or its affiliates.

(f) Cash received in a transaction under this section shall be invested in accordance with section 431:6- , and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner.

(g) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date, at least equal to one hundred two per cent of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two per cent of the market value of the loaned securities.

(h) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five per cent of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five per cent of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five per cent of the market value of the transferred securities.

(i) In a dollar roll transaction, the insurer shall receive cash in the amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(j) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two per cent of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred per cent of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two per cent of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.”

SECTION 2. Section 431:1-213, Hawaii Revised Statutes, is amended to read as follows:

“**§431:1-213 State defined.** State means any state of the United States[,] and the [government] governments of Puerto Rico, American Samoa, Guam, United States Virgin Islands, and the District of Columbia.”

SECTION 3. Section 431:1-214, Hawaii Revised Statutes, is amended to read as follows:

“**§431:1-214 United States defined.** United States, when used to signify a place, means the states of the United States[,] and the [government] governments of Puerto Rico, American Samoa, Guam, United States Virgin Islands, and the District of Columbia.”

SECTION 4. Section 431:9-235, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may suspend, revoke, or refuse to extend any license issued under this article or any surplus lines broker’s license for any cause specified in any other provision of this article, or for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (2) If the licensee wilfully violates or knowingly participates in the violation of any provision of this [article;] code;
- (3) If the licensee has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, or converted to the licensee’s own use, or has illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (6) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (7) If in the conduct of the licensee’s affairs under the license, the licensee has shown oneself to be a source of injury and loss to the public;

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- (8) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind; or
- (9) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee's licenses."

SECTION 5. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

- “(f) The provisions of this [subsection] section shall not apply to:
- (1) Any transaction which is subject to the provisions of article 4, dealing with the merger or consolidation of two or more insurers; or
  - (2) Any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:
    - (A) Not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or
    - (B) Not otherwise comprehended within the purposes of this section.”

SECTION 6. Section 431:3-211, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 17, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 234**

H.B. NO. 1900

A Bill for an Act Relating to Insurance Licensing.

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

SECTION 1. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) The commissioner shall collect in advance the following fees:
- (1) Certificate of authority: Issuance ..... \$600
  - (2) Organization of domestic insurers and affiliated corporations:
    - (A) Application and all other papers required for issuance of solicitation permit, filing ..... \$1,000
    - (B) Issuance of solicitation permit ..... \$100
  - (3) General agent's license:
    - (A) Issuance, regular license ..... \$50
    - (B) Issuance, temporary license ..... \$50
  - (4) Subagent's license:
    - (A) Issuance, regular license ..... \$50
    - (B) Issuance, temporary license ..... \$50

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- (8) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind; or
- (9) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee's licenses."

SECTION 5. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

- “(f) The provisions of this [subsection] section shall not apply to:
- (1) Any transaction which is subject to the provisions of article 4, dealing with the merger or consolidation of two or more insurers; or
  - (2) Any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:
    - (A) Not having been made or entered into for the purpose of, and not having the effect of, changing or influencing the control of a domestic insurer; or
    - (B) Not otherwise comprehended within the purposes of this section.”

SECTION 6. Section 431:3-211, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 17, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 234**

H.B. NO. 1900

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- “(a) The commissioner shall collect in advance the following fees:
- (1) Certificate of authority: Issuance ..... \$600
  - (2) Organization of domestic insurers and affiliated corporations:
    - (A) Application and all other papers required for issuance of solicitation permit, filing ..... \$1,000
    - (B) Issuance of solicitation permit ..... \$100
  - (3) General agent's license:
    - (A) Issuance, regular license ..... \$50
    - (B) Issuance, temporary license ..... \$50
  - (4) Subagent's license:
    - (A) Issuance, regular license ..... \$50
    - (B) Issuance, temporary license ..... \$50

- (5) Nonresident agent's or broker's license: Issuance ..... \$40
- (6) Solicitor's license: Issuance ..... \$40
- (7) Independent adjuster's license: Issuance ..... \$40
- (8) Public adjuster's license: Issuance ..... \$40
- (9) Workers' compensation claims adjuster's limited license:  
Issuance ..... \$40
- (10) Limited license issued pursuant to section 431:9-214(c): Issuance \$40
- (11) Managing general agent's license: Issuance ..... \$50
- (12) Reinsurance intermediary's license: Issuance ..... \$50
- [(9)] (13) Surplus line broker's license: Issuance ..... \$100
- [(10)] (14) Examination for license: For each examination, a fee to be established by the commissioner [by rule adopted in accordance with chapter 91].

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority or a license are as follows:

- (1) \$400 per year for all services (including extension of the certificate of authority) for an authorized insurer.
- (2) \$50 per year for all services (including extension of the license) for a regularly licensed general agent.
- (3) \$50 per year for all services (including extension of the license) for a regularly licensed subagent.
- (4) \$30 per year for all services (including extension of the license) for a regularly licensed nonresident broker.
- (5) \$20 per year for all services (including extension of the license) for a regularly licensed solicitor.
- (6) \$30 per year for all services (including extension of the license) for a regularly licensed independent adjuster.
- (7) \$30 per year for all services (including extension of the license) for a regularly licensed public adjuster.
- (8) \$30 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster.
- (9) \$30 per year for all services (including extension of the license) for a limited license issued pursuant to section 431:9-214(c).
- (10) \$50 per year for all services (including extension of the license) for a regularly licensed managing general agent.
- (11) \$50 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary.
- [(8)] (12) \$30 per year for all services (including extension of the license) for a licensed surplus line broker.
- [(9)] (13) The services referred to in paragraphs (1) to [(8)] (12) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

SECTION 2. Section 431:9-206, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) This requirement shall not apply to:
  - (1) Applicants for limited licenses, as travel insurance subagents or solicitors only, under section 431:9-214;
  - (2) Applicants who at any time within the three-year period next preceding date of application held a license in this State which conferred powers comparable to those being applied for;

- [(3) Applicants for license as nonresident agent or broker who have fulfilled qualification requirements in their state of residence and who are deemed by the commissioner to be fully qualified and competent;
- (4)] (3) Applicants for a general agent’s, subagent’s, or solicitor’s license for life insurance or life disability insurance who hold the designation chartered life underwriter (C.L.U.) from The American College; or
- [(5)] (4) Applicants for a general agent’s, subagent’s, or solicitor’s license for any class of insurance, except life insurance, who hold the designation chartered property and casualty underwriter (C.P.C.U.) from the American Institute for Property and Liability Underwriters, Incorporated.”

SECTION 3. Section 431:9-211, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each [such] appointment shall be effective when all parties to the appointment have signed the notice of appointment form. The appointment form shall be mailed to the commissioner within ten days after the signature of the last party. The effective date of the appointment shall be the date on which the last party signs the appointment form[.] if the appointment form is mailed within the ten-day period. If the appointment form is not mailed within ten days, the effective date of the appointment shall be the date on which the commissioner receives the appointment form. The appointment shall continue in force until:

- (1) The commissioner notifies the insurer that the person so appointed is no longer licensed as a general agent by this State; [or]
- (2) The commissioner notifies the general agent or domestic insurer that the person so appointed is no longer licensed as a subagent by this State; [or]
- (3) The appointment as general agent is:
  - (A) Revoked by the insurer by written notice of the revocation to the general agent; or
  - (B) Terminated by the general agent by written notice of the termination to the insurer; or
- (4) The appointment as subagent is:
  - (A) Revoked by the general agent or domestic insurer by written notice of the revocation to the subagent; or
  - (B) Terminated by the subagent by written notice of the termination to the general [[agent[]] or domestic insurer.”

SECTION 4. Section 431:9-214, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-214 Limited license.** (a) The commissioner may issue limited licenses as travel insurance subagents or solicitors to persons selling travel tickets of a common carrier of persons or property who shall act only as to travel ticket policies of disability insurance or baggage insurance on personal effects.

(b) The commissioner may prescribe and furnish special forms calling for any information that the commissioner deems proper in connection with the application for or extension of these licenses.

(c) The commissioner may issue:

- (1) A limited license to each individual who has charge of vending machines used in this State for the effectuation of travel insurance;

- (2) A limited license to any individual who sells policies of accident and sickness insurance as a promotional device to improve the circulation of a newspaper in this State;
  - (3) A limited license to creditors for the purposes of enrolling debtors under a group credit life insurance or group credit disability insurance policy, issuing certificates of insurance pursuant thereto, or issuing individual credit life insurance or credit disability insurance policies to debtors; or
  - (4) A limited credit insurance license to any individual who sells policies of individual or group credit life, credit accident and health, credit involuntary unemployment, or credit property insurance provided the individual satisfactorily passes a preclicensing examination that is limited to the kinds of insurances marketed through creditors.
- (d) The limited license shall not be issued until the license fee has been paid.”

SECTION 5. Section 431:9-216, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each [such] appointment shall be effective when all parties to the appointment have signed the notice of appointment form. The appointment form shall be mailed to the commissioner within ten days after the signature of the last party. The effective date of the appointment shall be the date on which the last party signs the notice of appointment form[.] if the appointment form is mailed within the ten-day period. If the appointment form is not mailed within ten days, the effective date of the appointment shall be the date on which the commissioner receives the appointment form. The appointment shall continue in force until:

- (1) The commissioner notifies the general agent, subagent, or domestic insurer that the person so appointed is no longer licensed as a solicitor by this State; [or]
- (2) The appointment is revoked by the general agent, subagent, or domestic insurer by written notice of the revocation to the solicitor; or
- (3) The appointment is terminated by the solicitor by written notice of the termination to the general agent, subagent, or domestic insurer.”

SECTION 6. Section 431:9-217, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To qualify for a solicitor’s license, an applicant [must] shall otherwise comply with this article and [must:] shall:

- (1) Be domiciled in this State;
- (2) Represent only one licensed general agent, subagent, or domestic insurer; provided that:
  - (A) A solicitor representing a general agent may also represent that general agent in any subagent capacity to which that general agent is appointed;
  - (B) A solicitor, representing a general agent, subagent, or domestic insurer and licensed for life insurance only or life and disability insurance, may represent one other general agent, subagent, or domestic insurer for the solicitation of other classes of insurance; and
  - (C) Insurance used to provide funds to cover burial expenses only, payable to a funeral director, shall not be construed as the same

class of insurance as life insurance for the purposes of this subsection;

- (3) Have passed the examination provided for in section 431:9-206 within the immediately preceding two-year period[.]; and
- (4) Have paid the license fee.”

SECTION 7. Section 431:9-219, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No such individual shall be so licensed unless the individual files the power of attorney provided for in article 2[.] and pays the license fee.”

SECTION 8. Section 431:9-222, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To qualify for an adjuster’s license,<sup>1</sup> an applicant [must] shall comply with this article and [must:] shall

- (1) Be domiciled in this State, or in a state which will permit residents of this State to act as adjusters in such other state;
- (2) Have had experience, special education, or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make the individual competent to fulfill the responsibilities of an adjuster; [and]
- (3) Have successfully passed any examination required under section 431:9-206[.]; and
- (4) Have paid the license fee.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 17, 1997.)

**Note**

1. Comma should be underscored.

**ACT 235**

H.B. NO. 1902

A Bill for an Act Relating to Nursing Home Administrators.

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

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

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of hearing aid dealers and fitters, board of massage therapy, 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 section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 2. Section 457B-2, Hawaii Revised Statutes, is amended as follows:

(1) By deleting the definition of “board”.

[““Board” means the board of examiners of nursing home administrators.”]

(2) By adding two new definitions to be appropriately inserted and to read as follows:

““Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.”

SECTION 3. Section 457B-3, Hawaii Revised Statutes, is amended to read as follows:

“**§457B-3 License required.** No person shall operate a nursing home in the State without having a nursing home administrator’s license [and being registered with the board] from the department as hereinafter provided. It shall be unlawful for any person not licensed under this chapter to practice or offer to practice nursing home administration or to use any sign, card, or device to indicate that the person is licensed [and registered] as [an] a nursing home administrator.”

SECTION 4. Section 457B-3.1, Hawaii Revised Statutes, is amended to read as follows:

“**§457B-3.1 Conditions concerning qualifications for licensure examination.** The [board] director shall adopt rules setting minimum educational, training, and experience qualifications that must be satisfied before an applicant is allowed to sit for the licensing examination.”

SECTION 5. Section 457B-3.2, Hawaii Revised Statutes, is amended to read as follows:

“[[**§457B-3.2**]] **Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of licenses.** The [board] director may refuse to renew, reinstate, or restore, or may revoke, suspend, deny, 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:

- (1) Altering in any way the physician’s order for any patient’s or resident’s medical or therapeutic care unless the orders are clearly hazardous to the patient or resident, in which case the physician shall be immediately notified;
- (2) Defrauding any federal, state, county, or social agency, business, or individual in the operation of a nursing home;

- (3) Engaging in false, fraudulent, or deceptive advertising, or making false or improbable statements regarding the services of the nursing home; and
- (4) Submitting or filing with the board any notice, statement, or other document required under this chapter which is false or which contains any material misstatement of fact.”

SECTION 6. Section 457B-3.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§457B-3.5] Limited and temporary licenses.** The [board of examiners of nursing home administrators] director may issue a limited and temporary license to an applicant who has not been examined as required by section 457B-6, if the applicant is otherwise qualified to be examined. Such a license shall be effective only until the next licensure examination process has been completed.”

SECTION 7. Section 457B-6, Hawaii Revised Statutes, is amended to read as follows:

“**§457B-6 Powers and duties[.] of director.** In addition to any other powers and duties authorized by law, the [board] director shall:

- (1) Develop, impose, and enforce standards which shall be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators shall be individuals who by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;
- (2) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets the [board’s] standards[;] of this chapter or the rules adopted pursuant thereto;
- (3) Issue licenses to individuals determined, after the application of appropriate techniques, to meet the [board’s] required standards, and revoke or suspend licenses [previously issued by the board] in any case where the individual holding a license is determined substantially to have failed to conform to the [requirements of the board’s] required standards[;] of this chapter or the rules adopted pursuant thereto;
- (4) Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators shall, during any period that they serve as such, comply with the [requirements of the board’s] required standards. The [board] director shall also initiate and maintain cooperative arrangements with the long-term care ombudsman, department of human services, and the department of health for the sharing of information on the performance of administrators;
- (5) Receive, investigate, and take appropriate action with respect to[, ] any charge or complaint filed with the [board] department to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements [of the board’s standards;] of this chapter or the rules adopted pursuant thereto;
- (6) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of administrators of nursing homes and of procedures and methods for the enforce-

- ment of licensing standards with respect to administrators of nursing homes who have been licensed;
- (7) (6) Adopt in accordance with chapter 91 rules as may be necessary for the purposes of this chapter; and
- (8) (7) Maintain a record of all [its] proceedings.”

SECTION 8. Section 457B-7, Hawaii Revised Statutes, is amended to read as follows:

“[[§457B-7[1]] **Subpoenas.** The [board] director may issue subpoenas to compel the attendance of witnesses and the production of documentary evidence or the production of any books, papers, or records. If any person subpoenaed as a witness fails or refuses to respond thereto, or refuses to answer questions material to the matter pending before the [board] department propounded by an examiner, any circuit judge, upon application of the [board] department or any examiner thereof, may enforce by proper proceeding the attendance and testimony of the witnesses. If any person wilfully testifies falsely under oath before the [board] department or wilfully makes a false affidavit in any proceeding before the [board,] department, the person shall be charged for perjury and shall be subject to the penalties for perjury provided by law.”

SECTION 9. Section 457B-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) There shall be a biennial renewal fee which shall be paid to the [board] department on or before June 30 of each even-numbered year. Failure, neglect, or refusal of any duly licensed nursing home administrator to pay the biennial renewal fee shall constitute a forfeiture of the nursing home administrator’s license. The license may be restored within three years upon written application therefor and the payment to the [board] department of all delinquent fees plus a penalty fee and evidence of participation in educational programs.”

SECTION 10. Section 457B-10, Hawaii Revised Statutes, is amended to read as follows:

“**§457B-10 Injunctive relief.** The [board] director may apply for an injunction in any court of competent jurisdiction to enjoin any person who has not been issued a license or [registered or] whose license has been suspended or revoked or has expired from practicing nursing home administration; and, upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise, may issue a temporary injunction, without notice or bond, enjoining the defendant from further practicing nursing home administration. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the defendant has been or is practicing nursing home administration without having been issued a license or [registered or] has been or is practicing nursing home administration after the defendant’s license has been suspended or revoked or has expired, the court or any judge thereof may enter a decree enjoining the defendant from further practicing nursing home administration. In case of violation of any injunction issued under this section, the court may summarily try and punish the offender for contempt of court. The injunction proceeding shall be in addition to, and not in lieu of, all penalties and other remedies provided in this chapter.”

SECTION 11. Section 457B-4, Hawaii Revised Statutes, is repealed.

## ACT 236

SECTION 12. All rules, guidelines, and other material adopted or developed by the board of nursing home administrators shall remain in full force and effect until amended or repealed by the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the board of nursing home administrators in those rules, guidelines, and other material is amended to refer to the director or department of commerce and consumer affairs as appropriate.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 14. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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

(Approved June 17, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 236

H.B. NO. 1904

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<sup>1</sup> 304-7, Hawaii Revised Statutes, is amended to read as follows:

“**§304-7 Gifts[.]; investment authority.** (a) The board of regents may receive, manage, and invest moneys or other property, real, personal, or mixed, which may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the purpose of the university, its improvement or adornment, or the aid or advantage of students or faculty, and in general act as trustee on behalf of the university for any of such purposes or objects.

(b) Any law to the contrary notwithstanding, land-grant college aid moneys obtained under section 304-9 may be received, managed, and invested pursuant to this section.

(c) The board shall cause to be kept suitable books of account wherein shall be recorded each gift, the essential facts of the management thereof, and the expenditure of the income, and a statement of all trust funds shall be included in the annual report to the governor[.] and the legislature.”

SECTION 2. Chapter<sup>1</sup> 304-9, Hawaii Revised Statutes, is amended to read as follows:

“**§304-9 Land-grant college aid.** The State of Hawaii hereby accepts and assents to the terms and provisions of paragraph 14(e) of the Act of Congress, approved July 12, 1960, entitled: “to amend certain laws of the United States in light of the admission of the State of Hawaii into the Union, and for other purposes”

(Public Law 86-624), and hereby consents to receive the benefits thereof in the manner and form and for the purpose in [said act] the Act intended and provided.

Until otherwise provided by law, the University of Hawaii shall be the beneficiary of the income from the funds in the [act] Act mentioned, and shall use and disburse the income from the funds only for the purposes and in the manner provided in the [act. In addition, the income shall be subject to chapter 37.] Act. The [director of finance is hereby authorized to receive and] board of regents shall be the custodian of the funds. The [director] board shall invest the funds in the manner provided by the [act and pay to the University of Hawaii the income earned by the funds.] Act. All income earned by the funds shall be credited to the University of Hawaii and used only for the purposes provided in the Act. The funds and all income earned therefrom shall be deemed to be trust money.”

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 17, 1997.)

**Note**

1. So in original.

**ACT 237**

H.B. NO. 1965

A Bill for an Act Relating to Harmful Aquatic Life.

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

SECTION 1. Alien aquatic organisms can cause serious and irreparable damage to native Hawaiian marine flora and fauna and can also adversely impact the State's aquaculture and visitor industries. Once introduced, control of those organisms is difficult and eradication is usually impossible.

The purpose of this Act is to direct state agencies to initiate discussions between the State and federal regulatory authorities, private shipping and boating industries, and scientists to develop a comprehensive plan to prevent the introduction of alien aquatic organisms in the ballast water and on the hulls of ships into Hawaiian waters.

SECTION 2. (a) The chairperson of the board of land and natural resources shall establish an alien aquatic organism task force consisting of the chairperson or designee and at least one representative from each of the following:

- (1) The department of agriculture;
- (2) The department of health;
- (3) The United States Fish and Wildlife Service;
- (4) The United States National Marine Fisheries Service;
- (5) The United States Coast Guard;
- (6) The United States Navy;
- (7) The commercial shipping, freight, or transport industry;
- (8) The private boating or marine recreation industry;
- (9) A fisheries or marine biology expert;
- (10) The International Maritime Organization; and

(11) Any other organization which the chairperson determines has an interest in the prevention of the introduction of alien aquatic organisms to Hawaiian waters.

(b) The task force shall review and evaluate the issues pertaining to the monitoring, control, and prevention of alien aquatic organisms being introduced to Hawaiian waters through international shipping and sailing, particularly through the ballast water contained in the holds of the vessels or from encrusting growth attached to the hull of the vessels. The task force shall develop a comprehensive plan to prevent the introduction and dispersal of alien aquatic organisms in the ballast water and on the hulls of vessels into Hawaiian waters by:

- (1) Identifying the ports within the State at greatest risk and the types of vessels posing the greatest danger of introductions;
- (2) Determining methods for notification of arrivals and inspection protocols for these types of vessels;
- (3) Determining preventative measures to minimize the risk of introductions from these vessels;
- (4) Recommending specific studies of existing impacts of alien organisms in ports within the State;
- (5) Recommending monitoring programs to assess the effectiveness of these protocols and measures, both within specific harbors and elsewhere in the State's marine environment;
- (6) Disseminating information relating to alien aquatic organisms to the public;
- (7) Making recommendations of proposed changes needed in rules and statutes to accomplish these goals; and
- (8) Addressing any other matters of concern raised by the task force.

(c) The task force shall submit a report setting forth its findings and recommendations to the legislature no later than twenty days prior to the 1998 regular session.

(d) The alien aquatic organism task force shall cease to exist on June 30, 1998.

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

(Approved June 17, 1997.)

**ACT 238**

H.B. NO. 2016

A Bill for an Act Relating to the Establishment of the University of Hawaii-Hilo Theatre Revolving Fund.

*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-Hilo theatre revolving fund.** There is created within the state treasury a University of Hawaii-Hilo theatre revolving fund, which shall consist of admissions, advertising sales, corporate sponsorships, marketing, merchandising, donations, fund-raising, fees, charges, and other moneys collected in conjunction with the University of Hawaii-Hilo theatre program. The revolving fund shall be administered by the office of administrative affairs of the University of Hawaii-Hilo. Funds may be expended for all costs associated with the

theatre program, including artists' fees, production costs, personnel costs, honoraria, per diem, hotel and room rentals, food and refreshments, printing and mailing, advertising, airfare, leis, rental or purchase of equipment, and theater supplies and materials.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved June 17, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 239**

H.B. NO. 2019

A Bill for an Act Relating to the Environment.

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

SECTION 1. Section 342G-29, Hawaii Revised Statutes, requires the office of solid waste management to periodically revise and update the state integrated solid waste management plan (state plan). Since its implementation in 1991, the state plan has been revised only once and is in need of updating to coordinate the county integrated solid waste management plans, which were developed in 1992 and 1993.

Due to staff and resource limitations in the office of solid waste management, however, the revision of the state plan is overdue. The state plan is necessary, not only to provide a statewide viewpoint but to account for new approaches and technologies in solid waste management as well as alternatives to disposal.

The purpose of this Act is to appropriate funds from the environmental management special fund to revise the state plan.

SECTION 2. There is appropriated out of the environmental management special fund established under section 342G-63, Hawaii Revised Statutes, the sum of \$100,000 or so much thereof as may be necessary for fiscal year 1997-1998 to review, revise, and update of the state integrated solid waste management plan.

SECTION 3. The sum appropriated shall be expended by the department of health to carry out the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1997.

(Approved June 17, 1997.)

**ACT 240**

H.B. NO. 2060

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. The purpose of this Act is to appropriate funds for the biennial budget of the office of Hawaiian affairs.

**ACT 240**

SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the office of Hawaiian affairs 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, where used, shall have the following meanings:

- A General funds
- T Trust 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. The following sums, or so much thereof as may be necessary 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, 1997, and ending June 30, 1999. 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 ceiling indicated for each year, except as provided elsewhere in this Act.

**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
<b>Office of Hawaiian Affairs</b>							
1.	OHA100	POLICY AND ADMINISTRATION					
	OPERATING		OHA	5.50*		5.50*	
			OHA	280,257A		280,257A	
			OHA	16.50*		16.50*	
			OHA	883,247T		883,247T	
2.	OHA101	ADMINISTRATIVE SERVICES					
	OPERATING		OHA	2.50*		2.50*	
			OHA	436,082A		436,082A	
			OHA	7.50*		7.50*	
			OHA	800,835T		650,935T	
3.	OHA102	PUBLIC INFORMATION					
	OPERATING		OHA	1.25*		1.25*	
			OHA	190,246A		190,246A	
			OHA	3.25*		3.25*	
			OHA	274,311T		274,311T	
4.	OHA103	HEALTH AND HUMAN SERVICES					
	OPERATING		OHA	.75*		.75*	
			OHA	361,770A		361,770A	
			OHA	1.75*		1.75*	
			OHA	408,980T		408,980T	
5.	OHA104	PLANNING AND RESEARCH					
	OPERATING		OHA	2.00*		2.00*	
			OHA	196,567A		196,567A	
			OHA	6.50*		6.50*	



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			OHA	419,247T			401,747T
6.	OHA105 - CULTURE OPERATING		OHA	4,540A			4,540A
			OHA	3.00*			3.00*
			OHA	250,976T			250,976T
7.	OHA106 - GOVERNMENT AFFAIRS OPERATING		OHA	.75*			.75*
			OHA	41,045A			41,045A
			OHA	1.75*			1.75*
			OHA	113,899T			113,899T
8.	OHA107 - LAND AND NATURAL RESOURCES OPERATING		OHA	1.25*			1.25*
			OHA	529,744A			529,744A
			OHA	3.75*			3.75*
			OHA	642,746T			642,746T
9.	OHA108 - ECONOMIC DEVELOPMENT OPERATING		OHA	2.75*			2.75*
			OHA	392,260A			392,260A
			OHA	8.25*			8.25*
			OHA	621,734T			621,734T
10.	OHA109 - EDUCATION OPERATING		OHA	.75*			.75*
			OHA	305,329A			243,630A
			OHA	2.25*			2.25*
			OHA	474,298T			474,298T
11.	OHA110 - HOUSING OPERATING		OHA	1.00*			1.00*
			OHA	34,756A			34,756A
			OHA	2.50*			2.50*
			OHA	146,168T			146,168T

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 board of 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 be inconsistent with legislative intent; and provided further that a report shall be made to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 6. Provided that, except as otherwise appropriated or authorized, the office of Hawaiian affairs and the State of Hawaii shall share proportionately in the costs of wages and fringe benefits for employees of the office of Hawaiian affairs; provided further that, for the purposes of this Act, "fringe benefits" means benefits received by public employees, including hospital, medical, and dental care under the public employees health fund, and temporary disability insurance, workers' compensation, social security, and retirement benefits.

## ACT 241

SECTION 7. In the event manifest clerical, typographical, or other mechanical errors are found in the Act, the board of trustees 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 8. This Act shall take effect on July 1, 1997.

(Approved June 17, 1997.)

## ACT 241

H.B. NO. 2110

A Bill for an Act Relating to Public Utility Exemptions from Real Property Taxes.

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

SECTION 1. The purpose of this amendment to section 239-3, Hawaii Revised Statutes, is to include a reference to existing and potential differences in a county ordinance relating to the filing date for an exemption claim from a real property assessment.

SECTION 2. Section 239-3, Hawaii Revised Statutes, is amended to read as follows:

**“§239-3 Exemption from real property taxes.** In order to secure under this chapter an exemption of county real property [from the] taxes [imposed by chapter 246], a public utility shall annually file with the [tax assessor on or before December 31 preceding the tax year, a return of such property] county in which the real property is situated, a claim for exemption in such [form] manner and by such date as [shall be] prescribed [by the director, setting forth its claim to the exemption.] in the respective county ordinance. The claim may include real property under lease to the public utility, under which lease the public utility is required to pay the taxes upon the property, and the claim to exemption shall be determined the same as if the public utility were the owner of the property.”

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

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

(Approved June 17, 1997.)

## ACT 242

H.B. NO. 2238

A Bill for an Act Relating to State Parks.

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

SECTION 1. The legislature finds that Hawaii is quickly becoming more developed, as new residents and commercial enterprises utilize greater amounts of the State's limited land and resources. As the islands become increasingly developed, the legislature finds that there is an urgent need to create new state parks to preserve additional open space for the use of future generations of Hawaii residents.

The purpose of this Act is to establish a trust fund to be administered by the department of land and natural resources as part of an “acquire a park” program to acquire state park lands through the condemnation of private lands. Under this program, citizens may donate contributions to the fund that are earmarked for a specific proposed state park or for the expansion of a specific existing state park. The legislature finds that providing contributors with assurance that contributions will be utilized exclusively for specific park acquisition and expansion purposes, combined with the existing federal and state income tax deductibility of such contributions, will encourage more of Hawaii’s residents to contribute directly toward the acquisition of more open park lands for Hawaii.

SECTION 2. Chapter 184, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§184- Park acquisition trust fund; “acquire a park” program. (a)** There is established in the state treasury a fund to be known as the park acquisition trust fund, which shall be administered by the department to acquire lands for the state park system through the condemnation of private lands.

(b) There shall be deposited into the fund the following:

- (1) Contributions received by the State that are designated for a particular proposed or existing park or parks;
- (2) All other gifts, bequests, appropriations, or other contributions of money or other property not otherwise conditioned; and
- (3) All interest earned or accrued on moneys in the fund.

(c) All moneys in the fund shall be expended by the department for the condemnation of private lands to:

- (1) Create new proposed state parks; and
- (2) Expand existing state parks.

(d) All contributions to the fund pursuant to subsection (b)(1) that are earmarked for a particular proposed or existing park or parks shall be expended for that purpose; provided that if no condemnation action has been initiated within five years after the receipt of that contribution, the contribution may be applied toward the condemnation for any other state park in the county for which the contribution was originally earmarked.

(e) The chairperson of the board of land and natural resources shall establish an “acquire a park” program to encourage state residents to assist in the acquisition of lands for the state park system through the condemnation of private lands. As part of this program, the chairperson shall identify and provide a description of proposed parks to be acquired by the State and advertise this information in newspapers of general circulation in the State and in the county in which the proposed park is to be situated, as well as other appropriate broadcast and electronic media, including the Internet.

(f) The chairperson of the board of land and natural resources, with the assistance of the director of taxation, shall adopt rules pursuant to chapter 91 to implement this section.”<sup>1</sup>

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 of this Act shall apply to taxable years beginning after December 31, 1996.

(Approved June 17, 1997.)

## Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 243

H.B. NO. 2305

A Bill for an Act Relating to Forgery.

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

Section 1. Section 708-850, Hawaii Revised Statutes, is amended to read as follows:

**“§708-850 Definitions of terms in this part.** In this part, unless a different meaning plainly is required:

- (1) “Written instrument” means:
  - (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or
  - (b) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification;
- (2) “Complete written instrument” means a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof;
- (3) “Incomplete written instrument” means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;
- (4) “Falsely make,” in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker[,] or issuing commercial establishment, but which is not either because the ostensible maker, or issuing commercial establishment is fictitious or because, if real, [he] the same did not authorize the making or drawing thereof;
- (5) “Falsely complete,” in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker,<sup>1</sup> [or] drawer, or issuing commercial establishment, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker [or] authorized by the maker[;], or issuing commercial establishment;
- (6) “Falsely alter,” in relation to a written instrument, means to change, without the authority of the ostensible maker [or], drawer, or issuing commercial establishment, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker [or], authorized by the maker[;], or issuing commercial establishment;
- (7) “Forged instrument” means a written instrument which has been falsely made, completed, endorsed, or altered;
- (8) “Utter,” in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation by acts or words, oral or in writing, that the instrument is genuine;

- (9) “Falsely endorse,” in relation to a written instrument, means to endorse, without the authority of the ostensible maker [or],<sup>2</sup> drawer, or issuing commercial establishment, any part of a written instrument, whether complete or incomplete, so that the written instrument so endorsed falsely appears or purports to be authorized by the ostensible maker [or], drawer[.], or issuing commercial establishment; and
- (10) “Fraudulently encode magnetic ink character recognition numbers,” in relation to a written instrument, means to change, alter, erase, add, create, tamper with, or manipulate the magnetic ink character recognition numbers, or symbols representing to be magnetic ink character recognition numbers, from the issuing commercial establishment.”

SECTION 2. Section 708-851, Hawaii Revised Statutes, is amended to read as follows:

**“§708-851 Forgery in the first degree.** (1) A person commits the offense of forgery in the first degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument, or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed:

- (a) Part of an issue of stamps, securities, or other valuable instruments issued by a government or governmental agency; or
  - (b) Part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property.
- (2) Forgery in the first degree is a class B felony.”

SECTION 3. Section 708-852, Hawaii Revised Statutes, is amended to read as follows:

**“§708-852 Forgery in the second degree.** (1) A person commits the offense of forgery in the second degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument,<sup>2</sup> or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed, a deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status.

- (2) Forgery in the second degree is a class C felony.”

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 17, 1997.)

#### Notes

1. Comma should be underscored.
2. Comma should not be underscored.

A Bill for an Act Relating to Probate.

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

SECTION 1. Section 560:2-205, Hawaii Revised Statutes, is amended to read as follows:

**“§560:2-205 Decedent’s nonprobate transfers to others.** The value of the augmented estate includes the value of the decedent’s nonprobate transfers to others, not included under section 560:2-204, of any of the following types, in the amount provided respectively for each type of transfer:

- (1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent’s death. Probate included under this category consists of:
  - (A) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent’s death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent’s estate or surviving spouse;
  - (B) The decedent’s fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent’s fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent’s death to a surviving joint tenant other than the decedent’s surviving spouse;
  - (C) The decedent’s ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included is the value of the decedent’s ownership interest, to the extent the decedent’s ownership interest passed at the decedent’s death to or for the benefit of any person other than the decedent’s estate or surviving spouse[; and]. As used herein, “ownership interest” is determined by dividing (i) the sum of all the decedent’s deposits to the account, including deposit life insurance proceeds added to the account on account of the decedent’s death, less all withdrawals made by or for the benefit of the decedent, by (ii) the sum of all deposits to the account;
  - (D) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent they were payable at the decedent’s death to or for the benefit of any person other than the decedent’s estate or surviving spouse;
- (2) Property transferred in any of the following forms by the decedent during marriage:
  - (A) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent’s right terminated at or

continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse;

- (B) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount;
- (3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:
- (A) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under paragraph (1)(A), (B)<sup>1</sup> or (C), or under paragraph (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subparagraph, "termination", with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, [occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property,] occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in paragraph (1)(A), "termination" occurs when the power terminated by exercise or release, but not otherwise;
  - (B) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under paragraph (1)(D) had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's

- [death to or for the benefit of any person other than the decedent's] estate or surviving spouse;
- (C) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years exceeded \$20,000."

SECTION 2. Section 560:2-702, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) Exceptions. Survival by one hundred twenty hours is not required if:
- (1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;
  - (2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; but survival must be established by clear and convincing evidence;
  - (3) The imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 560:2-901(a)(1), (b)(1), or (c)(1) or to become invalid under section [560:2-901(a)(2), (b)(2), or (c)(2);] 525-1(a)(2), (b)(2), or (c)(2); but survival must be established by clear and convincing evidence; or
  - (4) The application of a one hundred twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.”

SECTION 3. Section 560:3-203, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

- “(f) No person is qualified to serve as a personal representative who is:
- (1) [Under] An individual under the age of eighteen; [and] or
  - (2) A person whom the court finds unsuitable in formal proceedings.”

SECTION 4. Section 560:3-302, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Upon receipt of an application requesting informal probate of a will filed by a corporate fiduciary, by a parent or spouse of the decedent, or by a descendant of a parent of the decedent, the registrar, upon making the findings required by section 560:3-303, shall issue a written statement of informal probate[,] appointing a personal representative subject to qualification and acceptance, if at least one hundred twenty hours have elapsed since the decedent's death.

(b) Upon receipt of an application requesting informal probate of a will filed by someone other than as enumerated in subsection (a), the registrar shall set a date which shall be the earliest by which the registrar will decide the application. On or after such date, upon making the findings required by section 560:3-303, the registrar shall issue a written statement of informal probate[, granting any request for statutory allowances and exempt property, and] appointing a personal representative



subject to qualification and acceptance if at least fourteen days have passed after the last mailing or other delivery of the advance notice required by section 560:3-306, if proof that such notice has been given is filed with the registrar and if no petition for formal testacy proceedings has been filed.”

SECTION 5. Section 560:3-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition, for any application for informal probate under section 560:3-302(b), the moving party [must] shall mail an advance notice to the heirs and devisees informing them of the party’s application. The advance notice shall include the name and address of the applicant, the name and location of the court in which the application has been filed for informal probate, a copy of the application, a copy of any will and codicil being submitted for probate, and the date on or after which the registrar will act on the application. The advance notice shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant.”

SECTION 6. Section 560:3-307, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 560:3-614, if at least one hundred twenty hours have elapsed since the decedent’s death, and after the registrar has made the findings required by section 560:3-308, the registrar shall appoint the applicant subject to qualification and acceptance; provided that if the decedent was a non-resident, the registrar shall delay the [order of] appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent’s domicile is the applicant, or unless the decedent’s will directs that the decedent’s estate be subject to the laws of this State.”

SECTION 7. Section 560:3-402, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by section 560:3-301(a)(1) and (4) and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by section 560:3-301(a)(4)(B)[.] may be omitted.”

SECTION 8. Section 560:3-603, Hawaii Revised Statutes, is amended to read as follows:

“**§560:3-603 Bond not required without court order, exceptions.** (a) No bond is required of a personal representative appointed in informal proceedings, except:

- (1) Upon the appointment of a special administrator where bond has been requested by an interested party and the court is satisfied that it is desirable;
- (2) When an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(3) When bond is required under section 560:3-605.

(b) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this State to secure performance of the personal representative's duties."

SECTION 9. Section 560:3-605, Hawaii Revised Statutes, is amended to read as follows:

**"§560:3-605 Demand for bond by interested person.** Any person apparently having an interest in the estate worth in excess of \$1000, or any creditor having a claim in excess of \$1000, may make a written demand that a personal representative give bond. The demand [must] shall be filed with the [registrar] court and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, if ordered by the court, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 560:3-603 or 560:3-604. After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause of<sup>2</sup> the personal representative's removal and appointment of a successor personal representative."

SECTION 10. Section 560:3-803, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Nothing in this section affects or prevents:

- (1) Any proceeding to enforce any mortgage, pledge, [lien,] or other [secured interest] lien upon property of the estate;
- (2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative or the decedent's trustee for which the personal representative or the trustee is protected by liability insurance; or
- (3) Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or trustee or by the attorney or accountant for the personal representative of the estate or the decedent's trustee."

SECTION 11. Section 560:3-914, Hawaii Revised Statutes, is amended to read as follows:

**"§560:3-914 Disposition of unclaimed assets.** If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the share of the missing person, whether realty or [ ]personalty[ ], to that [persons' conservator,] person's guardian of the property, if any, otherwise to the State to become a part of the treasury of the State under chapters 523A and 665, as appropriate."

SECTION 12. Section 560:3-1006, Hawaii Revised Statutes, is amended to read as follows:

**“§560:3-1006 Limitations on actions and proceedings against distributees.** Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of three years after the decedent’s death or one year after the time of its distribution thereof, but all claims of creditors of the decedent, are barred [one year after the decedent’s death.] as set forth in section 560:3-803. This section does not bar an action to recover property or value received as a result of fraud.”

SECTION 13. Section 560:7-303, Hawaii Revised Statutes, is amended to read as follows:

**“§560:7-303 Duty to inform and account to beneficiaries.** [Subject to the provisions of section 560:1-108, the] The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration[.]; provided, however, during the life of the settlor, the trustee of a revocable inter vivos trust shall not be required to register the trust, reveal the terms to beneficiaries, or account to beneficiaries, unless otherwise directed by the settlor. In addition:

- (1) Within thirty days after the trustee’s acceptance of the trust, the trustee shall inform in writing the persons currently entitled to benefits from the trust, and if possible, one or more persons who under section 560:1-403 may represent beneficiaries with future interests, of the court in which the trust is registered and of the trustee’s name and address.
- (2) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect the beneficiary’s interest and with information about the assets of the trust and the particulars relating to the administration.
- (3) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.”

SECTION 14. Section 531-28.5, Hawaii Revised Statutes, is amended to read as follows:

**“§531-28.5 Petition to sell real property.** [In cases where the will of the decedent does not specifically authorize the personal representative to sell real property, a] If required by the decedent’s will or if demanded by a devisee in a testate probate proceeding or by an heir in an intestate probate proceeding, the personal representative or guardian shall present to the court having jurisdiction of the estate a petition setting forth the condition of the estate, and the facts and circumstances tending to show the necessity or expediency of the sale of real property. If it appears to the court either that it is necessary or that it would be advisable and for the benefit of the estate that the real property or any part thereof be sold, and that sufficient notice of the proposed sale has been given to interested persons as defined in section 560:1-201, the court may authorize the personal representative or guardian to sell the real property either at private sale or at public auction on such terms as the court shall order.”

SECTION 15. Section 560:2-103, Hawaii Revised Statutes, is amended to read as follows:

“§560:2-103 **Share of heirs other than surviving spouse.** Any part of the intestate estate not passing to the decedent’s surviving spouse under section 560:2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

- (1) To the decedent’s descendants by representation;
- (2) If there is no surviving descendant, to the decedent’s parents equally if both survive, or to the surviving parent; provided, however, if the decedent is a minor, and if it is shown by clear and convincing evidence that any parent has:
  - (A) Deserted the child without affording means of identification for a period of at least ninety days;
  - (B) Failed to communicate with the child when able to do so for a period of at least one year when the child is in the custody of another; or
  - (C) Failed to provide for care and support of the child when able to do so for a period of at least one year when the child is in the custody of another despite a child support order requiring such support;
- (3) such parent shall be deemed to have predeceased the decedent; If there is no surviving descendant or parent[,] entitled to inherit, to the descendants of the decedent’s parents or either of them by representation; and
- (4) If there is no surviving descendant, parent[,] entitled to take, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent’s paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent’s paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent’s maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent’s relatives on the other side in the same manner as the half.”

SECTION 16. Act 288, Session Laws of Hawaii 1996, is amended by amending section 5 to read as follows:

“SECTION 5. **Effect and transition.** (a) The amendments made by this Act shall take effect on January 1, 1997.

(b) Except as provided elsewhere in this Act, on [July 1, 1997:] January 1, 1997:

- (1) The amendments made by this Act apply to any governing instruments executed by decedents dying thereafter;
- (2) The amendments made by this Act apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except:
  - (A) Parts 1 and 2 of Article II (relating to intestate succession and elective share) shall apply only to the estates of decedents dying after [July 1, 1997:] January 1, 1997; and
  - (B) To the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Act;

- (3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Act and is subject to the duties imposed with respect to any act occurring or done thereafter;
- (4) An act done before the effective date in any proceeding and any accrued right is not impaired by this Act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and
- (5) Any rule of construction or presumption provided in this Act applies to instruments executed before the effective date unless there is a clear indication of a contrary intent.”

SECTION 17. Section 533-1, Hawaii Revised Statutes, is repealed.

SECTION 18. Statutory material to be repealed is bracketed.<sup>3</sup> New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval.

(Approved June 17, 1997.)

#### Notes

1. Prior to amendment “,” appeared here.
2. Prior to amendment “for” appeared here.
3. Edited pursuant to HRS §23G-16.5.

## ACT 245

S.B. NO. 5

A Bill for an Act Relating to Motorsports Insurance.

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

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§663- Waiver of liability.** (a) Any waiver and release, waiver of liability, or indemnity agreement in favor of an owner, lessor, lessee, operator, or promoter of a motorsports facility, which releases or waives any claim by a participant or anyone claiming on behalf of the participant which is signed by the participant in any motor sports or sports event involving motorsports in the State, shall be valid and enforceable against any negligence claim for personal injury of the participant or anyone claiming on behalf of and for the participant against the motorsports facility, or the owner, operator, or promoter of a motorsports facility. The waiver and release shall be valid notwithstanding any claim that the participant did not read, understand, or comprehend the waiver and release, waiver of liability, or indemnity agreement if the waiver or release is signed by both the participant and a witness; provided that a waiver and release, waiver of liability, or indemnity agreement executed pursuant to this section shall not be enforceable against the rights of any minor or the minor’s representative.

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(b) The execution of a waiver and release, waiver of liability, or indemnity agreement shall create a presumption that the person signing the document read and understood the document.

(c) For the purposes of this section:

“Motorsports facility” means land, building, structure, or area designed or modified for motorsports activities including the track and surrounding area wherein a motorsports or other event involving motor vehicles is held and which is clearly demarcated as a restricted area to spectators. “Motorsports facility” shall not include the areas intended for use by spectators or non-participants.

“Owner” means a person or entity which owns or holds fee simple title to, or a leasehold interest in, a motorsports facility or any portion of a motorsports facility, and shall include without limitation, a fee owner or lessor of the underlying land, a lessee, or sublessee, or a sublessor or master lessor, of a motorsports facility or a portion thereof.

“Participant” means a person who is participating in a motorsports event at a motorsports facility, including practices or trials, as a rider, passenger or driver, official, or owner of a vehicle or equipment used in a motorsports, or anyone assisting any of the foregoing, or a person entering an area of the motorsports facility restricted to participants.

(d) A waiver and release, waiver of liability, or indemnity agreement executed under this section shall be construed as an express assumption of risk on the part of the party executing such a waiver and release, waiver of liability, or indemnity agreement.

(e) This section shall not apply to acts or omissions constituting gross negligence, wilful and wanton conduct, or intentional acts on the part of another participant or employees or agents of the motorsports facility.

(f) The provisions of this section shall not apply to any motorsports facility unless the facility has a general liability policy of no less than \$1,000,000 for spectators and no less than \$500,000 for participants, per claim, indemnifying participants and spectators for the negligence of the facility, its employees or agents.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved June 17, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 246

S.B. NO. 130

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. The legislature finds that constructive leisure pursuits by Hawaii citizens are important. Consequently, the intent of this Act is to encourage responsible participation in the hobby of collecting, preserving, restoring, and maintaining motor vehicles of historic and special interest, which hobby contributes to the enjoyment of citizens and the preservation of Hawaii memorabilia.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§286- Special interest vehicles.** (a) As used in this section:

“Collector” means an owner of one or more vehicles, including parts vehicles, who collects, purchases, acquires, trades, or disposes of a vehicle or its parts, for the owner’s own use, to preserve, restore, and maintain the vehicle or another vehicle for hobby or historical purposes.

“Parts vehicle” means a vehicle that is owned by a collector to furnish parts for the restoration or maintenance of a special interest vehicle.

“Street rod replica vehicle” means a vehicle that was assembled from a manufactured kit, either as:

- (1) A complete kit to construct a new vehicle consisting of a prefabricated body and chassis;
- (2) Components manufactured before 1949; or
- (3) Components manufactured after 1948 to resemble a vehicle manufactured before 1949;

and that has been modified in its body style or design through the use of nonoriginal or reproduction components, such as the frame, engine, drive train, suspension, or brakes, in a manner that does not adversely affect its safe performance as a motor vehicle or render the vehicle unlawful for use on public highways.

“Street rod vehicle” means a vehicle that was:

- (1) Manufactured before 1949; or
- (2) Manufactured after 1948 to resemble a vehicle manufactured before 1949;

and that has been modified in its body style or design through the use of nonoriginal or reproduction components, such as the frame, engine, drive train, suspension, or brakes, in a manner that does not adversely affect its safe performance as a motor vehicle or render the vehicle unlawful for use on public highways. The term does not include a motorcycle, an antique vehicle, or a restored vehicle.

(b) If a street rod vehicle was manufactured before 1949 and has been modified in body style or design, the make and year of the vehicle shall be the year the vehicle most nearly resembles. If a street rod vehicle was manufactured after 1948 to resemble a vehicle manufactured before 1949, the body type of the vehicle shall be street rod vehicle or “STRD.”

(c) A state vehicle identification number shall be issued to a street rod vehicle that was manufactured after 1948 to resemble a vehicle manufactured before 1949, when no vehicle identification number is present on the vehicle; when more than one vehicle identification number is present on the vehicle; or when the vehicle identification number is absent from the body or frame, or both, of the vehicle. The state vehicle identification number shall be assigned by the director of finance of the county in which the vehicle resides.

To obtain a state vehicle identification number under this subsection, the owner of a street rod vehicle that was manufactured after 1948 to resemble a vehicle manufactured before 1949 shall provide:

- (1) A title of ownership from the previous owner of the vehicle’s body or frame;
  - (2) A bill of sale or invoices for all major parts used in the modification of the vehicle; and
  - (3) A weight certificate issued by a state-certified scale for the actual weight of the vehicle.
- (d) Notwithstanding any other law to the contrary:
- (1) Street rod vehicles and street rod replica vehicles shall be equipped with the following equipment:

- (A) Hydraulic service brakes on all wheels;
  - (B) Sealed beam or halogen headlights;
  - (C) Turn signals and a turn signaling switch;
  - (D) Safety glass or lexan windshield;
  - (E) Electric or vacuum windshield wiper located in front of the driver;
  - (F) Standard or DOT/SAE-approved tail lights; and
  - (G) A parking brake that operates on at least two wheels on the same axle;
- (2) Street rod vehicles and street rod replica vehicles shall be equipped in such a manner that no part of a vehicle, other than the vehicle's tires, will make contact with the surface of a flat highway when the vehicle is operated on the same;
  - (3) Seatbelts, bumpers, hoods, door handles, and fenders shall be optional equipment on street rod vehicles and street rod replica vehicles; and
  - (4) Seatbelts, bumpers, hoods, door handles, and fenders shall be optional equipment on vehicles manufactured before 1949, and on vehicles manufactured after 1948 to resemble a vehicle manufactured before 1949.

In the event of a conflict between this subsection and equipment requirements specified in chapters 286, 291 and 291C, this subsection shall control.

(e) If a street rod replica vehicle was assembled from a manufactured kit as a complete kit to construct a new vehicle consisting of a prefabricated body and chassis, the year of the vehicle shall be the year the vehicle resembles as reflected on the manufacturer's certificate of origin. If a street rod replica vehicle was assembled from a manufactured kit as components manufactured before 1949 or components manufactured after 1948 to resemble a vehicle manufactured before 1949, the year of the vehicle shall be the year the vehicle resembles as reflected on the manufacturer's certificate of origin. The certificate of title for a street rod replica vehicle shall be for the make and year the vehicle resembles, and the body type of the vehicle shall be street rod vehicle replica (STRD-RPLC).

(f) The state vehicle identification number of a street rod replica vehicle that was assembled from a manufactured kit as a complete kit to construct a new vehicle consisting of a prefabricated body and chassis shall be taken from the manufacturer's certificate of origin. The state vehicle identification number shall be assigned by the director of finance of the county in which the vehicle resides.

The state vehicle identification number of a street rod replica vehicle that was assembled from a manufactured kit as components manufactured before 1949 or components manufactured after 1948 to resemble a vehicle manufactured before 1949, shall be taken from the manufacturer's certificate of origin or provided by the director of finance of the county in which the vehicle resides.

To obtain a state vehicle identification number under this subsection, the owner of a street rod replica vehicle shall provide:

- (1) Ownership documents from the manufacturer of the kit or components;
- (2) All shipping and freight documents for the kit or components; and
- (3) A weight certificate issued by a state-certified scale for the actual weight of the vehicle.

(g) A state vehicle identification number shall be issued to a street rod replica vehicle when the vehicle identification number is absent from the body or frame, or both, of the vehicle; or when the vehicle identification number is absent from the manufacturer's certificate of origin. The state vehicle identification number shall be assigned by the director of finance of the county in which the vehicle resides."

SECTION 3. Section 286-2, Hawaii Revised Statutes, is amended as follows:



1. By adding a new definition to be appropriately inserted and to read:

““Special interest vehicle” means a vehicle of any age that, because of its significance, is being collected, preserved, restored, or maintained by a collector. The term includes a street rod vehicle and a street rod replica vehicle, as those terms are defined in section 286- ; a vehicle manufactured before 1949; and a vehicle manufactured after 1948 to resemble a vehicle manufactured before 1949.”

2. By amending the definition of “reconstructed vehicle” to read:

““Reconstructed vehicle” means a vehicle that is registered to be operated on a public highway [which:

(A) Is assembled], and that is:

(1) Assembled from new or used parts by a person other than a recognized manufacturer of new vehicles;

[(B) Is modified]

(2) Modified to the extent that the identity of [its] the vehicle’s make, model, or type is obscured by material changes in its appearance; or

[(C) Is modified]

(3) Modified by the removal, addition, alteration, or substitution of other than original replacement essential parts, including [but not limited to its] the vehicle’s body, power train, steering system, suspension system, exhaust system, intake system, or bumper system;

excluding ordinary body repair [which] that does not change the exterior structure of the vehicle. The term does not include a special interest vehicle.”

SECTION 4. Section 286-27, Hawaii Revised Statutes, is amended to read as follows:

**“§286-27 Permits to operate official inspection stations.** (a) The department of transportation, referred to in this section and sections 286-28 and 286-29 as “the department”, shall be responsible for issuing permits for and furnishing instructions and all forms to official inspection stations. The stations shall operate in the manner directed by the department pursuant to standards established by the director of transportation.

(b) Application for an official inspection permit shall be made upon an official form and shall be granted only when the department is satisfied that the station is equipped properly and has competent personnel to make the required inspections. Before issuing a permit, the department shall require the applicant to file proof that the applicant has, in effect, a liability insurance policy, issued to the applicant by an insurance company authorized to do business in the State, insuring against the liability of the applicant and any of the applicant’s employees in minimum amounts as follows: comprehensive public liability insurance in the amount of \$10,000 for one person and \$20,000 for one accident and comprehensive property damage insurance of \$5,000; provided that the director of transportation by rules may establish higher limits; provided that the proof of insurance need not be filed by an applicant who shall inspect only vehicles owned by the applicant; and provided further that the proof of insurance need not be filed by instrumentalities of the United States.

(c) Official inspection stations in this State shall be exempt from liability arising from the destruction of property or injury to persons caused by special interest vehicles; provided that the official inspection station:

(1) Meets the requirements of subsection (b); and

(2) Exercises due diligence in inspecting special interest vehicles in accordance with applicable standards for motor vehicle and equipment safety for special interest vehicles.

## ACT 246

[(c)] (d) A permit for an official station shall not be assigned or transferred or used at any location other than that designated by the department and every permit shall be posted in a conspicuous place at the location designated.

[(d)] (e) The counties shall provide for the necessary administrative and enforcement services.

[(e)] (f) The counties shall be reimbursed the costs incurred in providing the services under subsection [(d)] (e) .”

SECTION 5. Section 286-41, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the vehicle to be registered is specially constructed, reconstructed, or rebuilt[,] is a special interest vehicle; or is an imported vehicle, [such] this fact shall be stated in the application and upon the registration of [every] the special interest motor vehicle and imported motor vehicle, which has been registered [theretofore] until that time in any other state or county, and the owner shall surrender to the director of finance the certificates of registration or other evidence of such form of registration as may be in the applicant’s possession or control. The director of finance shall grant full faith and credit to the currently valid certificates of title and registration describing [such] the vehicle, the ownership thereof, and any liens noted thereon, issued by any title state or county in which the vehicle was last registered. The acceptance by the director of finance of a certificate of title or of registration issued by another state or county, as [hereinabove] provided[,] in this subsection, in the absence of knowledge that the certificate is forged, fraudulent, or void, shall be a sufficient determination of the genuineness and regularity of the certificate and of the truth of the recitals therein, and no liability shall be incurred by any officer or employee of the director of finance by reason of so accepting the certificate.”

SECTION 6. Section 286-42, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The county finance director, upon being notified by the designated county department that a vehicle is a special interest vehicle or that a vehicle has been inspected and approved as a reconstructed vehicle, shall cause that fact to be shown upon the registration and title certificates for that vehicle.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 17, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 247

S.B. NO. 138

A Bill for an Act Relating to Insurance Reimbursements of Mental Health and Substance Abuse Benefits for Advanced Practice Registered Nurses.

*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 adding three new definitions to be appropriately inserted and to read:  
““Advanced practice registered nurse” means a person recognized as such pursuant to chapter 457.

“Physician” means a person licensed in the practice of medicine or osteopathy pursuant to chapter 453 or 460, respectively.

“Psychologist” means a person licensed in the practice of psychology pursuant to chapter 465.”

2. By amending the definition of “alcohol or drug dependence outpatient services” to read:

““Alcohol or drug dependence outpatient services” means alcohol or drug dependence nonresidential treatment provided on an ambulatory basis to patients with alcohol or drug dependence problems that includes [psychiatric or psychological] interventions prescribed and performed by [state licensed] physicians [or], psychologists, or advanced practice registered nurses who have been certified pursuant to chapter 321. This definition shall not imply a broadening of the scope of or granting of prescriptive authority privileges, except as otherwise allowed pursuant to chapter 457.”

3. By amending the definition of “day treatment services” to read:

““Day treatment services” means treatment services provided by a hospital, mental health outpatient facility, or nonhospital facility to patients who, because of their conditions, require more than periodic hourly service. Day treatment services shall be prescribed by a physician [or licensed], psychologist, or advanced practice registered nurse with a psychiatric or mental health specialty or subspecialty, and carried out under the supervision of a physician [or licensed], psychologist[,], or advanced practice registered nurse with a psychiatric or mental health specialty or subspecialty. Day treatment services require less than twenty-four hours of care and a minimum of three hours in any one day.”

4. By amending the definition of “detoxification services” to read:

““Detoxification services” means the process whereby a person intoxicated by alcohol [or], drugs, or both, or a person who is dependent upon alcohol [or], drugs, or both, is assisted through the period of time necessary to eliminate, by metabolic or other means, the intoxicating alcohol or drug dependency factors, as determined by a [licensed] physician[,], or advanced practice registered nurse, while keeping the physiological risk to the person at a minimum.”

5. By amending the definition of “mental health outpatient services” to read:

““Mental health outpatient services” means mental health nonresidential treatment provided on an ambulatory basis to patients with mental illness that includes [psychiatric or psychological] interventions prescribed and performed by [the] a physician [or licensed], psychologist[,], or advanced practice registered nurse with a psychiatric or mental health specialty or subspecialty.”

6. By amending the definition of “partial hospitalization services” to read:

““Partial hospitalization services” means treatment services, including in-hospital treatment services or benefits, provided by a hospital or mental health

outpatient facility to patients who, because of their conditions, require more than periodic hourly service. Partial hospitalization services shall be prescribed by a physician or [licensed] psychologist[.], and may be prescribed by an advanced practice registered nurse with a psychiatric or mental health specialty or subspecialty in consultation with a physician or psychologist. Partial hospitalization services require less than twenty-four hours of care and a minimum of three hours in any one day.”

7. By amending the definition of “treatment episode” to read:

““Treatment episode” means one admission to an accredited hospital or nonhospital facility, or office of a [state-licensed] physician [or], psychologist, or advanced practice registered nurse certified pursuant to chapter 321 for treatment of alcohol or drug dependence, or both, as stipulated in a prescribed treatment plan and which would generally produce remission in those who complete the treatment. The prescribed treatment plan may include the provision of substance abuse services in more than one location and may include in-hospital, nonhospital residential, day treatment, or alcohol or drug dependence outpatient services, or any combination thereof. An admission for only detoxification services shall not constitute a treatment episode.”

SECTION 2. Section 431M-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Covered benefits for alcohol dependence, drug dependence, or mental illness insurance policies, hospital or medical service plan contracts, and health maintenance organization health plan contracts shall be limited to those services certified by the insurance or health care plan carrier’s [licensed] physician [or licensed], psychologist, or advanced practice registered nurse as medically or psychologically necessary at the least [costly] restrictive appropriate level of care.”

SECTION 3. Section 431M-4, Hawaii Revised Statutes, is amended to read as follows:

“**§431M-4 Mental illness, alcohol and drug dependence benefits.** (a) The covered benefit under this chapter shall not be less than thirty days of in-hospital services per year. Each day of in-hospital services may be exchanged for two days of nonhospital residential services, two days of partial hospitalization services, or two days of day treatment services. [Physician or psychologist visits] Visits to a physician, psychologist, or advanced practice registered nurse with a psychiatric or mental health specialty or subspecialty shall not be less than thirty visits per year to hospital or nonhospital facilities or to mental health outpatient facilities for day treatment or partial hospitalization services. Each day of in-hospital services may also be exchanged for two outpatient visits under this chapter; provided that the patient’s condition is such that hospitalization would become imminent if outpatient services were interrupted and the outpatient services would reasonably preclude hospitalization. The covered benefit for outpatient services under this chapter shall not be less than twelve visits per year. The covered benefit under this chapter shall apply to any of the services in subsection (b) or (c). In the case of alcohol and drug dependence benefits, the insurance policy may limit the number of treatment episodes but may not limit the number to less than two treatment episodes per lifetime.

(b) Alcohol and drug dependence benefits shall be as follows:

(1) Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility which has a written affiliation agreement with a hospital for emergency, medical,

and mental health support services. The following services shall be covered under detoxification services:

- (A) Room and board;
- (B) Diagnostic x-rays;
- (C) Laboratory testing; and
- (D) Drugs, equipment use, special therapies, and supplies.

Detoxification services shall be included as part of the covered in-hospital services, but shall not be included in the treatment episode limitation, as specified in subsection (a);

- (2) Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a [licensed] physician [or], psychologist, or advanced practice registered nurse certified pursuant to chapter 321 shall determine that the person suffers from alcohol or drug dependence, or both. The substance abuse services covered under this paragraph shall include those services which are required for licensure and accreditation, and shall be included as part of the covered in-hospital services as specified in subsection (a). Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system, and services performed by mutual self-help groups; and
  - (3) Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a [licensed] physician [or], psychologist, or advanced practice registered nurse certified pursuant to chapter 321 and must be reasonably expected to produce remission of the patient's condition. An individualized treatment plan approved by an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist. Services covered under this paragraph shall be included as part of the covered outpatient services as specified in subsection (a).
- (c) Mental illness benefits.
- (1) Covered benefits for mental health services set forth in this subsection shall be limited to coverage for diagnosis and treatment of mental disorders. All mental health services shall be provided under an individualized treatment plan approved by a [licensed] physician [or], psychologist, or advanced practice registered nurse with a psychiatric or mental health specialty or subspecialty and must be reasonably expected to improve the patient's condition. An individualized treatment plan approved by an advanced practice registered nurse with a psychiatric or mental health specialty or subspecialty for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist;
  - (2) In-hospital and nonhospital residential mental health services as a covered benefit under this chapter shall be provided in a hospital or a nonhospital residential facility. The services to be covered shall include those services required for licensure and accreditation, and shall be included as part of the covered in-hospital services as specified in subsection (a)[.];
  - (3) Mental health partial hospitalization as a covered benefit under this chapter shall be provided by a hospital or a mental health outpatient

facility. The services to be covered under this paragraph shall include those services required for licensure and accreditation and shall be included as part of the covered in-hospital services as specified in subsection (a)[.]; and

- (4) Mental health outpatient services shall be a covered benefit under this chapter and shall be included as part of the covered outpatient services as specified in subsection (a).”

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 17, 1997.)

ACT 248

S.B. NO. 141

A Bill for an Act Relating to Lease-Purchase Agreements.

*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  
LEASE-PURCHASE AGREEMENTS FOR PERSONAL PROPERTY**

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

“Advertisement” means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement.

“Cash price” means the price at which retail sellers are selling and retail buyers are buying the same or similar property for cash in the same trade area in which the lessor’s place of business is located. Cash price may be evidenced by an amount no greater than twice the documented actual cost, including freight charges and applicable taxes, of the lease-purchase property from an unaffiliated wholesaler, distributor, or manufacturer. A lessor shall maintain records that establish that the price disclosed as the cash price in a lease-purchase agreement is the cash price as defined.

“Consummation” means the time a lessee becomes contractually obligated on a lease-purchase agreement.

“Lessee” means a natural person who rents personal property under a lease-purchase agreement.

“Lessor” means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

§ -2 **Lease-purchase agreement defined.** A lease-purchase agreement is an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less that:

- (1) Is automatically renewable with each payment after the initial period;

- (2) Does not obligate or require the lessee to continue leasing or using the property beyond the initial period; and
- (3) Permits the lessee to become the owner of the property.

§ **-3 Agreements exempt from other laws.** (a) Lease-purchase agreements are not subject to:

- (1) Chapter 476; and
  - (2) Article 2A or 9 of chapter 490.
- (b) This chapter does not apply to the following:
- (1) Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
  - (2) A lease of a safe deposit box;
  - (3) A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the lessee has no option to purchase the leased property; or
  - (4) A lease of a motor vehicle.

§ **-4 Provisions prohibited in agreements.** A lease-purchase agreement may not contain:

- (1) A confession of judgment;
- (2) A negotiable instrument;
- (3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
- (4) A wage assignment;
- (5) A waiver by the consumer of claims or defenses; or
- (6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods.

§ **-5 Limit on total lease payments.** (a) No lessor shall offer a lease-purchase agreement in which the total lease payments necessary to acquire ownership exceed twice the cash price of the rented property.

(b) When fifty per cent of all rental payments made by a lessee equals the cash price of the property disclosed to the lessee in the lease-purchase agreement, the lessee shall own the rented property and the lease-purchase agreement shall terminate.

§ **-6 Early termination.** The lessee shall have the right to acquire ownership of the property at any time after the initial payment by tendering to the lessor all past due payments and fees and an amount equal to the cash price stated in the lease-purchase agreement multiplied by a fraction that has as its numerator the number of periodic payments remaining under the agreement and that has as its denominator the total number of periodic payments.

§ **-7 Additional charges.** (a) A lessor may contract for and receive an initial nonrefundable fee not to exceed \$10 per contract. If the lessor requires a security deposit, the amount of the deposit and the conditions under which it will be returned shall be disclosed pursuant to section -13.

(b) A lessor may contract for and receive an initial delivery charge per contract not to exceed \$15 in the case of a lease-purchase agreement covering five or fewer items if, in either case, the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed pursuant to section -14. The

delivery charge shall be assessed in lieu of and not in addition to the initial charge in subsection (a). A lessor may not contract for or receive a delivery charge on property redelivered after repair or maintenance.

(c) A lessor may contract for and receive a charge for picking up late payments from the lessee if the lessor is required to do so pursuant to the rental purchase agreement or is requested to visit the lessee to pick up a payment. In a lease-purchase agreement with payment or renewal dates which are on a monthly basis, this charge may not be assessed more than three times in any six-month period. In lease-purchase agreements with payments or renewal options on a weekly or biweekly basis, this charge may not be assessed more than six times in any six-month period. No charge assessed pursuant to this subsection may exceed \$10. A pickup fee may be assessed pursuant to this subsection only in lieu of and not in addition to any late charge assessed pursuant to subsection (d).

(d) The parties may contract for late charges as follows:

- (1) For lease-purchase agreements with monthly renewal dates, a late charge not exceeding \$5 may be assessed on any payment not made within five days after payment is due, or return of the property is required; or
- (2) For lease-purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding \$3 may be assessed on any payments not made within three days after payment is due, or return of the property is required.

A late charge on lease-purchase agreements may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A lessor may elect to waive imposition of a late charge due on an accrued payment in accordance with the terms of the lease-purchase agreement; except that, the waiver shall be in writing and, once a late charge is waived for specific payment, the lessor may not seek to impose a late fee for the accrued payment in question. No late charge shall be assessed against a payment that is timely, even though an earlier late charge has not been paid in full.

**§ -8 Assignee liability and notice of assignment.** (a) With respect to a lease-purchase agreement, an assignee of the rights of the lessor is subject to all claims and defenses of the lessee against the lessor arising from the lease of property or services, notwithstanding that the assignee is the holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments.

(b) A claim or defense of a lessee specified in subsection (a) may be asserted against the assignee under this section only to the extent of the amount owing and paid to the assignee and assignor.

(c) An agreement may not limit or waive the claims or defenses of a lessee under this section.

(d) The lessee is authorized to pay the original lessor until the lessee receives written notification that the rights to payment pursuant to a lease-purchase agreement have been assigned to an assignee and that payment is to be made to the assignee. A notification that does not reasonably identify the rights assigned shall be ineffective. If requested by the lessee, the assignee shall furnish reasonable proof that the assignment has been made, and unless the assignee does so, the lessee may pay the lessor.

**§ -9 Unfair or deceptive acts or practices.** Any person who violates this chapter shall be deemed to have engaged in an unfair or deceptive act or practice within the meaning of section 480-2.



**§ -10 Remedies of lessee.** (a) In case of a violation by a lessor of any provision of this chapter with respect to any lease-purchase agreement, the lessee may bring a suit in any court of competent jurisdiction to recover from the lessor or may set off or counterclaim in any action by the lessor actual damages. If the court finds that any violation has occurred, the court shall award a minimum recovery of \$250 or twenty-five per cent of the total cost to acquire ownership under the lease-purchase agreement, whichever is greater.

(b) The remedies specified in subsection (a) shall be in addition to any other remedies provided by law.

(c) In any action brought pursuant to this section, the court shall award the prevailing party the costs of the action and reasonable attorney fees.

**§ -11 Unconscionability.** (a) With respect to a lease-purchase transaction, if the court as a matter of law finds the transaction, agreement, or any clause of the agreement to have been unconscionable at the time it was made, the court may:

- (1) Refuse to enforce the agreement;
- (2) Enforce the remainder of the agreement without the unconscionable clause; or
- (3) Limit the application of any unconscionable clause to avoid any unconscionable result.

(b) If it is claimed or appears to the court that the transaction, agreement, or clause may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making a determination related to unconscionability.

(c) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to this section, the court may award the costs of the action and reasonable attorney fees to the lessee. If the court does not find unconscionability and does find that the lessee claiming unconscionability brought or maintained an action that the lessee knew to be groundless, the court may award the costs of the action and reasonable attorney fees to the party against whom the claim was made. In determining attorney fees, the amount of recovery claimed on behalf of the lessee shall not be controlling.

(d) The remedies of this section shall be in addition to remedies otherwise available for the same conduct authorized under law other than in this chapter, but double recovery of actual damages shall be prohibited.

(e) For the purpose of this section, a charge or practice expressly permitted by this chapter shall not be unconscionable.

**§ -12 Waivers.** A lessor shall not require a lessee to waive:

- (1) Service of process;
- (2) Any defense;
- (3) Any counterclaim; or
- (4) Right of action against the lessor or a person acting on the lessor's behalf as the lessor's agent;

in collection of payments under the lease or in repossession of the lease property.

**§ -13 Disclosure of information.** The lessor shall disclose to the lessee the information required by this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by these disclosures. The disclosures shall be made before consummation of the lease-purchase agreement. The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the lessee in not less than ten point standard type. All disclosures required by this chapter shall be printed or typed in a color or shade that clearly contrasts with the background. The

disclosures required under section -14 shall be made on the face of the contract above the line for the lessee's signature. Before any payment is due, the lessor shall furnish the lessee with an exact copy of the lease-purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement.

If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the lessee after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of this chapter.

§ -14 Information required in disclosure. (a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

- (1) The total number, total amount, and timing of all payments necessary to acquire ownership of the property;
- (2) A statement that the lessee shall not own the property until the lessee has made the total payment necessary to acquire ownership;
- (3) A statement that the lessee shall be responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;
- (4) A brief description of the leased property, sufficient to identify the property to the lessee and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used does not violate this chapter;
- (5) A brief description of any damages to the leased property;
- (6) A statement of the cash price of the property. If the agreement involves a lease of two or more items as a set, in one agreement, a statement of the aggregate cash price of all items is sufficient;
- (7) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property whichever is later;
- (8) A statement that the total of payments shall not include other charges, such as delivery, taxes, late payment, pickup, and reinstatement fees, which fees shall be separately disclosed in the contract;
- (9) A statement clearly summarizing the terms of the lessee's option to purchase, including a statement that the lessee has the right to exercise an early-purchase option and the price, formula, or method for determining the price at which the property may be so purchased;
- (10) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the leased property at the time the lessee acquires ownership of the property, the warranty shall be transferred to the lessee, if allowed by the terms of the warranty;
- (11) The date of the transaction and the identities of the lessor and lessee;
- (12) A statement that the lessee may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, ordinary wear and tear excepted, upon expiration of any lease term along with any past due rental payments; and
- (13) Notice of the right to reinstate an agreement as provided in this chapter.

(b) In addition to the disclosures required pursuant to this section, the lessor shall also make the following disclosure:

**NOTICE TO LESSEE—READ BEFORE SIGNING**

- (1) **DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.**

- (2) **DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.**
- (3) **YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.**
- (4) **YOU HAVE THE RIGHT TO EXERCISE ANY EARLY BUY-OUT OPTION AS PROVIDED IN THIS AGREEMENT. EXERCISE OF THIS OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP UNDER THIS AGREEMENT.**
- (5) **IF YOU ELECT TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND EXERCISE YOUR PURCHASE OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.**

(c) With respect to matters specifically governed by the Federal Consumer Credit Protection Act (15 U.S.C. 1601 to 1674), compliance with that Act satisfies the requirements of this section.

**§ -15 Reinstatement of agreement and repossession.** (a) A lessee who breaches any lease-purchase agreement, including but not limited to the failure to make timely rental payments, shall have the right to reinstate the original lease-purchase agreement without losing any rights or options previously acquired under the lease-purchase agreement if both of the following apply:

- (1) Subsequent to having failed to make a timely rental payment, the lessee has promptly surrendered the property to the lessor, in the manner as set forth in the lease-purchase agreement, and if and when requested by lessor; and
- (2) Not more than thirty days have passed since the lessee returned the lease property; except that if the lessee has made more than sixty per cent of the total number of payments required under the lease purchase agreement to acquire ownership, the thirty-day period shall be extended to a sixty-day period.

(b) As a condition precedent to reinstatement of the lease-purchase agreement, a lessor may collect a reinstatement fee as set forth in subsection (d).

(c) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with either the same item leased by the lessee prior to reinstatement or a substitute item of equivalent quality and condition. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 14.

(d) A reinstatement fee as provided for in this section shall equal the outstanding balance of any accrued missed payments and late charges plus an additional fee not to exceed \$5.

**§ -16 Written receipts for cash or money order.** A lessor shall provide the lessee a written receipt for each payment made by cash or money order.

**§ -17 Renegotiation for new agreement and extensions.** A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and lessee. A renegotiation shall be considered a new agreement requiring new disclosures. However, the following events shall not be treated as renegotiations:

- (1) The addition or return of property in a multiple-item agreement or in the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five per cent;

- (2) A deferral or extension of one or more periodic payments, or portions of a periodic payment;
  - (3) A reduction in charges in the lease or agreement; and
  - (4) A lease or agreement involved in a court proceeding.
- No disclosures are required for any extension of a lease-purchase agreement.

§ -18 **Advertisement of lease-purchase agreement.** If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership of any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

- (1) That the transaction advertised is a lease-purchase agreement;
- (2) The total of payments necessary to acquire ownership; and
- (3) That the lessee acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated is not liable under this section.

This section shall not apply to an advertisement which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business.”

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

(Approved June 17, 1997.)

**ACT 249**

S.B. NO. 152

A Bill for an Act Relating to Time Sharing.

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

SECTION 1. Time share activity has increased dramatically in our State over the past decade. With its growth and the financial incentives relative to time share sales and resales, complaints regarding overly aggressive marketing tactics have risen in intensity at an alarming rate, raising issues of compelling concern to the State regarding its adverse impact on tourism.

Tourism is our main source of income, yet tourists are especially vulnerable to unscrupulous time share sales practices as they are the primary target for marketing purposes. In order to protect the State’s main source of revenue and effectively enforce existing time share licensing laws, the State must become more proactive and creative in its enforcement efforts.

The purpose of this Act is to provide the necessary tools for that enforcement to occur.

SECTION 2. Chapter 514E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§514E- **Identification badges.** (a) Each person registered under this chapter as an acquisition agent, sales agent, or resale agent shall wear an identification badge while engaged in off-premises acquisition agent sales agent, or resale agent activity, as such activity is defined in section 514E-1. “Off-premises” shall be deemed to be acquisition agent, sales agent, or resale agent activity which occurs in a place other than in the office of a sales agent, on a project site, or within a

developer's principal place of business. Badges shall be worn in plain view, at chest level, and be unobstructed by any clothing or other matter.

(b) Identification badges shall be at least three and one-half by two and one-fourth inches and include the words "TIME SHARE AGENT" printed in capital letters of at least twenty-four point bold type.

(c) Identification badges shall be used only by the person whom they identify and may not under any circumstances be used by another person.

No other words, logos, or pictures shall appear on the badges.

**§514E- Private right of action.** Nothing in this chapter shall be construed to preclude a person aggrieved by a violation of this chapter from filing an action in court for civil damages. A violation of this chapter shall be deemed a cause of action for the purpose of the court action."

SECTION 3. Section 514E-11, Hawaii Revised Statutes, is amended to read as follows:

**“§514E-11 Prohibited practices.** It is a violation of this chapter for any sales agent or acquisition agent of time share units or plans to:

- (1) Fail to comply with the disclosure requirements set forth in section 514E-9 or any rule adopted pursuant thereto;
- (2) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, transportation, luaus, ocean recreational activities, land recreational activities, aerial recreational activities, or tours, or other inducements, or make any offer thereof, without fully disclosing orally and as provided in paragraph (3) that the device is being used or offered for the purpose of soliciting sales of time share units or interests;
- (3) Offer a prospective purchaser a prize or gift as part of any time share advertising or sales promotion plan, if in order to claim the prize, the prospective purchaser must attend and complete a sales presentation, unless written disclosure is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type and contains all of the following:
  - (A) A full description of the exact prize or gift won by the prospective purchaser including its cash value;
  - (B) All terms and conditions attached to the prize or gift;
  - (C) A statement that the consumer must attend and complete a sales presentation; and
  - (D) An identification of the time share project to be offered for sale including type of ownership, exchange privileges, limitations, and price ranges of the time share interests in that project;
- (4) Misrepresent or deceptively represent any material fact concerning the time share plan or time share unit;
- (5) Make any representation that a time share interest is an investment, including but not limited to the value of the interest at resale;
- (6) Fail to honor and comply with all provisions of a contract or reservation agreement with the purchaser;
- (7) Include, in any contract or reservation agreement, provisions purporting to waive any right or benefit provided for purchasers pursuant to this chapter;
- (8) Receive from any prospective purchaser any money, property (including but not limited to a credit card), or other valuable consideration

prior to signing a contract or reservation agreement for the purchase of a time share plan or unit;

- (9) Make any agreement or contract with a purchaser before delivering, furnishing, or tendering to that prospective purchaser any promised promotional device or other instrument;
- (10) Distribute any promotional or disclosure material separately if the material was filed in a consolidated form;
- (11) Use any unregistered time share booth [or fail to have displayed at least one conspicuous, clear, and unobstructed sign of a permanent nature which is upright and perpendicular to the ground, easily visible to passersby at eye-level, five feet from the floor of the booth, and of minimum dimensions of twelve inches by eighteen inches, stating in capital, block-style letters of at least one inch tall the name of the resort with which the booth is affiliated and for which the offer is intended, and prominently displaying the words "TIME SHARE," in a manner consistent with department rules and county ordinances.], or fail to display at all times a conspicuous, clear, and unobstructed sign of a permanent nature:

(A) Containing no artwork or text except:

(i) The name of the time share plan or plans with which the booth is affiliated, which must be printed in capital, block-style letters at least one inch tall using bold black lettering against a white background; and

(ii) At least one inch beneath the name of the time share plan or plans;

the words "TIME SHARE", which must be printed in capital, block-style letters at least three and one-half inches tall using bold black lettering against a white background;

(B) With minimum dimensions of nine inches by twenty-four inches, excluding any frame;

(C) Permanently affixed to each side of the booth facing the public, in an upright position, perpendicular to the ground, and easily visible to passersby; and

(D) Consistent with such rules as the director may adopt pursuant to this chapter and consistent also with county ordinances.

As used in this paragraph, "sign of a permanent nature" specifically excludes banners, grease boards, marker boards, handwritten signs, or signs constructed of temporary materials such as paper, poster board, or cardboard;

- (12) Misrepresent the amount of fees to be charged, including management fees, or the structure for future fee increase; or
- (13) Sell, offer for sale, or advertise for sale, by any person, partnership, firm, corporation, joint stock company, or other association engaged in marketing time share plans within the State, any tourist activity, including, but not limited to land, aerial, or water recreational activities, at less than the cost thereof to such vendor or give, offer to give, or advertise with the intent to give away any such tourist activity with the purpose or effect of inducing the vendee to purchase a time share plan or to attend a time share marketing event.

Any violation of this section shall also constitute an unlawful or deceptive practice within the meaning of section 480-2[.]; provided that in addition violations of section 514E- or of paragraph (11) shall result in a fine of not less than \$50 for each separate offense for a maximum aggregate amount of \$500."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved June 17, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 250**

S.B. NO. 161

A Bill for an Act Relating to Child Care Facilities.

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

SECTION 1. 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] that 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[;] years of age;
  - (6) Programs for children four years of age 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 persons authorized under chapter 358D[.];
  - (8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;
  - (9) Child care programs for children five years of age and older conducted by counties pursuant to section 302A-408; provided that each county adopt rules for their programs; and
  - (10) Any person who enters a home in a child caring capacity and only cares for children who are of that household.”

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 17, 1997.)

ACT 251

H.B. NO. 100

A Bill for an Act Relating to Motor Vehicle Insurance.

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

(1997 record)  
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SECTION 1. The legislature finds that the cost of motor vehicle insurance in the State has consistently been among the highest in the country. As a result, it has been estimated that approximately twenty per cent to thirty per cent of the motor vehicles in this State are currently uninsured.

Additionally, the ability of litigants to collect first dollar coverage when the current monetary threshold is reached has resulted in the exaggeration of claims which has resulted in increased costs to Hawaii residents.

In light of this and many other factors, the State's current motor vehicle insurance system is in need of major reform.

The purpose of this Act is to provide much demanded and much needed amendments to the motor vehicle insurance law to reduce motor vehicle insurance premiums and to preserve adequate protection of the rights of drivers.

SECTION 2. Chapter 431:10C, Hawaii Revised Statutes, is amended by adding twelve new sections to be appropriately designated and to read as follows:

**“§431:10C-A Personal injury protection benefits; defined; limits.** (a) Personal injury protection benefits, with respect to any accidental harm means all appropriate and reasonable treatment and expenses necessarily incurred as a result of the accidental harm and which are substantially comparable to the requirements for prepaid health care plans, including medical, hospital, surgical, professional, nursing, dental, optometric, chiropractic, ambulance, prosthetic services, products and accommodations furnished, x-ray, psychiatric, physical, and occupational therapy and rehabilitation.

(b) Personal injury protection benefits, when applied to a motor vehicle insurance policy issued at no cost under section 431:10C-410(3)(A), shall not include benefits under subsection (a) for any person receiving public assistance benefits.

(c) Personal injury protection benefits shall be subject to an aggregate limit of \$10,000 per person for services provided under this section. An insurer may offer additional coverage in excess of the \$10,000 aggregate limit for services provided under this section, or as provided by rule of the commissioner.

**§431:10C-B Personal injury protection benefits tied to prepaid health plan for description of coverage only.** (a) The benefits provided under section 431:10C-A shall be substantially comparable to the requirements for prepaid health care plans, as provided in chapter 393 and rules of the department of labor and industrial relations, pertaining to the Prepaid Health Care Act, as of January 1, 1998. The reference to the Prepaid Health Care Act is only for purposes of describing the coverages and exclusions, without regard to any specific insurer or plan, and shall not be construed to transfer coverage to the prepaid health care plans. The precise charges and utilization rates shall be as contained in the workers' compensation schedules as provided under section 431:10C-308.5, unless modified by the commis-



tioner by rule under chapter 91. Chiropractic treatments shall be allowed for not more than the lesser of the following:

- (1) Thirty visits at no more than \$75 a visit; or
- (2) Treatment as defined by the Hawaii state chiropractic association guidelines.

(b) The benefits under section 431:10C-A may be with copayment, and shall be subject to and apply the utilization requirements applicable under prepaid health care plans, under chapter 393.

**§431:10C-C Covered loss deductible.** (a) Whenever a person effects a recovery for bodily injury, whether by suit, arbitration, or settlement, and it is determined that the person is entitled to recover damages, the judgment, settlement, or award shall be reduced by \$5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit.

(b) It shall be a violation of section 431:13-103 for any insurer to alter, adjust, or in any way offset the judgment, settlement, or award as a result of the maximum limit as defined in section 431:10C-103.

**§431:10C-D Intervention by commissioner to adjust rates.** (a) The commissioner, annually, may reduce rates and may adjust rates prospectively for any class or type of mandatory coverage or optional additional motor vehicle insurance coverage for any insurer or group of insurers, if rates are excessive, inadequate, or unfairly discriminatory.

(b) An affected party that objects to a rate adjustment pursuant to subsection (a) shall be entitled to a public hearing under chapter 91, at which all affected and interested parties shall have an opportunity to examine, comment, and present testimony on the impact and application of the proposed or revised rates.

**§431:10C-E Managed care option.** (a) An insurer shall offer, and provide at the option of the named insured, the personal injury protection benefits through managed care providers such as a health maintenance organization or preferred provider organization. The option may include conditions and limitations to coverage, including deductibles and coinsurance requirements, as approved by the commissioner. The commissioner shall approve those conditions and limitations if the benefits are substantially comparable to or exceed the requirements of section 431:10C-A.

(b) An insurer offering the coverages authorized under subsection (a) shall demonstrate in rate filings submitted to the commissioner the savings to the insured to be realized under subsection (a).

**§431:10C-F Preferred repair provider.** An insurer may have a preferred repair provider program. All insurers having such a program shall:

- (1) Make appropriate rate filings with the insurance commissioner to reflect the reduced premiums; and
- (2) Offer a choice of no less than two preferred repair providers to the claimant, if available.

**§431:10C-G Original equipment manufacturer's and like kind and quality parts.** (a) An insurer shall make available a choice to the insured of authorizing a repair provider to utilize a like kind and quality part of an equal or better quality than the original equipment manufacturer part if such part is available or an original equipment manufacturer part for motor vehicle body repair work. If the insured or claimant chooses the use of an original equipment manufacturer part, the insured or claimant shall pay the additional cost of the original equipment

manufacturer part that is in excess of the equivalent like kind and quality part, unless original equipment parts are required by the vehicle manufacturer's warranty.

(b) A like kind and quality part under subsection (a), of an equal or better quality than the original equipment manufacturer part, shall carry a guarantee in writing for the quality of the like kind and quality part for not less than ninety days or for the same guarantee period as the original equipment manufacturer part, whichever is longer. The guarantee shall be provided by the insurer.

(c) Like kind and quality parts, certified or approved by governmental or industry organizations, shall be utilized if available.

**§431:10C-H Plain language billings.** A bill for a new and renewal policy or a notification included with the bill for the payment of premiums shall clearly identify each coverage in the policy, with the price of each coverage specified.

**§431:10C-I Fraud violations and penalties.** (a) A fraudulent insurance act, under this article, shall include acts or omissions committed by any person who intentionally attempts to obtain benefits or compensation for services provided, or provides legal assistance or counsel to obtain benefits or recovery through the following means:

- (1) Presenting, or causing to be presented, any intentionally false information on a claim;
- (2) Presenting, or causing to be presented, any intentionally false claim for the payment of a loss;
- (3) Presenting multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer except when these multiple claims are appropriate;
- (4) Making, or causing to be made, any intentionally false claim for payment of a health care benefit;
- (5) Submitting a claim for a health care benefit that was not used by, or on behalf of, the claimant;
- (6) Presenting inappropriate multiple claims for payment of the same health care benefit;
- (7) Presenting for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at that same time;
- (8) Assisting, abetting, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section; or
- (9) Making or causing to be made any intentionally false statements or claims by, or on behalf of, any person or persons with regard to obtaining legal recovery or benefits.

(b) Violation of subsection (a) is a criminal offense and shall constitute a:

- (1) Class C felony if the value of the moneys obtained is more than \$2,000;
- (2) Misdemeanor if the value of the moneys obtained or denied is less than \$2,000; or
- (3) Petty misdemeanor if the providing of intentionally false information did not cause any monetary loss to any person.

(c) Where the ability to make restitution can be demonstrated, any person subject to a criminal penalty under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the intentionally false act.

(d) A person, if acting without malice, shall not be subject to criminal or civil liability for cooperating with authorities or any court order, including filing a report, furnishing oral or written evidence, testimony, or information concerning suspected,

anticipated, or completed insurance fraud to the commissioner, the National Association of Insurance Commissioners, or any federal, state, or county agency for the purpose of investigating or prosecuting fraud under this section, except if the person commits perjury.

(e) This section shall not supersede any other law relating to theft, fraud, or deception. A violation of this section may be prosecuted under this section or any other applicable section.

(f) An insurer shall have a civil cause of action to recover payments or benefits from any person who has intentionally obtained payments or benefits in violation of this section; provided that no recovery shall be allowed if the person has made restitution under subsection (c).

**§431:10C-J Group insurance plans.** (a) Any insurer may issue any insurance coverage on a group plan, without restriction as to the purpose of the group, occupation, or type of group. Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among other persons insured under the group plan.

(b) This section is additional to article 12 and other provisions of law relating to group insurance.

**§431:10C-K U-drive insurance policy; primary.** (a) A U-drive motor vehicle insurance policy shall be primary; provided that its bodily injury liability coverage shall be secondary to the operator's or renter's motor vehicle insurance policy if:

- (1) The U-drive rental business provides any claimant or person sustaining accidental harm or damages, as a result of the operation of the rental vehicle, the identity and address of the operator or renter, along with any information available to the U-drive rental business as to the identity and address of any insurer under any liability policies applicable to the operator or renter; provided that the U-drive rental business shall make reasonable efforts to obtain such information;
- (2) A suit may be filed and service upon the responsible operator or renter can be effectuated; and
- (3) An insurer responds on behalf of the operator or renter to a claim or suit.

(b) In cases where the U-drive motor vehicle insurance policy is primary because of:

- (1) A failure of a renter or operator to cooperate with the U-drive rental business in providing the information described in subsection (a)(1);
- (2) The failure to file suit and effectuate service as described in subsection (a)(2); or
- (3) The failure of an insurer to respond as described in subsection (a)(3) or defend a claim or pay required benefits or a judgment;

the U-drive rental business may recover from the renter, operator, or insurer, the sums the U-drive rental business expended in payments or benefits, along with reasonable attorneys' fees and expenses.

**§431:10C-L Insurance fraud investigations unit.** (a) There is established in the insurance division an insurance fraud investigations unit.

(b) The unit shall employ attorneys, investigators, investigator assistants, and other support staff as necessary to promote the effective and efficient conduct of the unit's activities. The commissioner may hire such employees not subject to chapters 76 and 77.

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(c) The purpose of the insurance fraud unit shall be to conduct a statewide program for the investigation and prosecution of insurance fraud cases and violations of all applicable state laws relating to insurance fraud. The insurance fraud unit may also review and take appropriate action on complaints relating to insurance fraud.

(d) Funding for the insurance fraud investigations unit shall come from the motor vehicle insurance administration revolving fund.”

SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the 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 to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation or any of its facilities;
- [[ (13) ]]
- [[ (14) ]]
- (15) By the insurance division; or
- [[ (15) ]]

(16) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.”

2. By amending subsection (c) to read:

“(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation, the department of commerce and consumer affairs in prosecution of consumer complaints, [or] insurance division, the Hawaiian home lands trust individual claims review panel, or as grand jury counsel, shall be a deputy attorney general.”

SECTION 4. Section 41D-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The comptroller may compromise or settle a claim within the purview of section 41D-8 for an amount not exceeding [the applicable medical-rehabilitative limit established in section 431:10C-308,] \$15,000, and the comptroller may pay the claim without review by the attorney general.”

SECTION 5. Section 286-26, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Upon application for a certificate of inspection to be issued for a vehicle, an inspection as prescribed by the director [of transportation] under subsection (g) shall be conducted on the vehicle, and if the vehicle is found to be in a safe operating condition, a certificate of inspection shall be issued upon payment of a fee to be determined by the director [of transportation]. The certificate shall state the effective date, the termination date, the name of the issuing insurance carrier, and the policy number of the [no-fault] motor vehicle insurance identification card for the inspected motor vehicle as specified by section 431:10C-107 or state the information contained in the proof of insurance card as specified by section 431:10G-106. A sticker, authorized by the director [of transportation], shall be affixed to the vehicle at the time a certificate of inspection is issued. An inspection sticker which has been lost, stolen, or destroyed shall be replaced without reinspection by the inspection station that issued the original inspection sticker upon presentation of the vehicle’s current certificate of inspection; provided that the current certificate of inspection and inspection sticker shall not have expired at the time the replacement is requested. The director [of transportation] shall adopt rules to determine the fee for replacement of lost, stolen, or destroyed inspection stickers.”

SECTION 6. Section 286-26, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) As part of the inspection required by this section, the owner of the vehicle to be inspected shall produce and display the [no-fault] motor vehicle insurance identification card for the inspected motor vehicle required by section 431:10C-107 or the proof of insurance card required by section 431:10G-106. If no card is displayed, then the sticker authorized by the director [of transportation] shall not be affixed to the vehicle and the certificate of inspection shall not be issued.”

SECTION 7. Section 286-108, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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] motor vehicle or liability insurance identification card for the motor vehicle required by section 431:10C-107 and section 431:10G-106, when the applicant demonstrates the ability to operate a motor vehicle to the satisfaction of the examiner of drivers. If no valid [no-fault] motor vehicle or liability insurance identification card is displayed, the examiner of drivers shall not issue a driver’s license to the applicant.”

SECTION 8. Section 286-116, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every licensee shall have a valid driver’s license in the licensee’s immediate possession at all times, and a valid [no-fault] motor vehicle or liability insurance identification card applicable to the motor vehicle operated as required under section 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] motor vehicle or liability insurance identification card and policy conforming to article 10C and article 10G of chapter 431 or a certificate of self-insurance issued by the insurance commissioner pursuant to section 431:10C-107 and section 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] motor vehicle or liability insurance identification card required under section 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."

SECTION 9. Section 286-271, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsection (b), a legal owner of a vehicle shall not ship that vehicle interisland in this State unless the legal owner first presents to the shipper the legal owner's current certificate of registration showing that the person is the registered owner of the vehicle, picture identification, and a current [no-fault] motor vehicle insurance identification card for the vehicle. If the registered owner of the vehicle is not the legal owner of the vehicle, the registered owner must present to the shipper, the registered owner's current certificate of registration, the notarized written consent of the legal owner thereof to the transportation, and a [no-fault] motor vehicle insurance identification card. Presentation of a [no-fault] motor vehicle insurance identification card shall not be required for:

- (1) Unlicensed propelled vehicles that are not intended for on-road use;
- (2) Vehicles that have been repossessed by a regulated financial institution or vehicles that have been voluntarily surrendered to a regulated financial institution or its designated agent; or
- (3) New unregistered vehicles shipped with a bill of lading.”

SECTION 10. Section 287-20, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Whenever a driver's license has been suspended or revoked:

- (1) Pursuant to part XIV of chapter 286 except as provided in section 291-4(f),
- (2) Upon a conviction of any offense pursuant to law; or
- (3) In the case of minors, 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; provided that this section shall not apply to any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid [no-fault] motor vehicle insurance policy.

(b) 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 subsection, 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, except when a person's license has been suspended or revoked for the first conviction of driving without a [no-fault] motor vehicle insurance policy;
- (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) Driving without a valid [no-fault] motor vehicle insurance policy if the conviction occurs within a five-year period from any prior conviction."

SECTION 11. Section 431:10-102, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10-102 Definitions.** As used in this part:

[(1) Contract] **“Contract”** means any policy of life, disability, credit life, credit disability, homeowners insurance, and motor vehicle [no-fault] insurance covering personally owned or personally leased private passenger motor vehicles prepared for delivery by an insurer.

[(2) Flesch reading ease test] **“Flesch reading ease test”** means the test set forth in section 431:10-106.

[(3) Insurer] **“Insurer”** means any company, corporation, exchange, society, or association organized on the stock, mutual, assessment, or fraternal plan of insurance and authorized under the insurance laws of this State to issue life, disability, credit life, credit disability, homeowners, and motor vehicle [no-fault] insurance, including but not limited to fraternal benefit societies, nonprofit health service corporations, nonprofit hospital service corporations, and health maintenance organizations.

[(4) Text] **“Text”** includes all printed material in the contract except:

- [(A)] (1) The insurer's name and address;
- [(B)] (2) The name, number, or title of the contract;
- [(C)] (3) The table of contents or index;
- [(D)] (4) Any captions or subcaptions;
- [(E)] (5) Any specification pages, schedules, or tables;
- [(F)] (6) Any language required by federal law, regulation, or agency interpretation or any written certification to exclude such language;
- [(G)] (7) Any language required by any collective bargaining agreement;
- [(H)] (8) Any medical terminology; and
- [(I)] (9) Any definitions."

SECTION 12. Section 431:10C-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To effectuate this system of motor vehicle insurance and to encourage participation by all drivers in the motor vehicle insurance system:

- (1) Those uninsured drivers who try to obtain the privilege of driving a motor vehicle without the concomitant responsibility of an ability to compensate adequately those who are injured as a result of a motor vehicle accident are to be dealt with more severely in the criminal or civil areas than those who obtain the legally required [no-fault] motor vehicle insurance coverage;
- (2) Those persons truly economically unable to afford insurance are provided for under the public assistance provisions of this article.”

SECTION 13. Section 431:10C-103, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-103 Definitions. As used in this article:

[(1) Accidental harm] “Accidental harm” means bodily injury, death, sickness, or disease caused by a motor vehicle accident to a person.

[(2) Criminal conduct] “Criminal conduct” means:

- [(A)] (1) The commission of an offense punishable by imprisonment for more than one year;
- [(B)] (2) The operation or use of a motor vehicle with the specific intent of causing injury or damage; or
- [(C)] (3) The operation or use of a motor vehicle as a converter without a good faith belief by the operator or user that the operator or user is legally entitled to operate or use such vehicle.

[(3) Injury] “Injury” means accidental harm not resulting in death.

[(4) Insured motor vehicle] “Insured motor vehicle” means a motor vehicle:

- [(A)] (1) Which is insured under a [no-fault] motor vehicle insurance policy; or
- [(B)] (2) The owner of which is a self-insurer with respect to such vehicle.

[(5) Insurer] “Insurer” means every person holding a valid certificate of authority to engage in the business of making contracts of motor vehicle insurance in this State. For purposes of this article, insurer includes reciprocal or inter-insurance exchanges.

[(6) Maximum limit] “Maximum limit” means the total [no-fault] personal injury protection benefits payable for coverage under section 431:10C-A(a), per person [or, on the person’s death, to the person’s survivor] on account of accidental harm sustained by the person in any one motor vehicle accident shall be [\$20,000, regardless of the number of motor vehicles involved or policies, to be applied as follows:

- (A) \$10,000 for benefits described in section 431:10C-103(10)(A)(i) and (ii); and
- (B) \$10,000 for benefits described in section 431:10C-103(10)(A)(iii) and (iv).

During the course of a pending claim, the no-fault insured or legal representative shall at his or her sole option, be allowed to transfer any part [or]<sup>1</sup> all of the unused portion of the benefits under (A) to (B) or from (B) to (A); provided that the total benefits payable shall not exceed the maximum limit of \$20,000. (For example, if the insured has \$5,000 in unused benefits under (B), that amount may be transferred for use under (A) thereby increasing the limits under (A) to \$15,000.) In the event that the amount in (A) is exhausted for any reason, no-fault benefits for medical expenses shall be deemed exhausted for purposes of other contractual insurance medical benefits available to the in-



sured.] \$10,000, regardless of the number of motor vehicles or policies involved.

[(7) Monthly earnings means:

- (A) In the case of a regularly employed person, one-twelfth of the average annual compensation before state and federal income taxes at the time of injury or death;
- (B) In the case of a person regularly self-employed, one-twelfth of the average annual earnings before state and federal income taxes at the time of injury or death; or
- (C) In the case of an unemployed person or a person not regularly employed or self-employed, one-twelfth of the anticipated annual compensation before state and federal income taxes of such person paid from the time such person would reasonably have been expected to be regularly employed.

(8) Motor vehicle] “Motor vehicle” means any vehicle of a type required to be registered under chapter 286, including a trailer attached to such a vehicle, but not including motorcycles and motor scooters.

[(9) Motor vehicle accident] “Motor vehicle accident” means an accident arising out of the operation, maintenance, or use of a motor vehicle, including an object drawn or propelled by a motor vehicle.

[(10) (A) No-fault benefits, sometimes referred to as personal injury protection benefits, with respect to any accidental harm means:

- (i) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional, nursing, dental, optometric, ambulance, prosthetic services, products and accommodations furnished, and x-ray. The foregoing expenses may include any nonmedical remedial care and treatment rendered in accordance with the teachings, faith, or belief of any group which depends for healing upon spiritual means through prayer;
- (ii) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation;
- (iii) Monthly earnings loss measured by an amount equal to the lesser of:
  - (I) \$1,200 a month; or
  - (II) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity;
- (iv) All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including, but not limited to:
  - (I) Expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed not for income but for the benefit of the person or the person’s family up to \$800 a month;
  - (II) Funeral expenses not to exceed \$1,500; and
  - (III) Attorney’s fees and costs to the extent provided in section 431:10C-211(a);

provided that the term, when applied to a no-fault policy issued at no cost under the provisions of section 431:10C-410(3)(A), shall not include benefits under items (i), (ii), and (iii) for any person receiving public assistance benefits.

(B) No-fault benefits shall be subject to:

- (i) An aggregate limit of \$10,000 for services provided under section 431:10C-103(10)(A)(i) and (ii) and \$10,000 for services provided under section 431:10C-103(10)(A)(iii) and (iv) per person or such person’s survivor where each applicable policy provides only the basic no-fault coverage;
- (ii) An aggregate limit of the expanded limits where the insured has contracted for it under an optional additional coverage;
- or
- (iii) The aggregate limit shall be subject to the application of benefits or transfer thereof as provided in section 431:10C-103(6).

(11) No-fault insured] “Insured” means:

[(A)] (1) The person identified by name as insured in a [no-fault] motor vehicle insurance policy complying with section 431:10C-301; and

[(B)] (2) While residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of [no-fault] motor vehicle insurance policy complying with this article:

[(i)] (A) A spouse or other relative of a named insured, and

[(ii)] (B) A minor in the custody of a named insured or of a relative residing in the same household with a named insured.

A person resides in the same household if the person usually makes the person’s home in the same family unit, even though the person temporarily lives elsewhere.

[(12) No-fault policy] “Personal injury protection policy” means an insurance policy which meets the requirements of section 431:10C-301.

[(13) Operation, maintenance, or use with respect to a motor vehicle] “Operation, maintenance, or use with respect to a motor vehicle” includes occupying, entering into, and alighting from it, but does not include:

[(A)] (1) Conduct in the course of loading or unloading the vehicle, unless the accidental harm occurs in the immediate proximity of the vehicle; and

[(B)] (2) Conduct within the course of a business of repairing, servicing, or otherwise maintaining vehicles, unless the conduct occurs outside the premises of such business.

[(14) Owner] “Owner” means a person who holds the legal title to a motor vehicle; except that in the case of a motor vehicle which is the subject of a security agreement or lease with a term of not less than one year with the debtor or lessee having the right to possession, such term means the debtor or lessee. Whenever transfer of title to a motor vehicle occurs, the seller shall be considered the owner until delivery of the executed title to the buyer, from which time the buyer holding the equitable title shall be considered the owner.

[(15) Person] “Person” means, when appropriate to the context, not only individuals, but corporations, firms, associations, and societies.

[(16) Person receiving public assistance benefits] “Person receiving public assistance benefits” means:

[(A)] (1) Any person receiving benefits consisting of medical services or direct cash payments through the department of [[]human services[]]; or

[(B)] (2) Any person receiving benefits from the Supplemental Security Income Program under the Social Security Administration.

[(17) Regulation] “Regulation” means any rule and regulation promulgated by the commissioner pursuant to chapter 91.

[(18) Replacement vehicle] “Replacement vehicle” means a specific, comparable, and available vehicle in as good or better overall condition than the total loss vehicle.

[(19) Self-insurer, with respect to any motor vehicle,] “Self-insurer, with respect to any motor vehicle,” means a person who has satisfied the requirements of section 431:10C-105.

[(20) U-Drive motor vehicle] “U-Drive motor vehicle” means a motor vehicle which is rented or leased or offered for rent or lease to a customer from an operator of a U-Drive rental business.

[(21) U-Drive rental business] “U-Drive rental business” means the business of renting or leasing to a customer a motor vehicle for a period of six months or less notwithstanding the terms of the rental or lease if in fact the motor vehicle is rented or leased for a period of six months or less.

[(22) Underinsured motor vehicle] “Underinsured motor vehicle” means a motor vehicle with respect to the ownership, maintenance, or use for which sum of the limits of all bodily injury liability insurance coverage and self-insurance applicable at the time of loss is less than the liability for damages imposed by law.

[(23) Uninsured motor vehicle] “Uninsured motor vehicle” means any of the following:

- [(A)] (1) A motor vehicle for which there is no bodily injury liability insurance or self-insurance applicable at the time of the accident; or
- [(B)] (2) An unidentified motor vehicle that causes an accident resulting in injury; provided the accident is reported to the police or proper governmental authority, and the claimant notifies the claimant’s insurer within thirty days or as soon as practicable thereafter, that the claimant or the claimant’s legal representative has a legal action arising out of the accident.

[(24) Without regard to fault] “Without regard to fault” means irrespective of fault as a cause of accidental harm, and without application of the principle of liability based on negligence.”

SECTION 14. Section 431:10C-104, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Except as provided in section 431:10C-105, no person shall operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such motor vehicle is insured at all times under a [no-fault] motor vehicle insurance policy.

(b) Every owner of a motor vehicle used or operated at any time upon any public street, road, or highway of this State shall obtain a [no-fault] motor vehicle insurance policy upon such vehicle which provides the coverage required by this article and shall maintain the [no-fault] motor vehicle insurance policy at all times for the entire motor vehicle registration period.”

SECTION 15. Section 431:10C-104.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§431:10C-104.5] Amnesty period for uninsured motorists.** Notwithstanding any other provision of law to the contrary, any penalties and any provision for surcharge based on prior failure, since January 1, 1996, to maintain no-fault insurance or suspension or revocation of license due solely to failure to maintain no-fault or motor vehicle insurance shall not apply to any uninsured motorist who obtains the required coverages prior to December 31, [1992.] 1997.”

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SECTION 16. Section 431:10C-105, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-105 Self-insurance.** The motor vehicle insurance required by section 431:10C-104 may be satisfied by any owner of a motor vehicle if:

- (1) Such owner provides a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under a [no-fault] motor vehicle insurance policy, providing coverage at all times for the entire motor vehicle registration period, as determined and approved by the commissioner under regulations; and
- (2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against such owner as the claimant would have had if a [no-fault] motor vehicle insurance policy had been applicable to such vehicle.”

SECTION 17. Section 431:10C-106, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-106 Specialty insurers not prohibited.** Nothing in this article shall prevent an insurer from offering [no-fault] motor vehicle insurance policies for only U-drive motor vehicles.”

SECTION 18. Section 431:10C-107, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer shall issue to its insureds a [no-fault] motor vehicle insurance identification card for each motor vehicle for which the basic [no-fault] motor vehicle insurance coverage is written. The identification card shall contain the following:

- (1) Name of make and factory or serial number of the motor vehicle; provided[, however,] that insurers of five or more motor vehicles which are under common registered ownership and used in the regular course of business shall not be required to indicate the name of make and the factory or serial number of each motor vehicle;
- (2) Policy number;
- (3) Names of the insured and the insurer; and
- (4) Effective dates of coverage including the expiration date.”

SECTION 19. Section 431:10C-108, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-108 Unlawful use of [no-fault] motor vehicle insurance<sup>2</sup> identification card.** It shall be a violation of this article:

- (1) For any person to make, issue, or knowingly use any fictitious or fraudulently altered [no-fault] motor vehicle insurance identification card; or
- (2) For any person to display or cause or permit to be displayed a [no-fault] motor vehicle insurance identification card knowing that the [no-fault] motor vehicle insurance policy was canceled as provided in section 431:10C-111 and section 431:10C-112.”

SECTION 20. Section 431:10C-109, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

**“§431:10C-109 [No-fault] Motor vehicle insurance identification card after cancellation of policy; return to insurer, civil sanctions.”**

2. By amending subsection (a) to read:

“(a) When a [no-fault] motor vehicle insurance policy is canceled before the end of the policy period, the insured shall within thirty days after being notified of the cancellation:

- (1) Return the [no-fault] motor vehicle insurance identification card to the insurer for the policy; or
- (2) If the card is lost or stolen, submit to the insurer an affidavit signed by the insured stating that fact to the insurer.”

3. By amending subsection (c) to read:

“(c) If the card or affidavit is not returned within the period specified, the insurer may:

- (1) If the premiums for the period shown on the [no-fault] motor vehicle insurance identification card have been prepaid, withhold the unearned portions of the premiums until the identification card or an affidavit signed by the insured has been returned. In addition, all premiums shall be considered “earned” until the card is returned.
- (2) If the premiums for the period shown on the identification card have not been paid in full, bring a civil action for three times the unpaid portion of the premiums. Notwithstanding section 607-14 and section 607-17, the insurer shall be awarded reasonable attorney’s fees and court costs. If the [no-fault] motor vehicle insurance identification card is returned after the civil action is filed but before the matter is taken to trial, the insurer shall be awarded damages of not less than \$100, but not more than the amount of the unpaid premiums together with reasonable attorney’s fees and costs as provided in this section.”

SECTION 21. Section 431:10C-110, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-110 Rejection of application, joint underwriting plan placement.** A general agent, including a branch office of a foreign or alien insurer, subagent, or solicitor upon rejection of an application for a [no-fault] motor vehicle insurance policy or optional additional insurance, shall immediately offer, subject to the guidelines established by rules of the commissioner, to place the requested insurance coverages with the joint underwriting plan.”

SECTION 22. Section 431:10C-111, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-111 Cancellation and nonrenewal of policies: when prohibited, when permitted.** (a) An insurer may not cancel or refuse to renew a [no-fault] motor vehicle insurance policy, including required optional additional insurance meeting [the provisions of] section 431:10C-302, once issued except when:

- (1) The license of the principal operator to operate the type of motor vehicle is suspended or revoked;
- (2) Premium payments for the policy are not made after reasonable demand therefor; or
- (3) The nonrenewal or conditional renewal is limited in accordance with section 431:10C-111.5.

(b) An insurer may refuse to renew optional additional coverage in excess of that which the insurer is required to make available to the insured under section 431:10C-302 where the insured is a member of a class set forth in section 431:10C-407(b)(1)(A) or (B) at the time of the refusal to renew.

(c) No insurer shall refuse to continue a [no-fault] motor vehicle insurance policy based solely upon a person's race, creed, ethnic extraction, age, sex, length of driving experience, marital status, residence, physical handicap, or because an insured has elected [ ]to obtain[ ]<sup>1</sup> any required or optional coverage or deductible required by law. If an insured alleges that the insurer's refusal to continue the [no-fault] motor vehicle insurance policy is based solely upon the insured's race, creed, ethnic extraction, age, sex, length of driving experience, marital status, residence, physical handicap, or because the insured has elected to obtain<sup>1</sup> any required or optional coverage or deductible provided by law, the burden of proof shall rest with the insurer to prove that the refusal to continue the policy was not based on noncompliance with this subsection.

(d) In any case of cancellation or refusal to renew, the insurer shall continue all [no-fault] motor vehicle insurance and optional additional coverages in force, to the date of expiration or for thirty days following notice, whichever date occurs first.

(e) An insurer may also refuse to renew [no-fault] motor vehicle insurance policies:

- (1) If the commissioner determines that the financial soundness of the insurer would be impaired by the writing of additional policies of insurance; or
- (2) The insurer ceases to write any new policies of insurance of any kind in this State.

(f) Within fifteen days of a cancellation and the return of the [no-fault] motor vehicle insurance identification card or a signed affidavit stating the card was lost or stolen, the insurer shall refund the pro rata unearned portion, if any, of any prepaid premiums. Premiums shall be considered "earned" as provided in section 431:10C-109."

SECTION 23. Section 431:10C-112.5, Hawaii Revised Statutes, is amended to read as follows:

**“[ ]§431:10C-112.5[ ] Notice of cancellation for insurer ceasing to issue [no-fault] motor vehicle insurance policies.** Any insurer authorized to issue [no-fault] motor vehicle insurance policies, which ceases to engage in the motor vehicle insurance business in this State, shall give written notice to each insured not less than sixty days prior to the effective date of closing its business.”

SECTION 24. Section 431:10C-115.5, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-115.5 [No-fault] Motor vehicle insurance administration revolving fund.** (a) There is established a separate revolving fund to be administered by the commissioner and to be designated as the [no-fault] motor vehicle insurance administration revolving fund.

(b) This fund shall be used to pay the costs of administering the commissioner's obligations under this article. The costs shall include but not be limited to [costs of peer review of treatment and rehabilitation services for injuries covered by no-fault insurance,] costs related to public education and information, [costs related to determination of the medical-rehabilitative threshold,] costs [relating] related to closed claims studies and other studies and evaluations relating to motor vehicle insurance, costs related to the administration of the motor vehicle insurance benefits

task force, and costs related to administrative [contract] contracts with personnel necessary to carry out the purposes of this article. The commissioner may hire attorneys for the insurance fraud investigations unit, insurance fraud investigators, insurance fraud investigator assistants, and other support staff without regard to chapters 76 and 77.

(c) Every insurer making a challenge which is submitted to a peer review organization pursuant to section 431:10C-308.6 shall pay to the commissioner a fair and equitable amount to be determined by the commissioner, plus the cost of the peer review. The commissioner may increase the amount from time to time as warranted by increases in the cost of administering the peer review program. All payments collected by the commissioner shall be deposited in the no-fault administration revolving fund. The commissioner or the peer review organization shall not receive or accept any additional emolument on account of any challenge to a peer review organization. The peer review organization shall submit its charges, which shall not exceed a fair and reasonable charge to be determined by the commissioner, along with the peer review organization's recommendation to the commissioner. The commissioner shall pay the peer review organization out of the no-fault administration revolving fund. The commissioner shall transmit copies of the peer review recommendation to the insured, insurer, and provider. The commissioner shall transmit the peer review charges to the insurer, and the insurer shall reimburse the no-fault administration revolving fund for the charges within thirty days.

(d) (c) Each insurer authorized to transact motor vehicle insurance in this State and each self-insurer shall deposit with the commissioner a fair and equitable amount to be determined by the commissioner on April 1 of each year, to be credited to the [no-fault] motor vehicle insurance administration revolving fund. In addition, each insurer authorized to transact motor vehicle insurance in this State and each self-insurer in this State, shall pay to the commissioner at a time determined by the commissioner, a one-time deposit in an amount to be determined by the commissioner, to be credited to the [no-fault] motor vehicle insurance administration revolving fund.

(e) (d) Moneys in the [no-fault] motor vehicle insurance administration revolving fund shall not revert to the general fund.

(f) (e) The commissioner shall report annually to the legislature before the convening of each regular session as to fund administration and expenditures.”

SECTION 25. Section 431:10C-115.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:10C-115.6]]~~ **Disclosure of [no-fault] personal injury protection limits and payments.** [(a) Effective January 1, 1993, every] Every insurer shall advise every person entitled to [no-fault] personal injury protection benefits, as defined in section [431:10C-103(10)(A),] 431:10C-A(a), of the maximum amount of [no-fault] personal injury protection benefits available under the policy within thirty days of receiving an initial notice, claim, or application for [no-fault] personal injury protection benefits. The disclosure of [no-fault] personal injury protection policy limits shall include a description of the nature of [no-fault] personal injury protection benefits, matters covered by [no-fault] personal injury protection benefits, and the procedure for submitting [no-fault] personal injury protection claims.

[(b) Every no-fault insurer shall give written notice to every person eligible for no-fault benefits when \$5,000 in benefits has been paid and at \$5,000 increments thereafter up to the policy limits, including any optional additional coverages.]”

SECTION 26. Section 431:10C-116, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-116 Challenges to [no-fault] motor vehicle insurance law; intervention by attorney general. At the request of the commissioner, the attorney general shall intervene in any case before any appellate court in this State in which the constitutionality or validity of this article or any part thereof is at issue, and may appeal to the United States Supreme Court, if necessary, to obtain a final determination of any case.”

SECTION 27. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) (1) Any person subject to this article in the capacity of the operator, owner, or registrant of a motor vehicle in this State, or registered in this State, who violates any applicable provision of this article, shall be subject to citation for the violation by any county police department in a form and manner approved by the violations bureau of the district court of the first circuit.
- (2) Notwithstanding any provision of the Hawaii Penal Code:
  - (A) Each violation shall be deemed a separate offense and shall be subject to a fine of not less than \$100 nor more than \$5,000 which shall not be suspended except as provided in subparagraph (B);
  - (B) If the person is convicted of not having had a [no-fault] motor vehicle insurance policy in effect at the time the citation was issued, the fine shall be \$500 for the first offense and a minimum of \$1,500 for each subsequent offense that occurs within a five-year period from any prior conviction; provided that the judge:
    - (i) Shall have the discretion to suspend the fine for the first offense; provided further that upon the defendant’s request, the judge may grant community service in lieu of the fine, of not less than seventy-five hours and not more than one hundred hours for the first offense, and not less than two hundred hours nor more than two hundred seventy-five hours for the second offense; and
    - (ii) May grant community service in lieu of the fine for subsequent offenses at the judge’s discretion.
- (3) In addition to the fine in paragraph (2), for the first conviction within a five-year period for the offense of driving without [no-fault] motor vehicle insurance policy, the court shall either:
  - (A) Suspend the driver’s license of the driver or of the registered owner for three months, provided that they shall not be required to obtain proof of financial responsibility pursuant to section 287-20[,]; or
  - (B) Require the driver or the registered owner to keep a nonrefundable [no-fault] motor vehicle insurance policy in force for six months.

In addition to the fine in paragraph (2), if the violation is a subsequent offense of driving without a valid [no-fault] motor vehicle insurance policy, within a five-year period of any prior conviction, the driver’s licenses of the driver or the registered owner shall be suspended for one year and the driver or the registered owner shall be required to maintain proof of financial responsibility pursuant to section 287-20.

- (4) Any person cited under this section shall have an opportunity to present a good faith defense, including but not limited to lack of knowledge or proof of insurance. The general penalty provision of this section shall not apply to:



- (A) Any operator of a motor vehicle owned by another person if the operator's own insurance covers such driving; [or]
  - (B) Any operator of a motor vehicle owned by that person's employer during the normal scope of that person's employment; or
  - (C) Any operator of a borrowed motor vehicle if the operator holds a reasonable belief that the subject vehicle is insured.
- (5) In the case of multiple convictions for driving without a valid [no-fault] motor vehicle insurance policy within a five-year period from any prior conviction, the court, in addition to any other penalty, shall impose the following penalties:
- (A) Imprisonment of not more than thirty days;
  - (B) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
  - (C) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle, or any other cost involved pursuant to section 431:10C-301; or
  - (D) Any combination of those penalties.’’

SECTION 28. Section 431:10C-118, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-118 Fee in lieu of fine; defense.** (a) Any person bringing an action in tort under this article who was uninsured at the time of the accident shall pay a fee of \$1,000 in lieu of any fine which could have been levied as a criminal penalty for failing to obtain the [no-fault] motor vehicle insurance coverage required by this article.

(b) The fee required under subsection (a) shall be paid by the person directly, or deducted from any settlement or verdict received, or both.

(c) No person shall be required to pay the fee in subsection (a) if the person can show proof of having been convicted in a prior criminal proceeding for failing to have [no-fault] motor vehicle insurance coverage on the date of the accident which is the subject of the tort action.’’

SECTION 29. Section 431:10C-119, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Prior to licensing an insurer to transact [no-fault or the optional additional] a motor vehicle insurance business in this State, the commissioner:

- (1) Shall effect a thorough examination of the insurer's business experience, financial soundness, and general reputation as an insurer in this and other states. In the discretion of the commissioner, this examination may include an examination of any or all of the business records of the insurer, and an audit of all or any part of the insurer's motor vehicle insurance business, each to be performed by the commissioner's staff or by independent consultants. No license shall be issued until the commissioner is satisfied as to the business experience, financial solvency, and the economic soundness of the insurer; and
- (2) Shall require of each insurer, and determine that satisfactory arrangements have been made for, the provision of a complete sales and claims service office in the State.
- (3) Notwithstanding any other requirements of this section or of the insurance code, may require a bond in a reasonable amount and with

deposits or sureties determined in the commissioner’s discretion of any applicant for a license hereunder. The commissioner may, at any time, make and enforce such a requirement of any licensed insurer or self-insurer.”

2. By amending subsection (c) to read:

“(c) The commissioner shall promulgate [regulations] rules to permit any licensed health insurer to secure a license to engage in the business of motor vehicle insurance to provide only those [no-fault] personal injury protection benefits [described] defined in section [431:10C-103(10)] 431:10C-A(a) and optional major medical coverages.”

SECTION 30. Section 431:10C-120, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No insurer shall issue or offer to issue any policy which the insurer represents is a [no-fault] motor vehicle insurance policy unless such insurer meets the requirements of this article.”

SECTION 31. Section 431:10C-121, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the event section 431:10C-306(a) [through (c)] to (d) is held constitutionally invalid, then it is the intent of the legislature that the following sections only shall be voided:

- (1) 431:10C-104[.];
- (2) 431:10C-105[.];
- (3) 431:10C-120[.];
- (4) 431:10C-303[.];
- (5) 431:10C-304[.] and
- (6) 431:10C-305.

It shall be conclusively presumed that the legislature would have enacted the remainder of this article without such invalid or unconstitutional provision.”

SECTION 32. Section 431:10C-202, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-202 Making of motor vehicle insurance rates.** All premium rates for motor vehicle insurance shall be made in accordance with article 14 and the following provisions:

- (1) Notwithstanding any other law to the contrary, no insurer shall agree, combine, or conspire with any other private insurer or enter into, become a member of, or participate in any understanding, pool, or trust, to fix, control, or maintain, directly or indirectly, motor vehicle insurance rates. Any violation of this section shall subject the insurer and each of its officers and employees involved to the penalties of chapter 480 without benefit of any exemption otherwise permitted by section 480-11; provided that this [ ]paragraph[ ] shall not apply to advisory organizations referred to in section 431:14-111 which are not involved in ratemaking under this article.
- (2) Notwithstanding any provision in this section to the contrary, the plans and rates for any surcharge or credit included by an insurer as part of the proposed rate filing shall be separately identified. Only reasonable surcharges approved by the commissioner shall be used; provided that no surcharge for the failure to maintain [no-fault] motor vehicle insur-

ance shall be approved by the commissioner unless the insured has previously been convicted of driving without insurance within the preceding three years. Credits shall be deemed reasonable if there is no objection by the commissioner. Insurers shall furnish the prospective insured with a written explanation, in easily understandable language, clearly describing the reason for the surcharge or credit and how the amount of the surcharge or credit is determined.”

SECTION 33. Section 431:10C-208, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-208 Increase in premiums prohibited.** No premium on any [no-fault] motor vehicle insurance policy shall be increased as a result of any accident if the insured is not at fault in the accident. An accident in which the insured was not at fault shall not be used in any way to affect any subsequent increases in insurance premiums.”

SECTION 34. Section 431:10C-211, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

“**§431:10C-211 [Claimant’s attorney’s] Attorney’s fees.**”

2. By amending subsections (a) and (b) to read:

“(a) A person making a claim for [no-fault] personal injury protection benefits may be allowed an award of a reasonable sum for attorney’s fees, and reasonable costs of suit in an action brought by or against an insurer who denies all or part of a claim for benefits under the policy, unless the court upon judicial proceeding or the commissioner upon administrative proceeding determines that the claim was unreasonable, fraudulent, excessive, or frivolous. Reasonable attorney’s fees, based upon actual time expended, shall be treated separately from the claim and be paid directly by the insurer to the attorney.

(b) A person who has effected a tort recovery, whether by suit or settlement, and who is sued by the insurer to recover fifty per cent of the [no-fault] personal injury protection benefits paid, under section 431:10C-307, may be allowed reasonable attorney’s fees and reasonable costs of suit.”

SECTION 35. Section 431:10C-212, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner has jurisdiction to review any denial of [no-fault] personal injury protection benefits.”

SECTION 36. Section 431:10C-213, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A claimant, insurer, or provider of services may submit any dispute relating to a [no-fault] motor vehicle insurance policy to an arbitrator by filing a written request with the clerk of the circuit court in the circuit where the accident occurred.”

SECTION 37. Section 431:10C-215, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The commissioner shall assess and collect from each insurer, self-insurer, and from every applicant for a certificate of self-insurance or a license to transact the motor vehicle [no-fault] insurance and optional additional insurance business in this State, such portion of the full cost of every audit, inspection, examination, visitation, and other services related to motor vehicle insurance required by this or any other article, or performed by the commissioner in the commissioner’s discretion under this article or this code, as the commissioner deems equitable in rendering of such service. The charges shall be collected and paid into the general fund of this State.

- (d) (1) Each insurer licensed to transact motor vehicle [no-fault] insurance or optional additional insurance business in this State shall provide the commissioner with periodic reports on every aspect of the [no-fault] motor vehicle insurance and the optional additional insurance business the insurer transacts in the State, including, but not limited to, reports on the investment, reserve, reinsurance, loss and profit experience, ratemaking and schedules, claims received and paid[.]; and
- (2) Each insurer shall, not less frequently than quarterly, report to the commissioner the details of each claim received, claim paid, application for and sale of a motor vehicle insurance policy, each termination and renewal refusal notice posted, and each cancellation and refusal to renew effected on both [no-fault] motor vehicle insurance and optional additional insurance policy transactions.”

SECTION 38. Section 431:10C-301, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), and (d) to read as follows:

“(a) [In order to meet the requirements of a no-fault policy as provided in this article, an] An insurance policy covering a motor vehicle shall provide:

- (1) Coverage specified in section 431:10C-304; and
  - (2) Insurance to pay on behalf of the owner or any operator of the insured motor vehicle using the motor vehicle with the express or implied permission of the named insured, sums which the owner or operator may legally be obligated to pay for injury, death, or damage to property of others, except property owned by, being transported by, or in the charge of the insured, which arise out of the ownership, operation, maintenance, or use of the motor vehicle; provided that in the case of a U-drive motor vehicle, insurance to pay on behalf of the renter or any operator of the insured motor vehicle using the motor vehicle with the express permission of the renter or lessee, sums which the renter or operator may be legally obligated to pay for damage or destruction of property of others (except property owned by, being transported by, or in the charge of the renter or operator) arising out of the operation or use of the motor vehicle unless the motor vehicle is reported stolen by the owner within three days of notification of the incident; provided that the insurer and owner of a U-drive vehicle shall have the right of subrogation against the renter and operator for breach of the rental contract between owner and renter; and provided further that, in the event that any motor vehicle offered for rental or lease is involved in an accident, the lessor shall provide all information it has or obtains relevant to the accident to all other involved parties upon their request, including but not limited to information about the lessee, and the driver of the vehicle if other than the lessee.
- (b) A motor vehicle insurance policy shall include:

- (1) Liability coverage of not less than [~~\$25,000~~] \$20,000 per person, with an aggregate limit of \$40,000 per accident, for all damages arising out of accidental harm sustained by any one person as a result of any one accident applicable to each person sustaining accidental harm arising out of ownership, maintenance, use, loading, or unloading of the insured vehicle;
- (2) Liability coverage of not less than \$10,000 for all damages arising out of [injury] damage to or destruction of property including motor vehicles and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle;
- (3) With respect to any motor vehicle registered or principally garaged in this State, liability coverage provided therein or supplemental thereto, in limits for bodily injury or death set forth in paragraph (1), under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom; provided[, however,] that the coverage required under this paragraph shall not be applicable where any named insured in the policy shall reject the coverage in writing; and
- (4) Coverage for loss resulting from bodily injury or death suffered by any person legally entitled to recover damages from owners or operators of underinsured motor vehicles. An insurer may offer the underinsured motorist coverage required by this paragraph in the same manner as uninsured motorist coverage; provided that the offer of both shall:
  - (A) Be conspicuously displayed so as to be readily noticeable by the insured;
  - (B) Set forth the premium for the coverage adjacent to the offer in a manner that the premium is clearly identifiable with the offer and may be easily subtracted from the total premium to determine the premium payment due in the event the insured elects not to purchase the option; and
  - (C) Provide for written rejection of the coverage by requiring the insured to affix the insured's signature in a location adjacent to or directly below the offer.

(c) The stacking or aggregating of uninsured motorist coverage or underinsured motorist coverage is prohibited, except as provided in subsection (d).

(d) An insurer shall offer the insured the opportunity to purchase uninsured motorist coverage and underinsured motorist coverage by offering the following options with each [no-fault] motor vehicle insurance policy:

- (1) The option to stack uninsured motorist coverage and underinsured motorist coverage; and
- (2) The option to select uninsured motorist coverage and underinsured motorist coverage, whichever is applicable, up to but not greater than the bodily injury liability coverage limits in the insured's policy.

These offers are to be made when a [no-fault] motor vehicle insurance policy is first applied for or issued. For any existing policies, an insurer shall offer such coverage at the first renewal after January 1, 1993. Once an insured has been provided the opportunity to purchase or reject the coverages in writing under the options, no further offer is required to be included with any renewal or replacement policy issued to the insured."

SECTION 39. Section 431:10C-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to the [no-fault] motor vehicle insurance coverages described in section 431:10C-301, every insurer issuing a [no-fault] motor vehicle insurance policy shall make available to the insured the following optional insurance under the following conditions:

- (1) At the option of the insured, provisions covering loss resulting from damage to the insured’s motor vehicle with such deductibles, including but not limited to collision and comprehensive deductibles of \$50, \$100, \$250, \$500, \$1,000, \$1,500, and \$2,000, at appropriately reduced premium rates, as the commissioner, by regulation, shall provide;
- (2) At the option of the insured, compensation to the insured, the insured’s spouse, any dependents, or any occupants of the insured’s vehicle for damages not covered by [no-fault] personal injury protection benefits;
- (3) Additional coverages and benefits with respect to any injury[, death,] or any other loss from motor vehicle accidents or from operation of a motor vehicle for which the insurer may provide for aggregate limits with respect to such additional coverage so long as the basic liability coverages provided are not less than those required by section 431:10C-301(b)(1) and (b)(2);
- (4) At the option of the insured, an option in writing for coverage for wage loss benefits for monthly earnings loss for injury arising out of a motor vehicle accident. Any change in the wage loss benefits coverage selected by an insured shall apply only to benefits arising out of motor vehicle accidents occurring after the date the change becomes effective. Coverage shall be offered in the amounts of \$1,000 a month to \$5,000 a month in increments of \$500 a month; however, nothing shall prevent an insurer from making available higher limits of coverage.

Benefit payments under this paragraph shall be for no less than two years following the date of the accidental harm and be made for lost net income after taxes for as long as the treating health care provider determines that the covered person’s injuries prevent the person from engaging in the employment in which the person was engaged immediately prior to the accident. Benefit payments after more than two years following the date of the accident shall continue if the treating health care provider determines the person is disabled from employment to which the person is suited by education, training, and experience. If, pursuant to this requirement, the covered person engages in a form of employment other than that in which the person was engaged immediately prior to the accident, the person shall receive payment for the difference between the person’s resulting net income after taxes and the person’s net income after taxes immediately prior to the accident;

- (5) An option in writing for minimum coverage for death benefits in an amount of \$25,000, to be paid to named beneficiaries. If there is no named beneficiary, the amount shall be paid to the estate. Coverage shall also be made available for increased death benefits in increments of \$25,000 up to \$100,000; however, nothing shall prevent an insurer from making available higher limits of coverage. At the option of the insured, coverage for funeral expenses of \$2,000 shall be made available;

- (4) (6) Terms, conditions, exclusions, and deductible clauses, coverages, and benefits which:

- (A) Are consistent with the required provisions of such policy,
  - (B) Limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers, and
  - (C) Are approved by the commissioner as fair and equitable; [and
- (5) (7) At appropriately reduced premium rates, deductibles applicable only to claims of [a no-fault] an insured [or of the insured's survivors in case of the insured's death] in the amounts of \$100, \$300, \$500, and \$1,000 from all [no-fault] personal injury protection benefits otherwise payable; provided that if two or more [no-fault] insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them; [and
- (6) (8) Every insurer shall fully disclose the availability of all [deductibles, including the nature of the deductible, amount of the deductible, and amount of savings in premium rates associated with each deductible at the time any policy is issued, delivered, or renewed.] required and optional coverages and deductibles, including the nature and amounts, at the issuance or delivery of the policy; or, for a policy already issued at the time of the effective date of this Act, disclosure shall be made at the first renewal after the effective date of this Act. The insurer shall also disclose at issuance or renewal, as applicable, the effect on premium rates and savings of each option and deductible. Further offers or disclosures thereafter shall be required to be included with every other renewal or replacement policy. All elections of coverages, options, and deductibles by a named insured shall be binding upon additional insureds covered under the named insured's policy. The purpose of this paragraph is to inform insureds or prospective insureds of the coverages under this article;
- (9) (A) An insurer may make available, and provide at the option of the named insured, the benefits described in section 431:10C-A(a) through managed care providers such as a health maintenance organization or a preferred provider organization. The option may include conditions and limitations to coverage, including deductibles and coinsurance requirements, as approved by the commissioner. The commissioner shall approve those conditions and limitations which are substantially comparable to or exceed the coverage provided under section 431:10C-B;
- (B) An insurer may make available, and provide at the option of the named insured, deductible and coinsurance arrangements whereby the recipient of care, treatment, services, products, expenses, or accommodations shares in the payment obligation;
- (C) No deductible or coinsurance under a policy covered under section 431:10C-302(a)(9)(A) or (B) shall be applied with respect to care, treatment, services, products, or accommodation provided or expenses incurred by an insured during the first twenty-four hours in which emergency treatment has been provided or until the insured patient's emergency medical condition is stabilized, whichever is longer;
- (D) (i) The optional coverage prescribed in section 431:10C-302(a)(9)(A) and (B) shall apply only to the named insured, resident spouse, or resident relative; and

- (ii) “Resident relative” means a person who, at the time of the accident, is related by blood, marriage, or adoption to the named insured or resident spouse and who resides in the named insured’s household, even if temporarily living elsewhere, and any ward or foster child who usually resides with the named insured, even if living elsewhere;
  - (E) An agreement made under section 431:10C-302(a)(9) must be a voluntary agreement between the insured and the insurer, and no insurer shall require an insured to agree to those policy provisions as a condition of providing insurance coverage. Requiring an agreement as a precondition to the provision of insurance shall constitute an unfair insurance practice and shall be subject to the provisions, remedies, and penalties provided in article 13; and
  - (F) An insurer providing the coverages authorized in section 431:10C-302(a)(9)(A) and (B) shall demonstrate in rate filings submitted to the commissioner the savings to the insured to be realized under the plan;
- and
- (10) An insurer shall make available optional coverage for naturopathic, acupuncture, and nonremedial care and treatment rendered in accordance with the teachings, faith, or belief of any group which relies upon spiritual means through prayer for healing.

The commissioner shall adopt rules, including policy limits, terms, and conditions as necessary to implement the requirements of this section.”

SECTION 40. Section 431:10C-303, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-303 Right to [no-fault] personal injury protection benefits.**

(a) If the accident causing accidental harm occurs in this State, every person insured under this article, and such person’s survivors, suffering loss from accidental harm arising out of the operation, maintenance, or use of a motor vehicle, has a right to [no-fault] personal injury protection benefits.

(b) If the accident causing accidental harm occurs outside this State, the following persons and their survivors suffering loss from accidental harm arising out of the operation, maintenance, or use of a motor vehicle, have a right to [no-fault] personal injury protection benefits as defined in section [431:10C-103(10); 431:10C-A(a):

- (1) [No-fault insureds] Insureds as defined in section [431:10C-103(11); 431:10C-103; and
- (2) The driver and other occupants of an insured vehicle, other than a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of five or more vehicles under common ownership.”

SECTION 41. Section 431:10C-304, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-304 Obligation to pay [no-fault] personal injury protection benefits.** For purposes of this section, the term [“no-fault insurer”] “personal injury protection insurer” includes [no-fault] personal injury protection self-insurers. Every [no-fault] personal injury protection insurer shall provide [no-fault] personal injury protection benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 431:10C-305(d)[:
- (A) In], in the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the provider of



services on behalf of the following persons who sustain accidental harm as a result of the operation, maintenance, or use of the vehicle, an amount equal to the [no-fault] personal injury protection benefits as defined in section 431:10C-A(a) payable for [wage loss and other] expenses to that person [under section 431:10C-103(10)(A)(iii) and (iv)] as a result of the injury:

- [(i)] (A) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;
  - [(ii)] (B) Any pedestrian (including a bicyclist); or
  - [(iii)] (C) Any user or operator of a moped as defined in section 249-1;
- [(B)] In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to a provider of services on behalf of the persons listed in subparagraph (A), charges for services covered under section 431:10C-103(10)(A)(i) and (ii); or
- [(C)] In the case of death of any person listed in subparagraph (A), arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the legal representatives of the person who sustains accidental harm as a result of the operation, maintenance, or use of the vehicle, for the benefit of the surviving spouse and any dependent, as defined in section 152 of the Internal Revenue Code of 1954, as amended, an amount equal to the no-fault benefits payable to the spouse and dependent as a result of the death of the person, subject to section 431:10C-103(10);]

provided that [subparagraphs (A), (B), and (C)] this paragraph shall not apply in the case of injury to or death of any operator of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident[.];

- (2) Payment of [no-fault] personal injury protection benefits shall be made as the benefits accrue, except that in the case of death, payment of benefits under section [431:10C-103(10)(A)(iii) and (iv)] 431:10C-302(a)(5) may be made immediately in a lump sum payment, at the option of the beneficiary[.];
- (3) (A) Payment of [no-fault] personal injury protection benefits shall be made within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof[.];
- (B) [Subject to section 431:10C-308.6, relating to peer review, if] If the insurer elects to deny a claim for benefits in whole or in part, the insurer shall, within thirty days, notify the claimant in writing of the denial and the reasons for the denial. The denial notice shall be prepared and mailed by the insurer in triplicate copies and be in a format approved by the commissioner. In the case of benefits for services specified in section [431:10C-103(10)(A)(i) and (ii),] 431:10C-A(a) the insurer shall also mail a copy of the denial to the provider[.]; and
- (C) If the insurer cannot pay or deny the claim for benefits because additional information or loss documentation is needed, the insurer shall, within the thirty days, forward to the claimant an itemized list of all the required documents. In the case of benefits for services specified in section [431:10C-103(10)(A)(i) and (ii),]

431:10C-A(a) the insurer shall also forward the list to the service provider[.];

- (4) Amounts of benefits which are unpaid thirty days after the insurer has received reasonable proof of the fact and the amount of benefits accrued, and demand for payment thereof, after the expiration of the thirty days, shall bear interest at the rate of one and one-half per cent per month[.];
- (5) No part of [no-fault] personal injury protection benefits paid shall be applied in any manner as attorney's fees in the case of injury or death for which the benefits are paid. The insurer shall pay, subject to section 431:10C-211, in addition to the [no-fault] personal injury protection benefits due, all attorney's fees and costs of settlement or suit necessary to effect the payment of any or all [no-fault] personal injury protection benefits found due under the contract. Any contract in violation of this provision shall be illegal and unenforceable. It shall constitute an unlawful and unethical act for any attorney to solicit, enter into, or knowingly accept benefits under any contract[.]; and
- (6) Any insurer who violates this section shall be subject to section 431:10C-117(b) and (c)."

SECTION 42. Section 431:10C-305, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-305 Source of payment.**

- (a) (1) A claim for [no-fault] personal injury protection benefits for accidental harm of a person who is not an occupant of any motor vehicle involved in a motor vehicle accident may be made against the [no-fault] insurer of any involved vehicle[.]; and
- (2) The [no-fault] insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but the insurer shall thereafter be entitled to recover from the [no-fault] insurer of all other involved vehicles proportionate contribution for the benefits paid and the cost of processing the claim.
- (b) (1) Except as provided in paragraph (2), [no-fault] personal injury protection 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] motor vehicle insurance applicable to the injured person shall apply.

No person shall recover [no-fault] personal injury protection benefits from more than one insurer for accidental harm as a result of the same accident[.];

- (2) All [no-fault] personal injury protection 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).] as provided in section 431:10C-302(a)(4). However, if the person's employer provides both workers' compensation and [no-fault] personal injury protection 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 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] personal injury protection benefits and, upon payment thereof, the [no-fault] personal injury protection insurer shall be subrogated to the injured person's rights to collect such benefits.

- (c) (1) If a temporary substitute vehicle is made available to a customer by an auto repair shop registered with the motor vehicle repair industry board or a motor vehicle dealer licensed by the motor vehicle industry licensing board, while the shop or dealer repairs or services the customer's insured motor vehicle, the [no-fault] motor vehicle insurance policy of the customer's insured motor vehicle shall be primary over the policy on the temporary substitute vehicle[.]; and
- (2) In the event that a customer's insured motor vehicle is operated by a registered repair shop in the course of service or repair, or to verify repairs, the [no-fault] motor vehicle insurance policy of the registered repair shop shall be primary over the policy on the customer's insured motor vehicle.
- (d) The following persons are not eligible to receive payment of [no-fault] personal injury protection benefits:

- (1) Occupants of a motor vehicle other than the insured motor vehicle;
- (2) Operator or user of a motor vehicle engaging in criminal conduct which causes any loss; or
- (3) Operator of a motorcycle or motor scooter as defined in section 286-2[.]<sup>1</sup>

Provided, that this] This subsection [does] shall not preclude recovery in other capacities under a [no-fault] motor vehicle insurance policy covering a vehicle which the person did not occupy at the time of the accident.:"

SECTION 43. Section 431:10C-306, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-306 Abolition of tort liability.** (a) Except as provided in subsection (b), this article abolishes tort liability of the following persons with respect to accidental harm arising from motor vehicle accidents occurring in this State:

- (1) Owner, operator, or user of an insured motor vehicle; or
- (2) Operator or user of an uninsured motor vehicle who operates or uses such vehicle without reason to believe it to be an uninsured motor vehicle.

(b) Tort liability is not abolished as to the following persons, their personal representatives, or their legal guardians in the following circumstances:

- (1) [(A)] Death occurs to such person in such a motor vehicle accident; [(B)] (2) Injury occurs to such person which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body; [or] [(C)] (3) Injury occurs to such person which consists of a permanent and serious disfigurement which results in subjection of the injured person to mental or emotional suffering;
- [(2)] Injury occurs to such person in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit established in section 431:10C-308 for expenses provided in section 431:10C-103(10)(A) and (B); provided that the expenses paid shall be presumed to be reasonable and necessary in establishing the medical-rehabilitative limit;] or
- [(3)] (4) Injury occurs to such person in [such an] a motor vehicle accident and as a result of such injury that the [aggregate limit of no-fault] personal injury protection benefits [outlined in section 431:10C-103(10) payable to such person are exhausted.] incurred by such person equal or exceed \$5,000.

(c) Subsections (a) and (b) shall apply whether or not the injured person is entitled to receive [no-fault] personal injury protection benefits. The party against whom the presumption under this section is directed shall have the burden of proof to rebut the presumption.

(d) No claim may be made for benefits under the uninsured motorist coverage by an injured person against an insurer who has paid or is liable to pay no-fault benefits to such injured person unless such claim meets the requirements of subsection (b).

(e) No provision of this article shall be construed to exonerate, or in any manner to limit:

- (1) The liability of any person in the business of manufacturing, retailing, repairing, servicing, or otherwise maintaining motor vehicles, arising from a defect in a motor vehicle caused, or not corrected, by an act or omission in the manufacturing, retailing, repairing, servicing, or other maintenance of a vehicle in the course of such person's business;
- (2) The criminal or civil liability, including special and general damages, of any person who, in the maintenance, operation, or use of any motor vehicle:
  - (A) Intentionally causes injury or damage to a person or property;
  - (B) Engages in criminal conduct which causes injury or damage to person or property; [or]
  - (C) Engages in conduct resulting in punitive or exemplary damages[.]; or
  - (D) Causes death or injury to another person in connection with the accident while operating the vehicle in violation of section 291-4 or 291-7.

(f) No provision of this section shall be construed to abolish tort liability with respect to property damage arising from motor vehicle accidents."

SECTION 44. Section 431:10C-307, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-307 Reimbursement of duplicate benefits.** Whenever any person effects a tort liability recovery for accidental harm, whether by suit or settlement, which duplicates [no-fault] personal injury protection benefits already paid

under the provisions of this article, the [no-fault] motor vehicle insurer shall be reimbursed fifty per cent of the [no-fault] personal injury protection benefits [by] paid to such person receiving the duplicate benefits, up to the maximum limit [specified by section 431:10C-103(6)].”

SECTION 45. Section 431:10C-308.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§431:10C-308.5]] **Limitation on charges.** (a) As used in this article, the term “workers’ compensation schedules” means the schedules adopted and as may be amended by the director of labor and industrial relations for workers’ compensation cases under chapter 386, establishing fees and frequency of treatment guidelines, and contained in sections 12-13-30, 12-13-35, 12-13-38, 12-13-39, 12-13-45, 12-13-85 through 92, and 12-13-94, Hawaii administrative rules. References in the workers’ compensation schedules to “the employer”, “the director”, and “the industrial injury”, shall be respectively construed as references to “the insurer”, “the commissioner”, and “the injury covered by [no-fault] personal injury protection benefits” for purposes of this article.

(b) [Effective January 1, 1993, the] The charges and frequency of treatment for services specified in section [431:10C-103(10)(A)(i) and (ii),] 431:10C-A(a), except for emergency services provided within seventy-two hours following a motor vehicle accident resulting in injury, shall not exceed the charges and frequency of treatment permissible under the workers’ compensation schedules[, except as provided in section 431:10C-308.6]. Charges for independent medical examinations to be conducted by a licensed Hawaii provider, unless the insured consents to an out-of-state provider, shall not exceed the charges permissible under the workers’ compensation schedules for consultation for a complex medical problem. The workers’ compensation schedules shall not apply to independent medical examinations conducted by out-of-state providers; provided that the charges for the examinations are reasonable. The commissioner may adopt administrative rules relating to fees or frequency of treatment for injuries covered by [no-fault] personal injury protection benefits. If adopted, these administrative rules shall prevail to the extent that they are inconsistent with the workers’ compensation schedules.

(c) Charges for services for which no fee is set by the workers’ compensation schedules or other administrative rules adopted by the commissioner shall be limited to eighty per cent of the provider’s usual and customary charges for these services. [These charges shall be deemed appropriate and reasonable if so determined by a provider unless they are found inappropriate or unreasonable by a peer review organization in accordance with section 431:10C-308.6.]

(d) Services for which no frequency of treatment guidelines are set forth in the workers’ compensation schedules or other administrative rules adopted by the commissioner shall be deemed appropriate and reasonable expenses necessarily incurred if so determined by a provider [unless they are found inappropriate or unreasonable by a peer review organization in accordance with section 431:10C-308.6].

(e) The provider of services described in section [431:10C-103(10)(A)(i) and (ii)] 431:10C-A(a) shall not bill the insured directly for those services but shall bill the insurer for a determination of the amount payable. The provider shall not bill or otherwise attempt to collect from the insured the difference between the provider’s full charge and the amount paid by the insurer.”

SECTION 46. Section 431:10C-308.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No health care provider shall engage in, or agree or offer to engage in, fee splitting. For the purposes of this subsection, “fee splitting” means the payment, or acceptance of payment, by a health care provider, of any portion of a health care fee, or a commission, in return for the referral of a patient for any service or treatment for which [no-fault] personal injury protection benefits are provided under this chapter.”

SECTION 47. Section 431:10C-309, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-309 Total loss motor vehicle claims.** When a [no-fault] motor vehicle insurance policy provides for the adjustment and settlement of an insured’s motor vehicle’s total losses on the basis of actual cash value or replacement, the insurer shall follow either the replacement method set forth in section 431:10C-310 or the cash settlement method set forth in section 431:10C-311.”

SECTION 48. Section 431:10C-310, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-310 Total loss motor vehicle claims: replacement.** When an insurer elects under section 431:10C-309 to offer the insured a replacement vehicle as defined in section [431:10C-103(18),] 431:10C-103, the insurer shall comply with the following requirements:

- (1) The claim file, which is maintained by the insurer, shall contain a description of the replacement vehicle, including the vehicle identification number and a schedule of options;
- (2) Replacement vehicles of the current model plus the three previous model years shall be purchased through motor vehicle dealers licensed under chapter 437. This requirement may be waived in writing by the insured. The signed waiver shall be maintained in the insurer’s claim file;
- (3) If the insurer offers a replacement vehicle to the insured and the insured rejects the offer and elects a cash settlement instead of the replacement vehicle, the insurer need pay only the amount it would have otherwise paid on the replacement vehicle. Evidence of the insured’s rejection shall be apparent in the file[.]; and
- (4) If the insurer offers a replacement vehicle to the insured and the insured rejects the offer and wants another vehicle substantially similar in value, the insurer need pay only the amount it would have otherwise paid on the replacement vehicle. The insurer shall maintain in the claim file the insured’s written waiver that the acceptance of another vehicle is of the insured’s own free will and choice.”

SECTION 49. Section 431:10C-315, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-315 Statute of limitations.** (a) No suit shall be brought on any contract providing [no-fault] motor vehicle insurance benefits or any contract providing optional additional coverage more than, the later of:

- (1) Two years from the date of the motor vehicle accident upon which the claim is based;
- (2) Two years after the last payment of [no-fault] motor vehicle insurance or optional additional benefits;
- (3) Two years after the entry of a final order in arbitration; or

- (4) Two years after the entry of a final judgment in, or dismissal with prejudice of, a tort action arising out of a motor vehicle accident, where a cause of action for insurer bad faith arises out of the tort action.
- (b) No suit arising out of a motor vehicle accident shall be brought in tort more than[,] the later of:
- (1) Two years after the date of the motor vehicle accident upon which the claim is based;
  - (2) Two years after the date of the last payment of [no-fault] motor vehicle insurance or optional additional benefits; or
  - (3) Two years after the date of the last payment of workers' compensation or public assistance benefits arising from the motor vehicle accident."

SECTION 50. Section 431:10C-403, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-403 Bureau's duties.** The bureau shall promptly assign each claim and application, and notify the claimant or applicant of the identity and address of the assignee of the claim or application. Claims and applications shall be assigned so as to minimize inconvenience to claimants and applicants. The assignee, thereafter, has rights and obligations as if it had issued [no-fault,] motor vehicle mandatory public liability and property damage policies complying with this part applicable to the accidental harm or other damage, or, in the case of financial inability of a [no-fault] motor vehicle insurer or self-insurer to perform its obligations, as if the assignee had written the applicable [no-fault] motor vehicle insurance, undertaken the self-insurance, or lawfully obligated itself to pay [no-fault] motor vehicle insurance benefits."

SECTION 51. Section 431:10C-407, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-407 Classifications.** (a) The commissioner shall establish classifications of eligible persons and uses for which the joint underwriting plan shall provide both the required [no-fault] motor vehicle insurance policies and any optional additional insurance an eligible person or user applies for. The commissioner shall, by regulation, establish, implement, and supervise the joint underwriting plan, through the bureau, assuring that insurance for motor vehicles will be conveniently and expeditiously afforded, subject only to payment or provision for payment of the premium, to all applicants for insurance required by this part to provide insurance for payment of [no-fault and] bodily injury and property damage liability insurance, or optional additional benefits, and who cannot reasonably obtain insurance at rates not in excess of those applicable to applicants under the plan, or who otherwise are in good faith entitled to, but unable to obtain the insurance through ordinary methods.

(b) The plan shall provide all [no-fault] personal injury protection benefits and services and bodily injury and property damage liability coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles, and motor vehicle uses specified in this article upon the payment of premiums as provided in subpart C, as follows:

- (1) The plan shall provide [no-fault] personal injury protection benefits and policies for each of the following classes, and each class shall be able to secure a [no-fault] personal injury protection and bodily injury and property damage liability policy through the plan:
  - (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner, by rules, shall define. The commissioner shall

regulate the class in accordance with the general practice of the industry, the applicable results, if any, of the commissioner's examination of the motor vehicle insurers' business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk automobile driver[.];

- (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
    - (i) Heedless and careless driving;
    - (ii) Driving while license suspended or revoked;
    - (iii) Leaving the scene of an accident;
    - (iv) Manslaughter, if resulting from the operation of a motor vehicle; or
    - (v) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug, except marijuana, as provided in section 291-7[.];
  - (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuity[.];
  - (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes[.]; and
  - (E) All other motor vehicles, not classified under subparagraph (A), (B), (C), or (D), owned by licensed drivers who are unable to obtain [no-fault] motor vehicle insurance policies and optional additional insurance through ordinary methods[.];
- (2) The plan shall provide [no-fault] personal injury protection benefits and bodily injury and property damage policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under subpart C, at the option of the owners, for the following classes, which the commissioner, by rules, shall further define and regulate:
- (A) All licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, who are receiving public assistance benefits consisting of direct cash payments through the department of human services, or benefits from the supplemental security income program under the Social Security Administration; provided that the licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this part, unless extra vehicles are approved by the department of human services as being necessary for medical or employment purposes; provided further that the motor vehicle to be insured shall be used strictly for personal purposes, and not for commercial purposes[.]; and
  - (B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver/owner under subparagraphs (A) and (B) may secure [no-fault] motor vehicle insurance coverage through the plan at the individual's option, provided any previous [no-fault] motor vehicle insurance policy has expired or has been canceled. Any person becoming eligible for plan coverage under subparagraph (A) shall first



exhaust all paid coverage under any [no-fault] motor vehicle insurance policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible under rules adopted by the commissioner under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of human services indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of chapter 431 upon the issuance of a valid [no-fault] motor vehicle insurance identification card pursuant to section 431:10C-107[.]; and

- (3) Under the joint underwriting plan, the required motor vehicle policy coverages as provided in section 431:10C-301 shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, uninsured motorist and underinsured motorist coverages shall be offered in conformance with section 431:10C-301, and optional additional coverages shall be offered in conformance with section 431:10C-302, for each class except that defined in paragraph (2)(A), as the commissioner, by rules, shall provide.

(c) The commissioner may further refine the definitions of the classifications provided for in subsection (b).”

SECTION 52. Section 431:10C-408, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-408 Assigned claims.** (a) Each person sustaining accidental harm, or such person's legal representative, may, except as provided in subsection (b), obtain the [no-fault] motor vehicle insurance benefits through the plan whenever:

- (1) No insurance benefits under [no-fault] motor vehicle insurance policies are applicable to the accidental harm;
- (2) No such insurance benefits applicable to the accidental harm can be identified; or
- (3) The only identifiable insurance benefits under [no-fault] motor vehicle insurance policies applicable to the accidental harm will not be paid in full because of financial inability of one or more self-insurers or insurers to fulfill their obligations.

(b) A person, or such person's legal representative, shall be disqualified from receiving benefits through the plan if:

- (1) Such person is disqualified for criminal conduct under section 431:10C-305(d) from receiving the [no-fault] motor vehicle insurance benefits; or
- (2) Such person was:
  - (A) The owner or registrant of the motor vehicle at the time of the motor vehicle's involvement in the accident out of which such person's accidental harm arose;
  - (B) The operator or any passenger of such a vehicle at such time with reason to believe that such vehicle was an uninsured motor vehicle;
  - (C) The owner, operator, or passenger of a motorcycle or motor scooter as defined in section 286-2; or

(D) A pedestrian incurring accidental harm arising out of a motorcycle accident or a motor scooter accident, as defined in section 431:10G-101.

(c) Any person eligible for benefits under this part, [or] and who becomes eligible to file a claim or an action against the mandatory bodily injury liability or property damage liability policies, shall, upon the bureau's determination of eligibility, be entitled to:

- (1) The full [no-fault] personal injury protection benefits as if the victim had been covered as an insured at the time of the accident producing the accidental harm[.]; and
- (2) The rights of claim and action against the insurer, assigned under section 431:10C-403, with reference to the mandatory bodily injury liability policy for accidental harm, and with reference to the mandatory property damage liability policy for property damage sustained.

Any claims of an eligible assigned claimant against either mandatory bodily injury liability or property damage liability policies, or the basic [no-fault] personal injury protection policy, shall be filed with the insurer assigned and shall be subject to all applicable conditions and provisions of subparts A and B, except that the date of notification of the assignment shall, where applicable, be substituted for the date of the accident for purposes of section 431:10C-315.

(d) By [regulation promulgated] rules adopted by the commissioner, each self-insurer shall be assessed its equitable proration of all costs and claims paid under this article annually. No claim shall be assigned to any self-insurer for servicing. Proration for insurers and self-insurers shall be founded upon a pro rata distribution for each premium dollar actually or theoretically received. Self-insurers shall be assessed that prorated amount based upon the total premium cost for the coverage and vehicles stated in its certificate of self-insurance, as if the self-insurer had sold such coverage at the premium rates applicable under subpart C.

(e) If a person qualifies for assignment or benefits under this article, the joint underwriting plan or any insurer to whom the claim is assigned by the plan shall be subrogated to the rights of such person and shall have a claim for relief or a cause of action, separate from that of such persons, to the extent that:

- (1) It has paid [no-fault] personal injury protection benefits; and
- (2) Elements of damage compensated for by the plan, with reference to the mandatory public liability policy for accidental harm and to the mandatory property damage policy for property damage sustained, are paid.'

SECTION 53. Section 431:10C-410, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-410 Schedules. The commissioner shall:

- (1) Set rate schedules periodically, but not less frequently than annually, for all classes in accordance with this part and the criteria in [item] paragraph (3), so that the total premium income, from all plan motor vehicle insurance, when combined with the investment income, shall annually fund the costs of all joint underwriting plan classes, the joint underwriting assigned claims plan, and the administration of the plans;
- (2) Prior to setting rates in accordance with [item] paragraph (1), hold a public hearing on the proposed rates to afford all interested persons an opportunity to be heard. Notice shall be published and the hearing shall be held in accordance with chapter 91[.];
- (3) Establish rates for the following classes within the following restrictions:

- (A) For the licensed public assistance driver, as defined in section 431:10C-407(b)(2)(A), no premium shall be assessed for [the basic no-fault,] the mandatory public liability[,], or the mandatory property damage policies; and all policies shall conform to [the provisions of] section 431:10C-407(b)(2); and
  - (B) For the physically limited driver defined in section 431:10C-407, no rate shall be set higher than that assessed a comparable driver without limitation, except that a higher rate may be surcharged under any applicable standard conforming with section 431:10C-409(3); and
- (4) Set various systems and schedules of rates based upon the risks involved, the experience with various exposures, uses, and drivers, and may include the establishment of surcharges for specific risks, drivers, and uses for each of the enumerated classes except the classes limited under [item] paragraph (3).”

SECTION 54. Section 431:10G-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any owner or operator of a motorcycle or motor scooter involved in a motor vehicle accident as defined in section [431:10C-103(9)] 431:10C-103 and who incurs accidental harm as defined in section [431:10C-103(1),] 431:10C-103, including such person’s representative or legal guardian, shall [not] have a cause of action in tort [except in the following circumstances:

- (1) Death occurs to the owner or operator in such a motor vehicle accident;
- (2) Injury occurs to the owner or operator which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body; or
- (3) Injury occurs to the owner or operator which consists of a permanent and serious disfigurement which results in subjection of the owner or operator to mental or emotional suffering; or
- (4) Injury occurs to the owner or operator in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit established in section 431:10C-308 for expenses provided in section 431:10C-103(10)(A) and (B); provided that the expenses paid shall be presumed to be reasonable and necessary in establishing the medical-rehabilitative limit.] as provided in section 431:10C-306.”

SECTION 55. Section 413:12-101,<sup>3</sup> Hawaii Revised Statutes, is amended to read as follows:

“**§431:12-101 Definitions.** As used in this article:

[(1) Employees] “Employees” includes compensated officers, managers, and employees of a firm, corporation, partnership, sole proprietor, trust, estate, or members of an unincorporated association or nonprofit organization. A mass merchandising agreement may provide that the term [employees] “employees” shall include retired employees and the individual proprietor, partners, or trustees, if the employer is an individual proprietor, partnership, trust, or estate.

[(2) Employer] “Employer” includes any firm, corporation, partnership, sole proprietorship, trust, estate, and unincorporated association or nonprofit organization; it also includes the State, any county, and any municipal corporation, and any governmental unit, agency, or department thereof.

[(3) Insurer] “Insurer” means an insurer authorized to transact the business of motor vehicle, property, and casualty insurance in the State.

[(4) Mass merchandise] “Mass merchandise” means to sell and [mass merchandising] “mass merchandising” means a sale of insurance wherein:

- [(A)] (1) The insurance is offered to employees of particular employers, and
- [(B)] (2) The employer has agreed to, or otherwise affiliated itself with, the sale of such insurance to its employees.

[(5) Mass merchandising plan or plan] “Mass merchandising plan” or “plan” means a program, design, or scheme of the insurance to be mass merchandised, including terms, coverages, and premiums.

[(6) Mass merchandising agreement] “Mass merchandising agreement” means an agreement between an insurer and an employer for the sale of insurance to the employees of the employer on a mass merchandising basis.

[(7) Motor vehicle] “Motor vehicle” means a vehicle of a type required to be registered under chapter 286, including a vehicle with less than four wheels or a trailer.

[(8) Motor vehicle insurance] “Motor vehicle insurance” means a<sup>1</sup> [no-fault] an insurance policy and optional additional insurance as defined in article 10C.”

SECTION 56. Section 431:19-115.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§431:19-115.5]] Applicability of other laws to captive insurance companies writing [no-fault] motor vehicle insurance policies in this State.** Captive insurance companies writing [no-fault] motor vehicle insurance policies in this State shall be subject to sections 431:10C-102, 431:10C-103, 431:10C-107, 431:10C-108, 431:10C-109, 431:10C-112, 431:10C-115, 431:10C-115.5, 431:10C-119, 431:10C-120, 431:10C-207, 431:10C-211, 431:10C-212, 431:10C-213, 431:10C-215, 431:10C-301, and 431:10C-303 through 431:10C-315. Captive insurance companies shall also be subject to the rules adopted by the commissioner to implement these sections.”

SECTION 57. Section 805-13, Hawaii Revised Statutes, is amended to read as follows:

**“§805-13 Motor vehicle insurance violation.** (a) In all cases of citation for alleged violations of chapter [294] 431:10C or section 286-116, the court shall hear and dispose of such actions expeditiously. Such actions may be severed from any other proceedings to facilitate immediate disposition. Continuance of proceedings on motor vehicle insurance violations may be allowed in the discretion of the court, only after the court has received evidence that the required insurance on the motor vehicle involved was in fact in force on the date of the citation, or that the motor vehicle has been, or is ordered by the court to be, impounded.

(b) In all cases of citation for alleged violations of chapter [294] 431:10C or section 286-116 the court shall require the appearance of the driver cited and the registered owner of the motor vehicle. If the registered owner is not the driver, the registered owner shall be cited by service of the citation on the driver who shall be deemed to be the owner’s agent for purposes of service and by naming the owner jointly with the driver in the citation. Where the registered owner is a corporation or association, an officer or designated agent thereof shall be required to appear. Where the registered owner is a partnership, a general partner thereof shall be required to appear.

(c) In the case of multiple violations the court shall, in addition to any other penalty, impose the following penalties:

- (1) Imprisonment of not more than thirty days; [or]

- (2) Suspension or revocation of driver's license of the driver and of the registered owner; [or]
- (3) Suspension or revocation of the motor vehicle registration plates of the vehicle involved; [or]
- (4) Impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle; or any other cost involved pursuant to section [294-10; or] 431:10C-117; or
- (5) Any combination of such penalties.

The court shall impose any other sanction it finds necessary to remove the vehicle or driver involved from the highways, and to preclude the driver or registered owner from the continued operation of any uninsured motor vehicle.

(d) Upon subsequent hearing ordered by the court or upon the driver's or registered owner's motion, the court may, in its discretion, terminate any judgment previously entered under subsection (c) upon finding that the registered owner and the driver, as applicable, have[:

- (1) Complied] complied with chapter 287 with respect to any prior accident as evidenced by a form properly validated by a police department[;] and;
- [(2)] (1) Complied with all requirements under chapter [294] 431:10C as evidenced by a [no-fault] motor vehicle insurance identification card and the insurance policy issued by a licensed insurer; or
- [(3)] (2) Complied with all requirements under chapter [294] 431:10C as evidenced by a certificate of self insurance issued by the [commissioner of motor vehicle] insurance commissioner pursuant to section [294-8.5(b).] 431:10C-107(c).

(e) The court may, in its discretion, maintain continuing jurisdiction following any termination or judgment as provided in the [preceding paragraph herein, in order] subsection (d), to assure the continued compliance of the registered owner or driver with [chapters] chapter 286, 287, or [294.] 431:10C.'

SECTION 58. Section 431:10C-308, Hawaii Revised Statutes, is repealed.

SECTION 59. Section 431:10C-308.6, Hawaii Revised Statutes, is repealed.

SECTION 60. During the period between July 1, 1997 and January 1, 1998, the insurance commissioner shall do all things necessary to implement this Act. The insurance commissioner with the assistance of the legislative reference bureau, shall review all existing Hawaii laws relating to motor vehicle insurance and financial responsibility and shall prepare legislation for the 1998 legislative session to amend or repeal those laws that are inconsistent with this Act.

SECTION 61. This Act does not affect rights and duties that matured, penalties that were incurred, accidents which occurred, and proceedings that were begun, before January 1, 1998.

SECTION 62. The legislature finds that the revision of the law regarding motor vehicle insurance in this Act will result in significant reductions in cost by the elimination or reduction of certain constituent parts of currently required mandatory coverage. The legislature has further reviewed the evidence presented at the hearings and finds that this measure should yield a reduction of twenty to thirty-five per cent in the overall premium costs for mandatory minimum coverage required by law.

By January 1, 1998, all authorized insurers providing motor vehicle insurance under chapter 431, Hawaii Revised Statutes, shall:

- (1) ~~Implement at least a twenty to thirty-five per cent reduction on the premiums approved for policies effective on July 1, 1996, for those insureds who have policies which only contain the mandatory minimum coverages required under this Act; and~~
- (2) Adjust the premiums paid by insureds whose policies contain more than the mandatory minimum coverages required by this Act.

All rates for motor vehicle insurance shall comply with the provisions of the casualty rating law contained in chapter 431, Hawaii Revised Statutes.

No motor vehicle insurance policy to which the reductions under this section apply, shall be canceled by the insurer prior to the expiration of the agreed term of the policy or one year after the effective date of the policy or renewal, whichever is less, solely because of the enactment of this Act.

If a rate adjustment under this section prevents an insurer from obtaining a fair rate of return, the insurer may be granted a public hearing under chapter 91, Hawaii Revised Statutes. The insurer shall not be required to comply with the disputed amount of the required reduction under this section until a final determination of that hearing is made; however, return premiums may be required and interest shall be added to any rate reductions which are determined from that hearing to be justified.

SECTION 63. All employees of the insurance division's compliance unit shall be transferred to the ~~insurance fraud investigations unit established by this Act~~. Employees who, prior to this Act, were exempt from civil service, and who are transferred by this Act to the fraud investigations unit shall continue to retain their exempt status after transfer and shall suffer no loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges as a consequence of this Act; provided that one investigator IV (position no. 30874E) shall be transferred to the insurance division's compliance and enforcement branch.

SECTION 64. There are created two permanent positions, in addition to current positions, under program ID CCA106 (Insurance Regulatory Services) to carry out the purposes of this Act; provided that one of the positions shall be an attorney licensed in this State.

SECTION 65. There is established a motor vehicle insurance benefits task force that shall be administratively attached to the insurance division of the department of commerce and consumer affairs.

The task force shall consist of the following three members:

- (1) The insurance commissioner;
- (2) One person appointed by the governor from a list submitted by the president of the senate; and
- (3) One person appointed by the governor from a list submitted by the speaker of the house of representatives.

If a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. The members shall serve without compensation but shall be reimbursed for all necessary expenses.

The task force shall review the motor vehicle insurance system and develop a comprehensive plan for:

- (1) Reducing costs;
- (2) Paying for the cost of motor vehicle insurance or benefits;
- (3) Maximizing coverage and benefits for residents; and
- (4) Alleviating the problem of uninsured motorists.

In assisting the task force to carry out this section, the insurance commissioner may:

- (1) Hire, without regard to chapters 76 and 77, Hawaii Revised Statutes, sufficient staff and retain, without regard to chapter 103D, Hawaii Revised Statutes, consultants or other persons to provide those services deemed by the task force necessary to carry out its function; and
- (2) Conduct informational hearings and compel, through the issuance of subpoenas, the attendance of witnesses and the production of documents and records.

The task force shall submit a progress report to the legislature and the governor no later than twenty days prior to the convening of the regular session of 1998 and a report of its final recommendations to the legislature and the governor no later than twenty days prior to the convening of the regular session of 1999.

SECTION 66. There is appropriated out of the motor vehicle insurance revolving fund the sum of \$145,000 or so much thereof as may be necessary for fiscal biennium 1997-1999 to carry out the purposes of this Act. The sum appropriated shall be expended by the department of commerce and consumer affairs.

SECTION 67. 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 68. In codifying the new sections added by section 2 and referred to in other sections of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 69. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>4</sup>

SECTION 70. This Act shall take effect on January 1, 1998; provided that section 431:10C-L of section 2 of this Act and sections 3, 24, 60, 62, 63, 64, 65, and 66 of this Act shall take effect on July 1, 1997.

(Approved June 19, 1997.)

#### Notes

1. So in original.
2. "Insurance" should not be underscored.
3. Should be "431:12-101".
4. Edited pursuant to HRS §23G-16.5.

## ACT 252

S.B. NO. 538

A Bill for an Act Relating to Public Libraries.

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

SECTION 1. The legislature finds that the state librarian recently entered into a 5-1/4 year, \$11,200,000 outsourcing contract with a mainland book vendor to select, acquire, catalog, and process all new books for the State's public libraries. In doing so, Hawaii has become the first state to give broad control over its book selection process to a private company.

The firm in question, Baker & Taylor, an information and entertainment company based in Charlotte, North Carolina, has been the subject of a significant

amount of criticism regarding its performance under this contract. Specifically, the firm has been responsible for acquiring many duplicate and unwanted books. In addition, the purchase of critical reference works, particularly those dealing with Hawaiiiana, has declined and new purchases in some foreign languages and music have been eliminated. The contract calls for a flat fee for each book, no matter what the actual cost, and it has been alleged that an inordinate number of cheap books have been sent, which maximizes Baker and Taylor's profit at state expense. Moreover, the firm has recently become the subject, in another state, of a whistleblower's lawsuit for overcharging libraries and schools, which has been joined by the federal government.

The legislature finds that this type of outsourcing contract in general is poor public policy. It elevates the book's price over the book's content. Hawaii taxpayers should not be paying higher prices for books that they never wanted and do not use. The legislature finds that the savings generated will be worthless if inappropriate book choices are made.

The purpose of this Act is to direct the board of education to take all steps possible to allow input from the State's professional public service librarians in selecting library materials until the existing contract is terminated. If Baker and Taylor is in breach of contract with the board, the legislature requests the board to begin proceedings to terminate the contract immediately. As soon as the contract is terminated, but in any event no later than the end of the current contract date, this Act prohibits any outsourcing contract to purchase books and other resources for the state library system that fails to incorporate a book selection process involving the affected librarians.

SECTION 2. Chapter 312, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§312- Selection and acquisition of library books.** (a) The board of education shall take all steps possible in any outsourcing contract in effect on the effective date of this Act, including the development and implementation of necessary procedures, to ensure formal involvement by the state public service librarians in the selection of books and other library materials.

(b) Upon termination of any outsourcing contract in effect on the effective date of this Act, decisions regarding the selection of books and other resources on behalf of the state library system that require the expenditure of public moneys shall be performed internally by the public service librarians of the state library system. The state librarian may contract with external sources for the purchase of books and other resources selected by the public service librarians. The state librarian shall be responsible for books or other resources acquired on behalf of the state library system.”

SECTION 3. Section 312-2, Hawaii Revised Statutes, is amended to read as follows:

**“§312-2 Powers of board; special fund.** The board of education may [make such]:

- (1) Except as provided in section 312- , make arrangements or contracts as are approved by the governor, with any county, city, association, society, person, or persons, for the purpose of benefiting the libraries and increasing their facilities and use; [subject]
- (2) Subject to section 26-12, enter into such arrangement or contract as is approved by the governor, with the Friends of the Library of Hawaii,



for the purpose of obtaining the use of the books and property and income of the Friends of the Library of Hawaii; [cooperate]

- (3) Cooperate by exchange and otherwise with libraries now existing or hereafter to be formed; [receive,]
- (4) Receive, use, manage, or invest moneys or other property, real, personal, or mixed which may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for any or all purposes of the libraries; [deposit]
- (5) Deposit with the director of finance in a special fund all moneys donated to the board for library services; [unless]
- (6) Unless otherwise provided for by the terms and conditions of the donation, convert, at such time as the board may at its sole discretion determine, any or all donations of property, real, personal, or mixed, into money to be deposited into the special fund; [expend] and
- (7) Expend the moneys in the special fund in accordance with the terms and conditions of each donation for the purposes of the libraries.

The board shall be the trustee of the special fund and all moneys therein shall be deemed to have been appropriated to the use and for the purposes of the board in providing library services. Nothing in this section shall be construed to limit the powers and duties of the board hereinbefore expressed, or to empower the board to obligate the State financially in any sum which shall not have been appropriated by the legislature for the use of the board.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved June 19, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 253**

H.B. NO. 1641

A Bill for an Act Relating to the Collection of Taxes.

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

SECTION 1. Section 231-13, Hawaii Revised Statutes, is amended to read as follows:

“**§231-13 Director; examination, investigation, and collection.** (a) The director of taxation shall be responsible for the collection and general administration of all delinquent taxes. [The director may forward all claims of the State for delinquent taxes to a collection agency bonded under chapter 443B. The director may make an agreement with the agency regarding the amount to be retained by it for services. The director shall duly and accurately account for all delinquent taxes collected.] Notwithstanding any other law to the contrary, the director, by contract, may select and retain bonded collection agencies, licensed attorneys, accountants, and auditors or other persons for the purpose of assessment, enforcement, or collection of taxes from persons subject to the provisions of title 14 administered by the department.

(b) At the option of the director, any contract entered into under this section may provide for compensation on:

- (1) A fixed price basis;
- (2) An hourly rate basis with or without a fixed cap; or
- (3) A contingent fee arrangement to be specified in the contract; provided that this paragraph shall not apply to auditors and accountants.

All compensation shall be payable out of the taxes recovered for the State, unless otherwise determined by the director.”

SECTION 2. Section 231-26, Hawaii Revised Statutes, is amended to read as follows:

**“§231-26 Extraterritorial enforcement of tax laws.** (a) The courts of the State shall recognize and enforce the liability for taxes lawfully imposed by the laws of any state which extends a like comity, whether by statute or case law, in respect of the liability for taxes lawfully imposed by the laws of this State. Should a claim be made in the state courts for taxes by a state whose highest court has not yet passed upon the question of enforcing extraterritorial revenue laws, the courts of the State shall enforce such claims until such time as the highest court of that state prohibits the enforcement of extraterritorial revenue laws.

(b) Any and all authorized officials of a state entitled to enforce its tax claims within the state courts may bring action in the courts of this State for the collection of the taxes. The certificate of the secretary of state of such state, or of the nearest equivalent official, that such officials have the authority to collect the taxes sought to be collected by the action shall be conclusive proof of that authority.

(c) The attorney general may bring action in the name of the State, or authorize action to be brought in the name of the State, in the courts of any state to collect taxes legally due the State.

(d) The term “state” as used herein means any state, territory, or possession of the United States. The term “taxes” as herein employed shall include:

- (1) Any and all tax assessments lawfully made, whether they be based upon a return or other disclosure of the taxpayer, upon the information and belief of the taxing authority, or otherwise;
- (2) Any and all penalties lawfully imposed pursuant to a taxing statute; and
- (3) Interest charges lawfully added to the tax liability which constitutes the subject of the action.

(e) In any case where a person owing delinquent taxes to the State has moved from the State to another state[,] or country, is situated in another state or country, resides, or maintains a place of business in another state or country, the [department of taxation may forward the claims of the State to a bonded collection agency or licensed attorney within that state, with or without assignment of the claims, and may further make such agreement with the agency or attorney regarding the amount to be retained by it or the attorney for services, as in the opinion of the department is necessary and proper.] the<sup>1</sup> director, notwithstanding any other law to the contrary, by contract, may select and retain bonded collection agencies, licensed attorneys, accountants, and auditors or other persons to pursue and collect the claims of the State.

(f) At the option of the director, any contract entered into under this section may provide for compensation on:

- (1) A fixed price basis;
- (2) An hourly rate basis with or without a fixed cap; or
- (3) A contingent fee arrangement to be specified in the contract; provided that this paragraph shall not apply to auditors and accountants.

All compensation shall be payable out of the taxes recovered for the State, unless otherwise determined by the director.

(g) Suits brought upon judgments shall be governed by the law relating thereto, and not by this section.”

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

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

(Approved June 20, 1997.)

Note

1. So in original.

ACT 254

H.B. NO. 233

A Bill for an Act Relating to Hunting.

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

SECTION 1. Section 134-5, Hawaii Revised Statutes, is amended to read as follows:

**“§134-5 Possession by licensed hunters and minors; target shooting[.]; game hunting.** (a) Any person of the age of sixteen years, or over or any person under the age of sixteen years while accompanied by an adult, may carry and use any lawfully acquired rifle or shotgun and suitable ammunition while actually engaged in hunting or target shooting or while going to and from the place of hunting or target shooting; provided that the person has procured a hunting license under chapter 183D, part II. A hunting license shall not be required for persons engaged in target shooting.

(b) A permit shall not be required when any lawfully acquired firearm is lent to a person, including a minor, upon a target range or similar facility for purposes of target shooting; provided that the period of the loan does not exceed the time in which the person actually engages in target shooting upon the premises.

(c) A person may carry unconcealed and use a lawfully acquired pistol or revolver while actually engaged in hunting game mammals, if that pistol or revolver and its suitable ammunition are acceptable for hunting by rules adopted pursuant to section 183D-3 and if that person is licensed pursuant to part II of chapter 183D. The pistol or revolver may be transported in an enclosed container, as defined in section 134-6(c), in the course of going to and from the place of the hunt, notwithstanding section 134-6(d).”

SECTION 2. Section 134-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No person shall carry concealed or unconcealed on the person a pistol or revolver without being licensed to do so under this section or in compliance with sections<sup>1</sup> 134-5(c) or 134-6.”

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

SECTION 4. This Act shall take effect upon its approval; provided that this Act is repealed on June 30, 2000, and sections 134-5 and 134-9,<sup>2</sup> Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 21, 1997.)

Notes

1. Prior to amendment "section" appeared here.
2. "134-9" substituted for "135-9".

ACT 255

H.B. NO. 1086

A Bill for an Act Relating to Agricultural Work Opportunities.

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

SECTION 1. The legislature finds that sweeping changes made by the federal government to the nation's welfare policy will profoundly affect the manner in which welfare assistance is distributed by the State. Faced with new mandates, decreased federal funding, and expanded program responsibilities, states throughout the country are currently in the process of transforming their welfare programs from programs of cash assistance to programs aimed at promoting work participation and self-sufficiency. The legislature determines that it is imperative that steps be taken to bring about this transition in Hawaii and reduce the welfare rolls of the State, and to help individuals, both U.S. citizens and legal immigrants, who are unemployed, who are on welfare, or whose welfare benefits have expired but remain unemployed.

The legislature further finds that although the State has experienced difficult economic times in recent years, new work opportunities can be created by carefully examining and making full use of the resources available to the State. For example, while factors such as high unemployment and the demise of large agricultural operations resulted in major effects to Hawaii's economy, the vast areas of land now open for new ventures in diversified farming provides the State with a unique opportunity to create new job opportunities in agriculture, encourage work participation, and reduce welfare dependency throughout the State.

By creating new work opportunities in agriculture, the State will help individuals, both U.S. citizens and legal immigrants, unemployed or on public assistance, make the transition from unemployment or welfare back to work. Conceptually, the program would involve the establishment of an agricultural back-to-work pilot program within the department of agriculture to establish programs on public and private agricultural lands in each county. The program will coordinate the assignment of eligible individuals to agricultural parcels and supervise the farming, marketing, and business activities of program participants.

Participation in the back-to-work program would be limited to individuals, both U.S. citizens and legal immigrants, who are unemployed, who are receiving welfare, or whose welfare benefits have expired but remain unemployed. The department of agriculture, in cooperation and participation with the department of labor and industrial relations and the department of human services, shall administer the program. The department of agriculture shall explore all possible funding sources, including private, state, and federal sources, to provide participants with start-up loans and other types of financial assistance.

The department of labor and industrial relations and the department of human services would assist the department of agriculture with the development of a referral and training system for program participants. The department of agriculture

would administer the program to encourage participants to target new areas of market demand to minimize the impact of the back-to-work program on the market areas of existing farmers.

The legislature finds that the development of agricultural back-to-work pilot programs on public and private agricultural lands will not only reduce welfare dependency and unemployment, but will also assist the State in fulfilling its constitutional obligation to protect and preserve prime agricultural lands throughout the State. The purpose of this Act is to create an agricultural back-to-work pilot program.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

“Department” means the department of agriculture.

“Chairperson” means the chairperson of the board of agriculture.

“Eligible individuals” means any person, either a citizen of the United States or legal immigrant, who is:

- (1) Unemployed;
- (2) Receiving welfare;
- (3) A displaced worker; or
- (4) Economically disadvantaged;

or whose welfare benefits have expired but who remains unemployed.

“Program” means the agricultural back-to-work pilot program.

SECTION 3. Agricultural back-to-work pilot program; established. There is established an agricultural back-to-work pilot program within the department, under the supervision of the chairperson. The chairperson may appoint employees necessary to carry out the functions of the program without regard to chapters 76 and 77.

SECTION 4. Administration and purpose of the agricultural back-to-work pilot program. (a) The department, in cooperation with other governmental agencies, shall administer the program on private and public agricultural lands to create new job opportunities for eligible individuals in agriculture, encourage work participation in agriculture, and reduce welfare dependency throughout the State. The department shall obtain assistance of the departments of human services and labor and industrial relations to coordinate the assignment of available agricultural parcels to eligible individuals and supervise the farming, business, and marketing activities of eligible individuals in the program.

(b) The department shall develop with the assistance of the departments of human services and labor and industrial relations a program for eligible individuals to ensure the cultivation of marketable crops. The program shall examine the current supply and demand for various agricultural commodities in the State, including but not limited to fruit and vegetable crops, horticultural crops, and biomass crops. To protect the market shares of local farmers, the program shall encourage the cultivation of crops that are not widely grown in Hawaii, but nonetheless exhibit high potential for marketability locally as well as nationally and internationally.

(c) In addition to all other responsibilities necessary to administer the program, the department, in cooperation with other governmental agencies, shall:

- (1) Work with owners of agricultural lands in each county to facilitate the use of lands for the development of the program for eligible individuals;
- (2) Explore all possible funding sources including, but not limited to, private, state, and federal sources to provide eligible individuals in the program with start-up loans, grants, or other types of financial assistance; and

## ACT 256

- (3) Submit an annual report to the legislature on the status of the program established in this Act.

SECTION 5. Assistance of other departments. The department of labor and industrial relations and the department of human services shall assist the department with the development of a referral and training system to facilitate the training and job placement of eligible individuals in the program, and shall assist in identifying possible funding sources appropriate for the project, including, but not limited to, federal Job Training Partnership Act funds and Employment Training Funds under section 383-128, Hawaii Revised Statutes.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$1 or so much thereof as may be necessary for fiscal year 1998-1999 for the agricultural back-to-work pilot program.

SECTION 7. The sums appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 8. This Act shall take effect on July 1, 1997; and shall be repealed on July 1, 2000.

(Approved June 21, 1997.)

## ACT 256

H.B. NO. 1370

A Bill for an Act Relating to Public Forest Reserves.

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

SECTION 1. Chapter 183, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§183- Harvesting from state-owned lands.** All harvesting of trees on public lands shall be done in accordance with a management plan approved by the board, and in accordance with the provisions regarding conservation of aquatic life, wildlife, and land plants, and the provisions regarding environmental impact statements. For any harvesting of native trees from public lands, the department shall use existing fire prevention and management programs and ensure that appropriate silvicultural practices are used to encourage native biodiversity and ecosystem processes. No native forests on public lands shall be converted to introduced forest plantations.”

SECTION 2. Section 183-16, Hawaii Revised Statutes, is amended to read as follows:

“**§183-16 Income from forest reserve.** In case any moneys accrue from any forest reserve, [or] the products thereof, or the sale of tree seedlings from state nurseries, the [same] moneys shall be deposited with the state director of finance to the credit of the general fund.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 1997.

(Approved June 21, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 257**

H.B. NO. 1451

A Bill for an Act Relating to the Petroleum Industry.

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

**SECTION 1. Legislative findings and declarations.** The legislature reiterates its findings and declarations of section 1 of Act 291, Session Laws of Hawaii 1991, that:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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; and
- (5) 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 ACT  
PART I. GENERALLY**

**§ -1 Definitions.** As used in this chapter:

“Aviation fuel” means and includes all liquid substances of whatever chemical composition usable for the propulsion of airplanes.

“Competitively priced” means fuel-grade ethanol for which the wholesale price, minus the value of all applicable federal, state, and county tax credits and exemptions, is not more than the average posted rack price of unleaded gasoline of comparable grade published in the State.

“Department” means the department of business, economic development, and tourism.

“Director” means the director of business, economic development, and tourism.

“Distributor” means and includes:

- (1) Every person who refines, manufactures, produces, or compounds fuel in the State, and sells it at wholesale or at retail, or who utilizes it directly in the manufacture of products or for the generation of power;
- (2) Every person who imports or causes to be imported into the State or exports or causes to be exported from the State, any fuel; and
- (3) Every person who acquires fuel through exchanges with another distributor.

“Energy” means work or heat that is, or may be, produced from any fuel or source whatsoever.

“Fuel” means and includes fuels whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and fuels manufacture, that may be manufactured, grown, produced, or imported into the State or that may be exported therefrom; including petroleum and petroleum products and gases, coal, coal tar, vegetable ferments, and all fuel alcohols.

“Major marketer” means any person who sells natural gas, propane, synthetic natural gas or oil in amounts determined by the department as having a major effect on energy supplies.

“Major oil producer” means any person who produces oil in amounts determined by the department 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 department 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 department as having a major effect on energy supplies.

“Month” or “calendar month” means each full month of the calendar year.

“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.

**§ -2 Distributors to register.** Every distributor, and any person before becoming a distributor, shall register as such with the department on forms to be prescribed, prepared, and furnished by the department.

**§ -3 Statements.** (a) Each distributor shall, at such reporting dates as the director may establish, file with the director, on forms prescribed, prepared, and furnished by the director, a certified statement showing separately for each county and for the islands of Lanai and Molokai within which and whereon fuel is sold or used during the last preceding reporting period, the following:

- (1) The total number of gallons or units of fuel refined, manufactured, or compounded by the distributor within the State and sold or used by the distributor, and if for ultimate use in another county or on another island, the name of that county or island;



- (2) The total number of gallons or units of fuel imported or exported by the distributor or sold or used by the distributor, and if for ultimate use in another county or on another island, the name of that county or island;
- (3) The total number of gallons or units of fuel sold as liquid fuel, aviation fuel, diesel fuel, and other types of fuel as required by the director;
- (4) The total number of gallons or units of fuel and the types thereof sold to: federal, state, and county agencies, ships stores, or base exchanges, commercial agricultural accounts, commercial nonagricultural accounts, retail dealers, and other customers as required by the director;
- (5) 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;
- (6) 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
- (7) 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, and consumer grade propane.

The department shall prescribe by rule when the first report shall be submitted.

(b) In addition to the above reporting, each distributor shall file with the director, Federal Form FEO-1000 or an equivalent state form to be prescribed, prepared, and furnished by the director, showing the expected supply of fuel products for the coming month, and their intended distribution as categorized by Form FEO-1000 or the equivalent state form. The state form shall be supplied in the event that the Federal Mandatory Petroleum Allocation Regulations should expire, be revoked, or be amended to delete or substantially change the reporting requirements provided therein.

(c) Each major marketer shall submit to the department, at a time and in a form as the department shall prescribe, information including petroleum and petroleum product receipts, exchanges, inventories, and distributions. The department shall prescribe by rule when the first report shall be submitted.

(d) The department may request additional information as and when it deems necessary to perform its responsibilities under this chapter.

**§ -4 Informational reports.** (a) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall submit to the department, in such form as the director 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 department 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; and
- (4) Major oil marketers shall report on facility capacity and methods of transportation of receipts and distributions.

The department shall prescribe by rule when the first report shall be submitted.

(b) The department may request additional information as and when it deems it necessary to perform its responsibilities under this chapter.

**§ -5 Analysis of information; audits and inspections; summary reports.** (a) The department may, 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 sections -3 and -4 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 department 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 department may solicit assistance of the department of taxation in any such audit. The department shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the department is not duplicative of the data received by any of their audits or inspections which is available to the department.

(c) The department may analyze the impacts of state and federal policies, rules, and regulations upon the supply and pricing of petroleum products.

(d) The department shall publish annually and submit to the governor and the legislature twenty days prior to the first day of the current legislative session a summary, including any analysis and interpretation, of the information submitted to it pursuant to this chapter. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted. At the option of the director, this report may be combined with reporting required by section 196-4(11), in the director's role as state energy resources coordinator.

**§ -6 Confidential information.** (a) Confidential commercial information presented to the department pursuant to this chapter shall be held in confidence by the department or aggregated to the extent necessary to assure confidentiality as governed by chapter 92F, including its penalty provisions.

(b) No data or information submitted to the department 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 sections -3 and -4, neither the director, nor any employee of the department, may do any of the following:

- (1) Use the information furnished under sections -3 and -4 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 sections -3 and -4 can be identified; or
- (3) Permit anyone to examine the individual reports provided under sections -3 and -4 other than the public utilities commission, the attorney general, and the consumer advocate, and the authorized representatives and employees of each.

**§ -7 Confidential information obtained by another state agency.** Any confidential information pertinent to the responsibilities of the department specified in this chapter that is obtained by another state agency, including the department of taxation, the public utilities commission, the attorney general, and the consumer advocate, shall be available to the attorney general, the attorney general's authorized representatives, and the department and shall be treated in a confidential manner.

**§ -8 Sharing of information obtained by the department.** The department shall make all information obtained by the department under this chapter, including confidential information, available to the attorney general, the department of taxation, the public utilities commission, the consumer advocate, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received.

**§ -9 Failure to timely provide information; failure to make and file statements; false statements; penalties.** (a) The department shall notify those persons who have failed to timely provide the information specified in section -3 or -4 or requested by the department under section -3 or -4. If, within five days after 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 \$2,000 per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the department regarding the information and the department has held a hearing and, following a ruling by the department, the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) Any person who wilfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the department shall be subject to a civil penalty not to exceed \$20,000.

(c) For the purposes of this section, the term "person" means, in addition to the definition contained in section -1, any responsible corporate officer.

**§ -10 Ethanol content requirement.** (a) The department shall adopt rules in accordance with chapter 91 to require that gasoline sold in the State for use in motor vehicles contain ten per cent ethanol by volume. The amounts of gasoline sold in the State containing ten per cent ethanol shall be in accordance with rules as the director may deem appropriate. The director may authorize the sale of gasoline that does not meet these requirements as provided in subsection (d).

(b) Gasoline blended with an ethanol-based product, such as ethyl tertiary butyl ether, shall be considered to be in conformance with this section if the quantity of ethanol used in the manufacture of the ethanol-based product represents ten per cent, by volume, of the finished motor fuel.

(c) Ethanol used in the manufacture of ethanol-based gasoline additives, such as ethyl tertiary butyl ether, may be considered to contribute to the distributor's conformance with this section; provided that the total quantity of ethanol used by the distributor is an amount equal to or greater than the amount of ethanol required under this section.

(d) The department may authorize the sale of gasoline that does not meet the provisions of this section:

- (1) To the extent that sufficient quantities of competitively-priced ethanol are not available to meet the minimum requirements of this section; or
- (2) In the event of any other circumstances for which the department determines compliance with this section would cause undue hardship.

(e) Each distributor, at such reporting dates as the director may establish, shall file with the director, on forms prescribed, prepared, and furnished by the director, a certified statement showing:

- (1) The price and amount of ethanol available;
- (2) The amount of ethanol-blended fuel sold by the distributor;
- (3) The amount of non-ethanol-blended gasoline sold by the distributor; and
- (4) Any other information the department shall require for the purposes of compliance with this section.

(f) Provisions with respect to confidentiality of information shall be the same as provided in section -7.

(g) Any distributor or any other person violating the requirements of this section shall be subject to a fine of not less than \$2 per gallon of nonconforming fuel, up to a maximum of \$10,000 per infraction.

(h) The department, in accordance with chapter 91, shall adopt rules for the administration and enforcement of this section.

**§ -11 Powers of the public utilities commission.** The public utilities commission shall have the authority and power to take any action or make any determination under this chapter, including but not limited to actions or determinations that affect persons not regulated under chapters 269, 271, and 271G, as the commission deems necessary to carry out its responsibilities or otherwise effectuate chapter 269, 271, or 271G.

**§ -12 Rules.** The department shall adopt, amend, or repeal such rules as it may deem proper to fully effectuate this chapter.

## PART II. PETROLEUM ADVISORY COUNCIL

**§ -21 Petroleum advisory council; establishment.** (a) There is established within the department for administrative purposes a voluntary petroleum advisory council, which shall be convened at the director's discretion and shall consist of the following eleven members:

- (1) Two lessee retail service station dealers;
- (2) Two independent retail service station dealers;
- (3) Two representatives of petroleum jobbers;
- (4) Two representatives of petroleum refiners;
- (5) One representative from the department of commerce and consumer affairs;

- (6) One representative from the department of business, economic development, and tourism; and
  - (7) One representative from the department of the attorney general.
- (b) The members of the council shall elect a chairperson from among their number.
- (c) The members of the council shall serve without compensation.

§ -22 **Duties of the council.** The council shall:

- (1) Advise the department of trends and activities in the retail petroleum industry that may require statutory consideration; and
- (2) Take such other action as may be necessary to ensure that the department is informed of all relevant developments in the retail petroleum industry affecting the health, safety, and welfare of the people of this State.”

SECTION 3. Chapter 486H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§486H- Restrictions on manufacturers or jobbers in operating service stations; lease rent controls; definitions.** (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer operated retail service station to a company operated retail service station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company operated retail service stations legally in existence on July 31, 1997;
- (2) Constructing and operating any new retail service stations as company operated retail service stations constructed after August 1, 1997, subject to subsection (b); or
- (3) Operating a former dealer operated retail service station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the service station, cancels the franchise, or is properly terminated or not renewed.

(b) No new company operated retail service station shall be located within one-eighth mile of a dealer operated retail service station in an urban area, and within one-quarter mile in other areas. For purposes of this subsection, “urban” means the first congressional district of the State, and “other areas” means the second congressional district of the State.

(c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:

- (1) Such renewal shall not be scheduled more frequently than once every three years; and
- (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer operated retail service station as defined in section 486H-1 and 486H- plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase which the manufacturer or jobber is required to pay the lessor under the ground lease for the service station. For the purposes of this subsection, “gross amount” means all monetary earnings of the dealer from a dealer operated retail service station after all applicable taxes, excluding income taxes, are paid.

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The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.

(d) Nothing in this section shall prohibit a dealer from selling a retail service station in any manner.

(e) For the purposes of this section:

“Company operated retail service station” means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that manufacturer or jobber.

“Dealer operated retail service station” means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer under a franchise.

“Operate” means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.

“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.”

SECTION 4. Chapter 486E, Hawaii Revised Statutes, is repealed.

SECTION 5. Chapter 486I, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 486H-10, Hawaii Revised Statutes, is repealed.

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.<sup>1</sup>

SECTION 9. This Act shall take effect on August 1, 1997.

(Approved June 21, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 258

H.B. NO. 1572

A Bill for an Act Relating to Agricultural Loans.

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

SECTION 1. Section 155-3, Hawaii Revised Statutes, is amended to read as follows:

“**§155-3 Restriction.** Loans provided for by this chapter shall be authorized only if [such] these loans cannot be made by [the Farmers Home Administration; the applicable farm credit system bank; and by two other private lenders; provided] two private lenders, a farm credit system bank, or the United States Department of Agriculture, except that the board of agriculture may waive this requirement for emergency loans.”

SECTION 2. Section 155-4, Hawaii Revised Statutes, is amended to read as follows:

“**§155-4 Powers and duties of the department.** The department of agriculture shall have the following powers:

- (1) Employ a secretary, who may be exempt from chapters 76 and 77, and such other full-time and part-time employees, subject to chapters 76 and 77, as are necessary to effectuate the purposes of this chapter, subject further to the limitation of funds in the agricultural loan reserve fund[.];
- (2) Designate such agents throughout the State as may be necessary for property appraisal, the consideration of loan applications, and the supervision of farming operations of borrowers. The agents may be compensated for their services at such rates as the department in its discretion may fix[.];
- (3) Initiate and carry on a continuing research and education program, utilizing and coordinating the services and facilities of other government agencies and private lenders to the maximum, to inform qualified farmers concerning procedures for obtaining loans and to inform private lenders concerning the advantages of making loans to qualified farmers[.];
- (4) Cooperate with private and federal government farm loan sources to increase the amount of loan funds available to qualified farmers in the State[.];
- (5) Assist individual qualified farmers in obtaining loans from other sources. Insofar as available funds and staff permit, counsel and assist individual farmers in establishing and maintaining proper records to prove their farming ability for loan purposes[.];
- (6) Insure loans made to qualified farmers by private lenders under section 155-5[.];
- (7) Participate in loans made to qualified farmers by private lenders under section 155-6[.];
- [(8) Make loans to qualified farmers under the insured loan program of the Farmers Home Administration, subject to section 155-7.]
- [(9) (8) Make direct loans to qualified farmers under section 155-8[.];
- [(10) (9) Borrow money for loan purposes[.];
- [(11) (10) Assign and sell mortgages[.];
- [(12) (11) Hold title to, maintain, use, manage, operate, sell, lease, or otherwise dispose of personal and real property acquired by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned[.];
- [(13) (12) Sue and be sued in the name of the “State of Hawaii”[.];
- [(14) (13) Exercise such incidental powers as are deemed necessary or requisite to fulfill its duty in carrying out the purposes of this chapter[.];
- [(15) (14) Delegate authority to its chairperson to approve loans, where the requested amount plus any principal balance on existing loans to the applicant, does not exceed \$25,000 of state funds[.]; and
- [(16) (15) Adopt rules pursuant to chapter 91 necessary for the purpose of this chapter.”

SECTION 3. Section 155-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of agriculture may provide funds for a share, not to exceed ninety per cent, of the principal amount of a loan made to a qualified farmer

or qualified new farmer by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates [where the qualified farmer or qualified new farmer is unable to obtain sufficient funds for the same purpose from the Farmers Home Administration].”

SECTION 4. Section 155-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of agriculture may make loans directly to qualified farmers or qualified new farmers who are unable to obtain sufficient funds at reasonable rates from private lenders either independently or under sections 155-5 and 155-6], or from the Farmers Home Administration either directly or under section 155-7].”

SECTION 5. Section 171-22, Hawaii Revised Statutes, is amended to read as follows:

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

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

SECTION 6. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, or industrial lease, may: (1) modify or eliminate any of the restrictions specified in



subsection (a); (2) extend or modify the fixed rental period of the lease; or (3) extend the term of the lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, Department of Veterans Affairs, Small Business Administration, [Farmers Home Administration,] United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or any other federal mortgage lending agency qualified to do business in the State, and their respective successors and assignees, or to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates; provided that the private lender shall be qualified to do business in the State; provided further that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) The rental shall not be less than the rental for the preceding term; and
- (4) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.”

SECTION 7. Section 201E-2, Hawaii Revised Statutes, is amended by amending the definition of “mortgage holder” to read as follows:

““Mortgage holder” includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture, [Farmers Home Administration,] or other federal or state agency engaged in housing activity, Administrator of Veterans Affairs, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees, and assigns.”

SECTION 8. Section 201E-60, Hawaii Revised Statutes, is amended by amending the definition of “mortgage lender” to read as follows:

““Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

- (1) Is authorized to do business in the State;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured, or is an institution which is an approved mortgagee for the Federal Housing Administration, or is an approved lender for the Veterans Administration or the [Farmers Home Administration] United States Department of Agriculture, or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.”

SECTION 9. Section 201E-110, Hawaii Revised Statutes, is amended by amending the definition of “mortgage lender” to read as follows:

““Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

- (1) Is authorized to do business in the State;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single-family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured, or is an institution which is an approved mortgagee for the Federal Housing Administration, or is an approved lender for the Veterans Administration or the [Farmers Home Administration] United States Department of Agriculture, or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.”

SECTION 10. Section 201E-205, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

- (1) Developed under this chapter or chapter 356;
- (2) Developed under a government assistance program approved by the corporation, including[,] but not limited to[,] the [Farmers Home Administration] United States Department of Agriculture 502 program and Federal Housing Administration 235 program; or
- (3) Developed under the sponsorship of a private nonprofit corporation providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing.”

SECTION 11. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in [section] sections 205-6 and [section] 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless the said A and B lands within the subdivision shall be made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition as prescribed in this section which restriction and condition shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee from obtaining mortgage financing from any of the mortgage lending agencies set forth hereinbelow, and said requirement is the sole reason for failure to obtain mortgage financing, then such requirement of encumbrances shall, insofar as such mortgage financing is so jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that such condi-

tional waiver shall thereafter become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies mentioned hereinabove are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, [Farmers Home Administration,] United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.”

SECTION 12. Section 206E-101, Hawaii Revised Statutes, is amended by amending the definition of “mortgage lender” to read as follows:

““Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

- (1) Is authorized to do business in the State;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single family or multi-family residential property; and
- (3) Is a financial institution whose accounts are federally insured, or is an institution which is an approved mortgagee for the Federal Housing Administration, or is an approved lender for the Veterans Administration or the [Farmers Home Administration,] United States Department of Agriculture, or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Mortgage Corporation.”

SECTION 13. Section 219-8, Hawaii Revised Statutes, is amended to read as follows:

**“§219-8 Participation in loans by the department.**

- (1) The department of agriculture may provide funds for a share, not to exceed ninety per cent, of the principal amount of a loan made to a qualified aquaculturalist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates where the qualified farmer is unable to obtain sufficient funds for the same purpose from the [Farmers Home Administration,] United States Department of Agriculture;
- (2) Participation loans under this section shall be limited by the provisions of section 219-6 and the department of agriculture’s share shall not exceed the maximum amounts specified therefor[.];
- (3) Interest charged on the private lender’s share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all state or national banks authorized to accept or hold deposits in the State[,] on secured short term loans made to borrowers who have the highest credit rating with those banks[.];
- (4) The private lender’s share of the loan may be insured by the department up to ninety per cent of the principal balance of the loan, under section 219-7[.];
- (5) When a participation loan has been approved by the department, its share shall be paid to the participating private lender for disbursement to the borrower. The private lender shall collect all payments from the borrower and otherwise service the loan[.];

- (6) Out of interest collected, the private lender may be paid a service fee to be determined by the department which fee shall not exceed one per cent of the unpaid principal balance of the loan[.]; provided that this fee shall not be added to any amount which the borrower is obligated to pay[.];
- (7) The participating private lender may take over a larger percentage or the full principal balance of the loan at any time that it has determined, to the satisfaction of the department, that the borrower is able to pay any increased interest charges resulting[.]; and
- (8) Security for participation loans shall be limited by section 219-5(6). All collateral documents shall be held by the private lender. Division of interest in collateral received shall be in proportion to participation by the department and the private lender.”

SECTION 14. Section 412:5-305, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To the extent specified herein, a bank may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the [Farmers Home Administration,] United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member[.]; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank’s capital and surplus.”

SECTION 15. Section 412:6-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To the extent specified herein, a savings bank may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the [Farmers Home Administration,] United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation[,] Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions including without limitation[,] the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member[,]; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the savings bank’s capital and surplus.”

SECTION 16. Section 412:7-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To the extent specified herein, a savings and loan association may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the [Farmers Home Administration,] United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation[,] Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal

- Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions including without limitation[,] the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member[.]; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the savings and loan association's capital and surplus.”

SECTION 17. Section 412:8-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To the extent specified herein, a trust company may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the [Farmers Home Administration,] United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member[.]; provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the trust company's capital and surplus.”

SECTION 18. Section 412:9-409, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To the extent specified in this subsection, a depository financial services loan company may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States including[,] without limitation[,] Federal Reserve Banks, the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the [Farmers Home Administration,] United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States including[,] without limitation[,] Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, the Federal National Mortgage Association, the Financing Corporation, the Resolution Funding Corporation, the Student Loan Marketing Association, the Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions including[,] without limitation[,] the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions in which the United States government is a shareholder or contributing member; provided that the total amount invested in any one issuer shall not exceed twenty per cent of the depository financial services loan company’s capital and surplus.”

SECTION 19. Section 412:10-502, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To the extent specified herein, a credit union may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the [Farmers Home Administration,] United States Department of Agriculture, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies, which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal

- Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member[.]; provided that the total amount invested in any one issuer shall not exceed ten per cent of the credit union's capital."

SECTION 20. Section 516-91, Hawaii Revised Statutes, is amended by amending the definition of "mortgage lender" to read as follows:

""Mortgage lender" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

- (1) Is authorized to do business in the State;
- (2) Customarily provides services or otherwise aids in the financing of mortgages on single family or multi-family residential property; and
- (3) Is a financial institution whose accounts are federally insured, or is an institution which is an approved mortgagee for the Federal Housing Administration, or is an approved lender for the Veterans Administration or the [Farmers Home Administration] United States Department of Agriculture, or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation."

SECTION 21. Section 155-7, Hawaii Revised Statutes, is repealed.

SECTION 22. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval.

(Approved June 21, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 259**

H.B. NO. 1591

A Bill for an Act Relating to the Hawaii State Clearinghouse for Missing Children.  
*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. All children are vulnerable and need protection from abuse and exploitation. The legislature finds that children who have been abducted by a



stranger or a family member are particularly vulnerable. Noncustodial parents are responsible for the overwhelming majority of child abduction cases. For example, in 1988, an estimated 354,100 children were abducted by a family member in the United States.

Act 246, Session Laws of Hawaii 1994, created a missing children state clearinghouse and resource center as a three-year pilot project. The clearinghouse is slated to sunset June 30, 1997. In less than two years of operation, the clearinghouse has assisted in the recovery of more than 150 children and has received over \$195,000 of charitable contributions in cash and in-kind services. The clearinghouse, in conjunction with the Federal Bureau of Investigation, Hawaii law enforcement agencies, the department of education, and child protective services, has provided invaluable assistance in locating Hawaii's missing children and reuniting Hawaii families. During these two years, Hawaii has leaped from a program with few resources to a program emulated by other states, which has advanced technology and a centralized database with information about all missing children within Hawaii.

In recognition of the missing children problem, forty-nine states and the District of Columbia have established state clearinghouses to:

- (1) Coordinate the efforts of law enforcement, social services, education and prevention programs, and legislative advocacy groups;
- (2) Disseminate photographs of missing children; and
- (3) Assist in efforts to secure the safe return of children.

The purpose of this Act is to establish a state clearinghouse and clearinghouse trust fund to address the problem of missing and exploited children.

SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . HAWAII STATE CLEARINGHOUSE FOR MISSING CHILDREN**

**§28- Hawaii state clearinghouse for missing children; programs.** (a)

There is established within the department of the attorney general a program to be known as the Hawaii state clearinghouse for missing children to assist in the implementation of federal and state laws relating to missing children.

(b) The Hawaii state clearinghouse for missing children shall include programs to coordinate the efforts of state and county agencies with those of federal agencies in locating, recovering, and protecting missing children and to promote community awareness of the problem of missing children.

(c) The department of the attorney general shall employ, without regard to chapters 76 and 77, a coordinator and an assistant to the coordinator who shall coordinate existing public and private resources and further define and develop, to the extent of available resources, the most appropriate system for addressing the problem of missing children, which may include the following:

- (1) A communication network among county and state law enforcement agencies and the National Crime Information Center in Washington, D.C.;
- (2) A standardized reporting system in all counties developed in conjunction with law enforcement officials at all levels;
- (3) Assistance in the establishment of trained search teams that can be activated in each county;
- (4) Educational programs designed to prevent child abduction, enhance child safety, and raise public awareness about ways to prevent child abduction, molestation, and sexual exploitation;

- (5) A directory of resources to assist in locating missing children including names, addresses, and services provided by public and private organizations; and
- (6) A statewide centralized, uniform, and computerized information database relating to family-related and nonfamily-related child abductions, as well as runaways and children who are unwanted by their parents.

**§28- Hawaii missing children's clearinghouse trust fund.** (a) There is established the Hawaii missing children's clearinghouse trust fund as a separate fund of the Hawaii Justice Foundation, a Hawaii nonprofit corporation. The fund shall not 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.

(b) The Hawaii Justice Foundation shall expend moneys from the trust fund to support efforts to implement the purposes of the Hawaii state clearinghouse for missing children in accordance with this part.

(c) The trust fund may receive appropriations, contributions, grants, endowments, or gifts in cash or otherwise from any source, including the State, corporations or other businesses, foundations, government, individuals, and other interested parties; provided that any appropriations made by the State are not intended to supplant the funding of existing missing children's clearinghouse programs. Moneys appropriated to and deposited into the fund by the state, county, or federal government, private contributions of cash or property, and the income and capital gains earned by the trust fund shall constitute the assets of the Hawaii missing children's clearinghouse trust fund. The public and private sectors shall work together as partners in securing contributions for the trust fund.

(d) Moneys appropriated for the purposes of the clearinghouse shall be administered by the department of the attorney general unless specifically appropriated to the clearinghouse trust fund.

(e) The aggregate principal sum deposited in the Hawaii missing children's clearinghouse trust fund shall be invested by the Hawaii Justice Foundation in a manner intended to maximize the rate of return on investment of the trust fund consistent with the objective of preserving the trust fund's principal.

(f) There may be an endowment component of the Hawaii missing children's clearinghouse trust fund.

(g) Any organization submitting a proposal to the Hawaii Justice Foundation for trust fund moneys 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 be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;
- (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) In the case of an applicant that is not a state or county agency, have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
- (4) Have experience with the project or in the program area for which the proposal is being made; and
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.

(h) Priority for funding shall be given to programs and activities carried out by the Hawaii state clearinghouse for missing children.

(i) Organizations or agencies to which trust fund moneys are awarded shall agree to comply with the following conditions before receiving the award:

- (1) Employ or have under contract persons qualified to engage in the activity to be funded;
- (2) Comply with applicable federal, state, and county laws; and
- (3) Comply with any other requirements prescribed by the Hawaii Justice Foundation to ensure the award recipient's adherence to applicable federal, state, and county laws and the purposes of this part.

(j) In the event of the termination of the Hawaii missing children's clearinghouse trust fund or the dissolution of the Hawaii Justice Foundation, the remaining principal amount of only those contributions made by the State to the trust fund shall be distributed to the general fund of the State. Any other amounts remaining in the Hawaii missing children's clearinghouse trust fund shall be distributed in accordance with the recommendations of the board of the Hawaii Justice Foundation.

**§28- Hawaii missing children's clearinghouse advisory board.** The Hawaii Justice Foundation may appoint an advisory board to carry out the purposes of the Hawaii missing children's clearinghouse trust fund. The foundation shall select members of the advisory board from the community from a list of candidates provided by the board, which shall give special consideration to community and business leaders from the private sector, the department of the attorney general, parents who have had a missing child, and persons who have been abducted as a child. The advisory board's duties shall include:

- (1) Soliciting and otherwise raising funds for the Hawaii missing children's clearinghouse trust fund;
- (2) Establishing criteria for the expenditure of funds; and
- (3) Making recommendations for grants and other specific expenditures.

The advisory board shall not be deemed to be a state board.

**§28- Annual audit of Hawaii Justice Foundation.** The results of the annual audit of the Hawaii Justice Foundation shall be submitted to the department of the attorney general not later than thirty days from the date the Hawaii Justice Foundation receives the audit results. In addition, the Hawaii Justice Foundation shall retain for a period of at least three years and permit the department of the attorney general, the department of accounting and general services, state legislators, and the auditor, or duly authorized representatives, to inspect and have access to any documents, papers, books, records, and other evidence that are pertinent to the trust fund."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$86,000 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$86,000 or so much thereof as may be necessary for fiscal year 1998-1999 to pay the salaries of the coordinator and assistant to the coordinator and general operating costs to carry out the purposes of this Act.

SECTION 4. The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved June 21, 1997.)

A Bill for an Act Relating to the Environment.

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

SECTION 1. The legislature finds that the federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) was intended to improve planning and response efforts to enable communities to respond properly to hazardous materials incidents.

Pursuant to EPCRA, the governor in each state appoints members to a state emergency response commission that establishes local emergency planning districts and appoints members to local emergency planning committees. The local emergency planning committee in each planning district develops emergency response plans to respond to hazardous materials incidents. It also gathers information on the facilities containing hazardous materials within the district, and assists in disseminating information to the public regarding the hazardous materials present in the district.

The governor signed the Hawaii Emergency Planning and Community Right-to-Know Act in 1993. It specifies the membership of the state emergency response commission, designates the counties as local emergency planning committees, and establishes a filing fee in the amount of \$100 for the processing of a chemical inventory form. These forms are submitted to the state emergency response commission.

The legislature finds that the federal government does not provide assistance to the state emergency response commissions or the local emergency planning committees in developing and implementing plans or programs.

The purpose of this Act is to establish funding for the local emergency planning committees to plan, prepare, and respond to hazardous material emergencies which may occur in their districts.

SECTION 2. 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 response actions[,] and preparedness, including removal and remedial actions, consistent with this chapter; provided that the revenues generated by the “environmental response tax” and deposited into the environmental response revolving fund:

- (1) Shall also be used:
  - (A) For oil spill planning, prevention, preparedness, education, research, training, removal, and remediation; and
  - (B) For direct support for county used oil recycling programs; and
- (2) May also be used to address concerns related to drinking water, underground storage tanks, including support for the underground storage tank program of the department and funding for the acquisition by the State of a soil remediation site and facility.”

SECTION 3. Section 128D-4, Hawaii Revised Statutes, is amended to read as follows:

“**§128D-4 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 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;
- (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;
- (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;
- (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
- (6) Contract the services of appropriate organizations to perform the actions set forth in paragraphs (1), (2), (3), (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 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.

(e) The governor may raise the legislative ceiling established in the environmental response revolving fund if, in the governor's determination, sufficient funds do not exist within the ceiling to conduct emergency response actions pursuant to this chapter."

SECTION 4. Section 128E-8, Hawaii Revised Statutes, is amended to read as follows:

“[[§128E-8]] Funds for operation. (a) The department shall establish an account, to be called the local emergency response planning committees account, within the environmental response revolving fund pursuant to section 128D-2, for the purpose of administration and oversight of this chapter.

[(a)] (b) All moneys to meet the general operating needs and expenses of the emergency planning and community right-to-know program of the department shall be allocated by the legislature through appropriations out of the state general fund[.] and the environmental response revolving fund; provided that the appropriations from the environmental response revolving fund shall not exceed the amount of moneys collected from the filing fees assessed in section 128E-9. The department shall include in its budgetary request for each upcoming fiscal period<sup>1</sup> the amounts necessary to effectuate the purposes of this chapter.

[(b)] (c) The department of health, with the assistance of the department of budget and finance and department of accounting and general services, shall prepare a report for the legislature concerning the amount of moneys collected during the preceding fiscal year, the amount of moneys collected to date during the current fiscal year, and the amount of moneys to be collected during the upcoming fiscal year, pursuant to sections 128E-9 and 128E-11[, and accruing to the credit of the state general fund]. The department shall submit the foregoing report to the legislature not less than twenty days prior to the convening of each regular session of the legislature.”

SECTION 5. Section 128E-9, Hawaii Revised Statutes, is amended to read as follows:

“[[§128E-9]] Filing fees. Facilities that are required to report according to section 128E-6(a)(2), shall remit \$100 with each submission of chemical inventory forms or Tier II forms to the commission by March 1 of each year. All moneys collected by the department pursuant to this section shall be deposited in the state

treasury and accrue to the credit of the [state general fund.] environmental response revolving fund established in section 128D-2.”

SECTION 6. There is appropriated out of the revenues of the environmental response revolving fund established under section 128D-2, Hawaii Revised Statutes, the sum of \$500,000, or so much thereof as may be necessary for fiscal year 1997-1998 for the purpose of conducting non-oil response actions consistent with chapter 128D, Hawaii Revised Statutes.

SECTION 7. The sum appropriated shall be expended by the department of health for the purposes of this Act.

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 21, 1997.)

**Note**

1. Prior to amendment “,” appeared here.

**ACT 261**

H.B. NO. 2202

A Bill for an Act Relating to Captive Insurance Companies.

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

SECTION 1. The legislature finds that since the passage of the Hawaii captive law in 1987, Hawaii has provided a friendly and supportive environment and infrastructure for captive insurance companies. Furthermore, the State has actively encouraged captive insurance company operations in Hawaii. The governor has pledged to keep Hawaii at the forefront of the captive industry by advocating a stable legal framework and a strong business environment.

Since 1987, the number of captive insurance companies in Hawaii has risen steadily, such that Hawaii is now the premier captive domicile in the Pacific and the second largest captive domicile in the United States.

In recent years, Hawaii domiciled captive insurance companies have filled a void in the insurance programs of a number of national and multinational companies and groups of smaller companies from throughout the United States and abroad. This has served to increase Hawaii’s image as a business center in the Pacific.

Although current law sets forth a regulatory scheme for the licensing and reporting of captive insurance companies, it is silent with respect to providing the governmental infrastructure for equally important monitoring and promotion of this growing industry. This infrastructure, specifically in the form of personnel versed in the nuances of captive insurance, is necessary for the continued and successful growth of Hawaii’s captive insurance industry.

With approximately fifty captive insurance companies now domiciled in this State, the captive insurance industry has outgrown or is at a point of outgrowing the available insurance division personnel who are assigned to regulate captive insurance companies on a part-time basis.

The Hawaii Captive Insurance Council, a nonprofit organization since 1991, has been helpful in the development and maintenance of the captive insurance

industry in Hawaii. However, its contribution is understandably and rightfully limited in the area of regulation.

Because of the unique nature of captive insurance and the State's commitment to attract new captive insurance companies, a new position is needed within the insurance commissioner's office. The position should be filled by a person who is sensitive to, understands the particular needs of, and is familiar with, issues relating to the captive insurance industry, and who can support the development of captive insurance companies.

The purpose of this Act is to:

- (1) Establish the position of captive insurance administrator;
- (2) Provide for examiners and other support personnel within the insurance division and under the supervision and control of the insurance commissioner; and
- (3) Provide funds to support and maintain the State's captive insurance program.

The captive insurance administrator shall be responsible for monitoring, regulating, and developing the captive insurance industry.

SECTION 2. Chapter 431, Article 19, Hawaii Revised Statutes, is amended by adding four new sections to be designated and to read as follows:

**“§431:19- Captive insurance administrator.** (a) There shall be established within the office of the commissioner, a captive insurance administrator, who shall be solely responsible for assisting the insurance commissioner in the monitoring, regulation, and development of captive insurance companies under this article. The insurance commissioner shall, with the approval of the director of commerce and consumer affairs, appoint the administrator who shall be exempt from chapters 76 and 77. The administrator shall serve at the pleasure of the director of commerce and consumer affairs.

(b) “Administrator”, where used in this article, means the captive insurance administrator.

**§431:19- Salary.** The salary of the administrator shall be set by the director of commerce and consumer affairs, but shall not be more than ninety-five per cent of the maximum salary of the commissioner.

**§431:19- General powers and duties.** (a)<sup>1</sup> The administrator shall:

- (1) Have the authority expressly conferred upon the administrator by, or reasonably implied from, the provisions of this article; and
- (2) Assist the commissioner in the enforcement of this article and rules adopted pursuant to this article and related to captive insurance.

**§431:19- Captive insurance administrative fund.** (a) The commissioner may establish a separate fund designated as the captive insurance administrative fund.

(b) The commissioner may appoint staff examiners exempt from chapters 76 and 77, to examine the affairs, transactions, accounts, records, documents, and assets of each authorized captive insurer licensed under this article. The commissioner may also appoint administrative support personnel exempt from chapters 76 and 77, to assist and support the examiners.

(c) The commissioner may pay the salaries of the captive insurance administrator, the staff examiners, and the administrative support personnel from the captive insurance administrative fund. The commissioner may also appoint independent contractor examiners to examine captive insurance companies. The funds may also



be used for other expenses relating to the monitoring, regulation, and examination of captive insurance companies, the development of the captive insurance industry under this article, and the education and training of the captive insurance administrator and examiners.

(d) All premium taxes collected from captive insurance companies licensed in this state under this article, all captive insurance company application fees, annual license fees, and examination fees collected pursuant to this article shall be credited to the captive insurance administration fund. Each fiscal year, the commissioner may expend out of the fund a total of forty per cent of the total moneys credited to the fund in the prior fiscal year or \$250,000, whichever is greater, to pay for the expenditures contemplated by this section. Subject to the foregoing expenditure limit, all moneys remaining in the fund shall revert to the general fund.

(e) The commissioner shall prepare and submit an annual report to the legislature on the use of the captive insurance administration fund.”

SECTION 3. Section 431:2-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The insurer, person, or guaranty fund examined and liable therefor shall pay to the commissioner’s examiners upon presentation of an itemized statement, their actual travel expenses, their reasonable living expense allowance, and their per diem compensation at a reasonable rate approved by the commissioner, incurred on account of the examination. All payments collected by the commissioner shall be remitted to [the]:

- (1) The general fund of the State[, or to the];
- (2) The insurance examiner’s revolving fund if independent contractor examiners were employed for the examination[.]; or
- (3) The captive insurance administrative fund if independent contractor examiners or captive staff examiners were employed for a captive insurer’s examination.

The commissioner or the commissioner’s examiners shall not receive or accept any additional emolument on account of any examination.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved June 21, 1997.)

#### Notes

1. No subsection (b).
2. Edited pursuant to HRS §23G-16.5.

## ACT 262

S.B. NO. 37

A Bill for an Act Relating to Enterprise Zones.

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

SECTION 1. Section 209E-2, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “education and training services” to read:

““Education and training services” [include] means courses and programs for international business executives in [international] business management, marketing, financial services, human resources, risk management, and for technicians in environmental sciences and remediation.”

2. By amending the definition of “medical and health care services” to read: ““Medical and health care services” [includes] means medical research, clinical trials, and telemedicine, [and related consulting services,] but not routine medical treatment or services.”

3. By amending the definition of “telecommunication services” to read: ““Telecommunication services” [include] means terrestrial (copper and optical fiber cable) and satellite information delivery systems, switching systems, and ground stations, [and related consulting services,] but not consumer services.”

SECTION 2. Section 209E-4, Hawaii Revised Statutes, is amended to read as follows:

**“§209E-4 Enterprise zone designation.** (a) The governing body of any county may [make written application] apply in writing to the department to have an area declared to be an enterprise zone. The application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives.

(b) The governor, upon the recommendation of the director, shall approve the designation of up to six areas in each county as enterprise zones for a period of twenty years. Any such area shall be located in one United States census tract or two or more contiguous United States census tracts in accordance with the most recent decennial United States Census. The census tract or tracts within which each enterprise zone is located also shall meet at least one of the following criteria:

(1) Twenty-five per cent or more of the population have incomes below eighty per cent of the median family income of the county; or

(2) The unemployment rate is 1.5 times the state average.

(c) Notwithstanding subsection (b), [all] census [tracts] tract #405 within the county of Kauai shall be eligible for designation as an enterprise zone. [Such] The eligibility for designation, [if made,] shall remain in effect until January 1, [1996] 1997, unless the governor earlier determines that [the designation] the eligibility is no longer necessary.

(d) Notwithstanding subsection (b) or (c), only lands classified as agricultural in the Waialua district on Oahu, as defined in section 4-1(3)(D), shall be designated an enterprise zone on July 1, 1997, and the designation shall remain in effect until June 30, 2002.”

SECTION 3. Section 209E-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Subsections (a)(1), [(a)(3), (a)(4), and] (a)(2), (b)(1), and (b)(2) shall not apply to agriculture producers in any county with a population of one-hundred thousand or less[.]; provided that the agricultural producers shall only be subject to section 209E-9(b)(3), if they began operations prior to July 1, 1996, and only to section 209E-9(a)(3) and (4), if they began operations on or after July 1, 1996, but prior to July 1, 1998. This subsection shall apply to those producers even if the area within the county in which they are located is subsequently designated as an enterprise zone. Any agricultural producers described in this subsection that seek eligibility as a qualified business after June 30, 1998, in a county with a population of 100,000 or less shall be subject to section 209E-9(a) or (b).”

2. By amending subsection (f) to read:

“(f) Tangible personal property must be sold by an establishment of a qualified business within an enterprise zone and the transfer of title [and delivery] to the buyer of the tangible personal property must take place in the same enterprise zone in which the tangible personal property is sold. Services must be sold by an establishment of a qualified business engaged in a service business [or calling] within an enterprise zone and the services must be delivered in the same enterprise zone in which sold. Any services rendered outside of an enterprise zone shall not be deemed to be the services of a qualified business.”

SECTION 4. Section 209E-11, Hawaii Revised Statutes, is amended to read as follows:

“**§209E-11 State general excise and use tax exemptions.** The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from the manufacture of tangible personal property, the wholesale sale of tangible personal property, or the engaging in a service business by a qualified business in the enterprise zone[.] and exempt from the use tax for purchases by a qualified business. The gross proceeds received by a contractor shall be exempt from the general excise tax for construction within an enterprise zone performed for a qualified business within an enterprise zone. The exemption shall extend for a period not to exceed seven years.”

SECTION 5. Act 286, Session Laws of Hawaii 1996, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that on June 30, 1998, section 209E-9(c), Hawaii Revised Statutes, shall be repealed and the remaining subsections in section 209E-9, Hawaii Revised Statutes, shall be renumbered accordingly[.]; and provided further that any agricultural producers operating as a qualified business pursuant to section 209E-9(c), Hawaii Revised Statutes, prior to June 30, 1998, may complete their seven years of eligibility under chapter 209E, Hawaii Revised Statutes. Those agricultural producers shall only be subject to section 209E-9(b)(3), Hawaii Revised Statutes, if they began operations prior to July 1, 1996, and only to section 209E-9(a)(3) and (4), Hawaii Revised Statutes, if they began operations on or after July 1, 1996, but prior to July 1, 1998. Notwithstanding any provision to the contrary, agricultural producers under section 209E-9(c), Hawaii Revised Statutes, are not required to derive at least fifty per cent of their annual gross revenues from agricultural production in a designated enterprise zone even if the area within the county in which they are located is subsequently designated as an enterprise zone. Any agricultural producers seeking eligibility as a qualified business after June 30, 1998, in a county with a population of 100,000 or less shall be subject to the requirements of section 209E-9(a) and (b), Hawaii Revised Statutes.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall take effect retroactive to December 31, 1996.

(Approved June 21, 1997.)

A Bill for an Act Relating to Architects.

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

SECTION 1. The purpose of this Act is to:

- (1) Establish the requirement that all candidates for the registration exam for licensure to practice architecture in the State of Hawaii have completed a post-graduate program of training that bridges the gap between formal education and professional practice as a registered architect; and
- (2) Require that this program of training be administered by the National Council of Architectural Registration Boards.

SECTION 2. Section 464-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) The person is the holder of an unexpired license issued to the person by any jurisdiction, domestic or foreign, in which the requirements for licensure at the time the person was first licensed are of a standard satisfactory to the board; provided that if the board is in doubt as to whether the standards are satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written examination, prescribed by the board and designed to test the holder’s knowledge, skill, and competency in the profession of architecture;
- (2) The person is the holder of a masters degree in architecture from an institution of higher education approved by the board; is a graduate of a school or college approved by the board as of satisfactory standing and has completed an architectural curriculum of five years or more; has had two years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person’s knowledge, skill, and competency in the profession of architecture;
- (3) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an architectural curriculum of five years; has had three years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person’s knowledge, skill, and competency in the profession of architecture;
- (4) The person is a graduate of a school or college approved by the board as of satisfactory standing and has completed an architectural curriculum of four years or a pre-architecture or arts and science curriculum of four years or more; has had five years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by

- the board and designed to test the person's knowledge, skill, and competency in the profession of architecture;
- (5) The person is a graduate of a community college or other technical training school approved by the board as of satisfactory standing, and has completed an architectural technology curriculum of two years or more; has had eight years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
  - (6) The person has had eleven years of full-time lawful experience in architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture[.];

provided that those persons who qualify under paragraphs (2) through (6), as of June 30, 2000, shall be required to fulfill the requirements of the Intern Development Program of the National Council of Architectural Registration Boards or of any similar program satisfactory to the board. For paragraphs (2) and (3), the intern development program shall fulfill the experience requirement. For paragraphs (4), (5), and (6), time participating in the intern development program shall be credited toward the experience requirement."

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 21, 1997.)

## ACT 264

S.B. NO. 242

A Bill for an Act Relating to Lobbyists.

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

SECTION 1. Section 97-6, Hawaii Revised Statutes, is amended to read as follows:

**"§97-6 Administration.** (a) The state ethics commission shall administer and implement this chapter, and shall have the following powers and duties:

- (1) [On the verified complaint of any person, to] Initiate, receive, and consider complaints concerning alleged violations of this chapter, and investigate or cause to be investigated on a confidential basis, the activities of any person to determine whether the person is in compliance with this chapter;
- (2) Refer for prosecution any violation of section 97-2, 97-3, or 97-5;
- (3) Prescribe forms for the statements and reports required by sections 97-2 and 97-3 and establish orderly procedures for implementing the requirements of those provisions;

- (4) Render advisory opinions upon the request of any person subject to this chapter. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of this chapter. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person subject to this chapter who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by [such] the person in the request for an advisory opinion;
- (5) Issue subpoenas, administer oaths, and exercise those powers conferred upon the commission by section 92-16; and
- (6) [From time to time, adopt, amend, and repeal] Adopt such rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by, the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall notify in writing every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with such informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter or of the code of ethics adopted by the constitutional convention has been

committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator in the same manner as provided in subsection (b). Upon the commission's issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public records. The hearing shall be held within ninety days of the commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period. All parties shall have an opportunity to:

- (1) Be heard;
- (2) Subpoena witnesses and require the production of any books or papers relative to the proceedings;
- (3) Be represented by counsel; and
- (4) Have the right of cross-examination.

All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited in the general fund.

(d) A decision of the commission pertaining to the conduct of any person subject to this chapter shall be in writing and signed by three or more of the members of the commission. A decision of the commission rendered after a hearing together with findings and the record of the proceeding shall be a public record.

(e) A person who files a frivolous charge with the commission against any person covered by this chapter shall be civilly liable to the person charged for all costs incurred in defending the charge, including but not limited to costs and attorneys' fees. In any case where the commission decides not to issue a complaint in response to a charge, the commission shall make a finding as to whether or not the charge was frivolous. The person charged may initiate an action in the circuit court for recovery of fees and costs incurred in commission proceedings within one year after the commission renders a decision that the charge was frivolous. The commission's decision shall be binding upon the court for purposes of a finding pursuant to section 607-14.5.

(f) The commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions where the identity of such persons is not otherwise a matter of public record 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 June 21, 1997.)

A Bill for an Act Relating to the Hawaii Health Systems Corporation.

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

SECTION 1. Section 323F-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The corporation shall be governed by a [eleven-member] thirteen-member board of directors which shall carry out the duties and responsibilities of the corporation.

(b) [Ten] Twelve members of the corporation board shall be appointed by the governor as follows:

- (1) One member from region I who resides in the city and county of [[Honolulu]];
- (2) One member from region II who resides in the county of Kauai;
- (3) One member from region III who resides in the county of Maui;
- (4) One member from region IV who resides in the eastern section of the county of Hawaii;
- (5) One member from region V who resides in the western section of the county of Hawaii; [and]

(6) One member from region II who resides in the county of Kauai or from region III who resides in the district of Hana or on the island of Lanai; provided that in no event shall the member be appointed from the same region for two consecutive terms; and

[(6) Five] (7) Six at-large members who reside in the State [of Hawaii].

The [eleventh] thirteenth member shall be the director of health or the director's designee, who shall serve as an ex officio, voting member.

Appointments to the corporation board shall be made by the governor, subject to confirmation by the senate pursuant to section 26-34. Prior to the transfer date, the public health facility management advisory committees appointed pursuant to section 323-66 for each county may recommend names to the governor for each position on the corporation board designated for a region which corresponds to its county. After the transfer date, the public health facility management advisory committees appointed pursuant to section 323F-10 for each region may make such recommendations to the governor. The [ten] appointed board members shall serve for a term of four years; provided that upon the initial appointment of the first ten members:

- (1) Two at-large members shall be appointed for a term of two years;
- (2) Three at-large members shall be appointed for a term of three years; and

(3) Five regional members shall be appointed for a term of four years.

Any vacancy shall be filled in the same manner provided for the original appointments. The corporation board shall elect its own chair from among its members.”

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 21, 1997.)



## ACT 266

S.B. NO. 262

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 87-4.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This section shall apply to state and county contributions to the fund for employees who were hired after June 30, 1996, and who retire with fewer than twenty-five years of credited service, excluding sick leave; provided that this section shall not apply if an employee is hired prior to July 1, 1996, and transfers employment after June 30, 1996[.] nor to any employee who has at least ten years of credited service and who has suffered a break in service. For purposes of this section “transfer” means to leave state or county employment and return to state or county employment within [seven] ninety calendar days.”

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 June 30, 1996.

(Approved June 21, 1997.)

## ACT 267

S.B. NO. 373

A Bill for an Act Relating to the Environment.

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

SECTION 1. Section 342D-6, Hawaii Revised Statutes, is amended to read as follows:

“**§342D-6 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 may require that applications for permits shall be accompanied by plans, specifications, and any other information that it deems necessary in order to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that it will be in the public interest; provided that the permit may be subject to any reasonable conditions that the director may prescribe. The director may include conditions in permits or may issue separate permits for management practices for sewage sludge, whether or not [such] the practices cause water pollution. [Such] The management practices include treatment, processing, storage, transport, use, and disposal. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that it will be in the public interest. The director shall not grant or deny an application for the issuance or renewal of a permit without affording the applicant and any person who commented on the proposed permit during the public comment period an opportunity for a hearing in accordance with chapter 91. A request for a hearing, a hearing,

and any judicial review of the hearing shall not stay the effect of the issuance or renewal of a permit unless specifically ordered by the director or a court.

(d) The director, on the director's own motion or the application of any person, may modify, suspend, revoke, or revoke and reissue any water pollution 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 condition of the permit;
- (2) The permit was obtained by misrepresentation, or there was failure to disclose fully all relevant facts;
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (4) It is in the public interest.

The public interest excludes any reason less stringent than the causes for permit modification, revocation, and termination, or revocation and reissuance identified in 40 Code of Federal Regulations section 122.62 or 122.64.

(e) The director, on the director's own motion or the application of any person, may modify, suspend, revoke, or revoke and reissue any sludge permit after affording the permittee an opportunity for a hearing in accordance with chapter 91, and consistent with 40 Code of Federal Regulations section 501.15(c)(2) and (3) and (d)(2).

[(e)] (f) The director shall ensure that the public receives notice of each application for a permit to control water pollution. The director may hold a public hearing before ruling on an application for a permit to control water pollution if the director determines the public hearing to be in the public interest. In determining whether a public hearing would be in the public interest, the director shall be guided by 40 Code of Federal Regulations section 124.12(a).

[(f)] (g) In determining the public interest regarding permit issuance or renewal, 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, 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, by rule, may prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

[(g)] (h) No applicant for a modification or renewal 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 with the permit previously granted, the application and all plans, specifications, and other information submitted as part thereof."

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

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

(Approved June 21, 1997.)

## ACT 268

S.B. NO. 375

A Bill for an Act Relating to Solid Waste Management.

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

SECTION 1. Section 342G-62, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342G-62]]~~ **Solid waste disposal surcharge.** (a) There is established [an initial] a solid waste management surcharge [of 25 cents]. The solid waste management surcharge shall be 35 cents per ton of solid waste disposed of within the State at permitted or unpermitted solid waste disposal facilities [during the first two years of the program]. The surcharge shall be paid by the person or entity doing the disposal. [This surcharge shall be based on actual weight received or on volumetric assumptions as determined by the department in collaboration with the owner or operator of the facility prior to October 1, 1993.] The owner or operator of the facility shall transfer all moneys collected from the surcharge to the department through a quarterly reporting and payment schedule [that is developed by the department and that is transmitted to the owner or operator of the facility by October 1, 1993]. Estimates of quarterly solid waste disposal shall be submitted prior to the first day of each quarter and the transfer of moneys collected shall occur within thirty days of the end of each quarter.

[(b) The solid waste management surcharge shall become effective on January 1, 1994.

(c) Following two years of program operation, the department and the respective counties shall evaluate the effectiveness of the solid waste management efforts and the surcharge may be adjusted higher or lower based on that evaluation; however, in no case shall it exceed \$1.50 per ton. The department, in consultation with each of the counties, shall submit its findings and recommendations to the legislature not less than twenty days prior to the convening of the legislative session immediately following the two-year period. Upon the receipt of the department's findings and recommendations, the legislature shall evaluate the effectiveness of the program and make a determination whether an adjustment of the assessment is warranted.

(d) (b) The surcharge collected pursuant to this section shall be deposited into the environmental management special fund. All interest earned or accrued on moneys deposited in the fund shall become a part of the fund.”

SECTION 2. Section 342H-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “inert fill material” to read:

““Inert fill material” means earth, soil, rocks, rock-like material such as cured asphalt, brick, and clean concrete less than eight inches in diameter, except as specified by a licensed soils engineer with no exposed steel reinforcing rod [longer than twelve inches, containing less than ten per cent vegetative material (such as shrubbery, brush, or trees). Any material containing more than five per cent by volume of solid waste other than vegetative material shall not be considered inert fill material for purposes of this chapter]. The fill material shall not contain vegetation or organic material, or other solid waste.”

2. By amending “solid waste” to read:

““Solid waste” means garbage, refuse, and other discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from

## ACT 269

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, but 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 waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants, or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923)[, or inert fill material].”

SECTION 3. Section 342H-30, Hawaii Revised Statutes, is amended to read as follows:

“**§342H-30 Prohibition.** (a) No person, including any public body, shall engage in the operation of an open dump without first securing approval in writing from the director.

(b) No person, including any public body, shall operate a solid waste disposal system without first securing approval in writing from the director.

(c) No person, including any public body, shall discard, dispose of, deposit, discharge, or dump solid waste or by contract or otherwise arrange directly or indirectly for the disposal of solid waste in an amount greater than one cubic yard in volume anywhere other than a permitted solid waste disposal system without the prior written approval of the director. This prohibition shall not be deemed to supersede any other disposal prohibitions established under federal, state, or county law, regulation, rule, or ordinance.

(d) A person who knowingly violates or knowingly consents to the violation of this section shall be subject to criminal penalties of not more than \$25,000 for each separate offense. Each day of a violation shall constitute a separate offense.”

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 21, 1997.)

## ACT 269

S.B. NO. 382

A Bill for an Act Relating to Motor Vehicle Driver Licensing.

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

SECTION 1. Section 286-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The examiner of drivers shall examine every applicant for a driver’s license, except as otherwise provided in this part. [[ ]The examination[[ ] shall include a test of [the]:

- (1) The applicant’s eyesight and [such] any 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]
- (2) The applicant’s ability to understand highway signs regulating, warning, and directing traffic; [the]

- (3) 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
- (4) The 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].

The examiner of drivers may waive the actual demonstration of ability to operate a motorcycle or motor scooter for any person who furnishes evidence, to the satisfaction of the examiner of drivers, that the person has completed the motorcycle education course approved by the director in accordance with section 431:10G-104.

At the time of examination, an application for voter registration by mail shall be made available to every applicant[.] for a driver's license."

SECTION 2. The director of transportation shall review the skill test included in all motorcycle and motor scooter education courses offered in the State of Hawaii that are presently recognized by the Motorcycle Safety Foundation to determine which courses the director shall approve as qualifying for the waiver provided in section 1 of this Act. The director of transportation shall report findings and recommendations, if any, to the legislature twenty days before the convening of the regular session of 1998.

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

SECTION 4. This Act shall take effect on January 1, 1998.

(Approved June 21, 1997.)

## ACT 270

S.B. NO. 623

A Bill for an Act Relating to State Funds.

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

### PART I.

SECTION 1. Section 248-9, Hawaii Revised Statutes, is amended to read as follows:

**“§248-9 State highway fund.** Moneys in the state highway fund may be expended for the following purposes:

- (1) To pay the costs of operation, maintenance, and repair of the state highway system, including without limitation, the cost of equipment and general administrative overhead;
- (2) To pay the costs of acquisition (including real property and interests therein), planning, designing, construction and reconstruction of the state highway system, and bikeways, including, without limitation, the cost of equipment and general administrative overhead; and
- (3) To reimburse the general fund for interest on and principal of general obligation bonds issued to finance highway projects where [such] the bonds are designated to be reimbursable out of the state highway fund.

At any time the director of transportation may transfer from the state highway fund all or any portion of available moneys determined by the director of transportation to be in excess of one hundred [fifty] thirty five per cent of the requirements for the ensuing twelve months for the state highway fund as permitted by and in accordance with section 37-53. For purposes of [such] the determination, the director of transportation shall take into consideration [the]:

- (1) The amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the state highway fund during [such] the period[, amounts];
- (2) Amounts on deposit in the state highway fund which are encumbered or otherwise obligated[, budgeted];
- (3) Budgeted amounts payable from the state highway fund during [such] the period[, and revenues];
- (4) Revenues anticipated to be received by and expenditures to be made from the state highway fund during [such] the period based on existing agreements and other information for the ensuing twelve months[.]; and [such]
- (5) Any other factors as the director of transportation shall deem appropriate.”

SECTION 2. The legislature determines that there is in the state highway fund at least \$22,559,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the state highway fund created by section 248-8, Hawaii Revised Statutes, the sum of \$22,559,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 3. The legislature determines that there is in the state highway fund at least \$23,414,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the state highway fund created by section 248-8, Hawaii Revised Statutes, the sum of \$23,414,000 for fiscal year 1997-1998, to be deposited into the general fund.

SECTION 4. The legislature determines that there is in the state highway fund at least \$24,268,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the state highway fund created by section 248-8, Hawaii Revised Statutes, the sum of \$24,268,000 for fiscal year 1998-1999, to be deposited into the general fund.

## PART II.

SECTION 5. The legislature finds that the State’s current financial constraints require prudent and most effective use of all state resources. As such, excess moneys in revolving funds should be identified and transferred to the general fund. The purpose of this part is to transfer sums of moneys from the designated revolving fund to the general fund upon the approval of this Act.

SECTION 6. The homes revolving fund is created by section 201E-207, Hawaii Revised Statutes, for the purpose, as specified in section 201E-207.5, Hawaii Revised Statutes, of developing and implementing affordable housing programs consisting of, without limitation, the development of infrastructure, the development of off-site and on-site improvements required for development, providing short-term or interim construction loans, development and construction of housing, and advancing equity capital for the rental housing system administered by the housing finance and development corporation. The legislature determines that:

- (1) The balance currently on deposit in the homes revolving fund is at least \$50.3 million;
- (2) The amount currently on deposit in the homes revolving fund is in excess of the amount necessary to fulfill the purposes for which the homes revolving fund was created; and
- (3) It is desirable to reduce the balance on deposit in the homes revolving fund.

SECTION 7. On July 1, 1997, the director of finance is authorized to transfer from the homes revolving fund to the general fund the sum of \$6,000,000 or so much thereof as may be necessary for fiscal year 1997-1998.

On July 1, 1998, the director of finance is authorized to transfer from the homes revolving fund to the general fund the sum of \$6,000,000 or so much thereof as may be necessary for fiscal year 1998-1999.

### PART III.

SECTION 8. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or 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.

SECTION 9. 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 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 1997; provided that section 2 shall take effect on June 30, 1997.

(Approved June 21, 1997.)

## ACT 271

S.B. NO. 633

A Bill for an Act Relating to Bed and Breakfast Operations.

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

SECTION 1. The legislature finds that more than four years after the disaster of Hurricane Iniki, the island of Kauai continues to struggle to revive its lagging economy. Iniki's destruction caused more than \$1,600,000,000 in damages to property and businesses on Kauai. Many hurricane-ravaged hotels were forced to close for repairs, crippling the island's once vibrant visitor industry. In spite of efforts to jump-start Kauai's economy, the island's unemployment rate remains the highest in the State, business confidence remains poor, and several major hurricane-damaged hotels have yet to reopen.

Despite the bleak outlook, business entrepreneurs determined to hasten the island's recovery have begun to explore innovative methods of expanding and

diversifying the island's economy. Kauai's growing bed and breakfast industry is an example of an industry that has contributed immeasurably to the island's recovery. Bed and breakfast operations are generally described as family operations that provide short-term accommodations to guests at affordable rates. These facilities are often located in rural or agricultural areas of the island where visitors can freely engage in hiking, horseback riding, and other nontraditional activities. In other parts of the world, these vacation packages, often referred to as "farm-stays" or "eco-tours", are becoming increasingly popular with tourists seeking "earth-friendly" or "back-to-nature" experiences. Fueled by visitors seeking alternatives to the luxury hotel experience, the number of bed and breakfast operations on Kauai has more than tripled since Hurricane Iniki.

With several major hotels on Kauai still in the process of reconstruction and renovation, bed and breakfast operations have become the only practical means of filling the deficit in the number of rooms available to visitors on the island. In spite of the clear benefits they provide, burdensome regulations currently prohibit these operations in areas where they exhibit the greatest potential to expand.

The purpose of this Act is to authorize the planning commission of any county with a population of one hundred thousand or less to permit, for a period of three years, the establishment of bed and breakfast operations on lands within the agricultural district that are fifteen acres or less in size, where the bed and breakfast operations are accessory or secondary to the agricultural uses of the land.

SECTION 2. (a) Notwithstanding any law to the contrary, the planning commission of any county with a population of one hundred thousand or less, that has suffered a natural disaster qualifying the county for federal disaster relief, may:

- (1) Permit the establishment of bed and breakfast operations on lands within the agricultural district; provided that the land parcels are fifteen acres or less in size and the bed and breakfast operations are accessory or secondary to the agricultural uses of the lands; and
- (2) Grant retroactive approvals, on a case-by-case basis, to all bed and breakfast operations operating on lands within the agricultural district prior to the effective date of this Act; provided that the land parcels are fifteen acres or less in size and that the bed and breakfast operations are accessory or secondary to the agriculture uses of the land.

(b) For the purposes of this Act, "bed and breakfast operation" means a detached single-family dwelling unit that:

- (1) Is occupied and operated by the owner-proprietor or lessee-proprietor;
- (2) Provides accommodations for periods of thirty consecutive days or less to any individual guest for compensation;
- (3) Includes bedrooms, a kitchen, and other living accommodations for the owner-proprietor or the lessee-proprietor; and
- (4) Provides not more than five additional bedrooms for short-term rental to guests.

(c) The authority conferred upon the planning commissions under this Act shall lapse on June 30, 2000.

SECTION 3. This Act shall take effect on approval and shall be repealed on June 30, 2000.

(Approved June 21, 1997.)



## ACT 272

S.B. NO. 647

A Bill for an Act Relating to Tort Liability.

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

SECTION 1. Section 520-2, Hawaii Revised Statutes, is amended to read as follows:

“**[§520-2] Definitions.** As used in this chapter:

- (1) “Land” means land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to realty, other than lands owned by the government.
- (2) “Owner” means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.
- (3) “Recreational purpose” includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
- (4) “Charge” means the admission price or fee asked in return for invitation or permission to enter or go upon the land.
- (5) “House guest” means any person specifically invited by the owner or a member of the owner’s household to visit at the owner’s home whether for dinner, or to a party, for conversation or any other similar purposes including for recreation, and include playmates of the owner’s minor children.]

“Charge” means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

“House guest” means any person specifically invited by the owner or a member of the owner’s household to visit at the owner’s home whether for dinner, or to a party, for conversation or any other similar purposes including for recreation, and includes playmates of the owner’s minor children.

“Land” means land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to realty, other than lands owned by the government.

“Owner” means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.

“Recreational purpose” includes but is not limited to any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

“Recreational user” means any person who is on or about the premises that the owner of land either directly or indirectly invites or permits, without charge, entry onto the property for recreational purposes.”

SECTION 2. Section 520-3, Hawaii Revised Statutes, is amended to read as follows:

“**[§520-3] Duty of care of owner limited.** Except as specifically recognized by or provided in section 520-6, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes[.], or to persons entering for a purpose in

response to a recreational user who requires assistance, either direct or indirect, including but not limited to rescue, medical care, or other form of assistance.”

SECTION 3. Section 520-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Except as specifically recognized by or provided in section 520-6, an owner of land who either directly or indirectly invites or permits without charge any person to use [such] the property for recreational purposes does not [thereby]:
- (1)<sup>1</sup> Extend any assurance that the premises are safe for any purpose;
  - (2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
  - (3) Assume responsibility for, or incur liability for, any injury to person or property caused by an act of omission or commission of such persons; and
  - (4) Assume responsibility for, or incur liability for, any injury to person or persons who enter the premises in response to an injured recreational user.”

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 21, 1997.)

Note

- 1. Except for a few technical amendments, paragraphs (1) to (3) should not be underscored.

**ACT 273**

S.B. NO. 656

A Bill for an Act Relating to Mental Health and Alcohol and Drug Abuse Treatment Insurance Benefits.

*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 adding three new definitions to be appropriately inserted and to read:
  - ““Clinical social worker” means a person licensed in the practice of social work pursuant to chapter 467E and certified in clinical social work by a recognized national organization.
  - “Physician” means a person licensed in the practice of medicine or osteopathy pursuant to chapter 453 or 460, respectively.
  - “Psychologist” means a person licensed in the practice of psychology pursuant to chapter 465.”

2. By amending the definition of “alcohol or drug dependence outpatient services” to read:

““Alcohol or drug dependence outpatient services” means alcohol or drug dependence nonresidential treatment provided on an ambulatory basis to patients with alcohol or drug dependence problems that includes [psychiatric or psychological] interventions prescribed and performed by [state licensed] physicians [or],

psychologists, or clinical social workers who have been certified pursuant to chapter 321.”

3. By amending the definition of “day treatment services” to read:

““Day treatment services” means treatment services provided by a hospital, mental health outpatient facility, or nonhospital facility to patients who, because of their conditions, require more than periodic hourly service. Day treatment services shall be prescribed by a physician [or licensed], psychologist, or clinical social worker and carried out under the supervision of a physician [or licensed], psychologist[.], or clinical social worker. Day treatment services require less than twenty-four hours of care and a minimum of three hours in any one day.”

4. By amending the definition of “detoxification services” to read:

““Detoxification services” means the process whereby a person intoxicated by alcohol [or], drugs, or both, or a person who is dependent upon alcohol [or], drugs, or both, is assisted through the period of time necessary to eliminate, by metabolic or other means, the intoxicating alcohol or drug dependency factors, as determined by a [licensed] physician, while keeping the physiological risk to the person at a minimum.”

5. By amending the definition of “mental health outpatient services” to read:

““Mental health outpatient services” means mental health nonresidential treatment provided on an ambulatory basis to patients with mental illness that includes [psychiatric or psychological] interventions prescribed and performed by [the] a physician [or licensed], psychologist[.], or clinical social worker.”

6. By amending the definition of “partial hospitalization services” to read:

““Partial hospitalization services” means treatment services, including in-hospital treatment services or benefits, provided by a hospital or mental health outpatient facility to patients who, because of their conditions, require more than periodic hourly service. Partial hospitalization services shall be prescribed by a physician [or licensed], psychologist[.], and may be prescribed by a clinical social worker in consultation with a physician or psychologist. Partial hospitalization services require less than twenty-four hours of care and a minimum of three hours in any one day.”

7. By amending the definition of “treatment episode” to read:

““Treatment episode” means one admission to an accredited hospital or nonhospital facility, or office of a [state-licensed] physician [or], psychologist, or clinical social worker certified pursuant to chapter 321 for treatment of alcohol or drug dependence, or both, as stipulated in a prescribed treatment plan and which would generally produce remission in those who complete the treatment. The prescribed treatment plan may include the provision of substance abuse services in more than one location and may include in-hospital, nonhospital residential, day treatment, or alcohol or drug dependence outpatient services, or any combination thereof. An admission for only detoxification services shall not constitute a treatment episode.”

SECTION 2. Section 431M-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Covered benefits for alcohol dependence, drug dependence, or mental illness insurance policies, hospital or medical service plan contracts, and health maintenance organization health plan contracts shall be limited to those services certified by the insurance or health care plan carrier’s [licensed] physician [or licensed], psychologist, or clinical social worker as medically or psychologically necessary at the least [costly] restrictive appropriate level of care.”

SECTION 3. Section 431M-4, Hawaii Revised Statutes, is amended to read as follows:

**“§431M-4 Mental illness, alcohol and drug dependence benefits.** (a) The covered benefit under this chapter shall not be less than thirty days of in-hospital services per year. Each day of in-hospital services may be exchanged for two days of nonhospital residential services, two days of partial hospitalization services, or two days of day treatment services. [Physician or psychologist visits] Visits to a physician, psychologist, or clinical social worker shall not be less than thirty visits per year to hospital or nonhospital facilities or to mental health outpatient facilities for day treatment or partial hospitalization services. Each day of in-hospital services may also be exchanged for two outpatient visits under this chapter; provided that the patient’s condition is such that hospitalization would become imminent if outpatient services were interrupted and the outpatient services would reasonably preclude hospitalization. The covered benefit for outpatient services under this chapter shall not be less than twelve visits per year. The covered benefit under this chapter shall apply to any of the services in subsection (b) or (c). In the case of alcohol and drug dependence benefits, the insurance policy may limit the number of treatment episodes but may not limit the number to less than two treatment episodes per lifetime.

(b) Alcohol and drug dependence benefits shall be as follows:

(1) Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility which has a written affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:

- (A) Room and board;
- (B) Diagnostic x-rays;
- (C) Laboratory testing; and
- (D) Drugs, equipment use, special therapies, and supplies.

Detoxification services shall be included as part of the covered in-hospital services, but shall not be included in the treatment episode limitation, as specified in subsection (a);

- (2) Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a [licensed] physician [or], psychologist, or clinical social worker certified pursuant to chapter 321 shall determine that the person suffers from alcohol or drug dependence, or both. The substance abuse services covered under this paragraph shall include those services which are required for licensure and accreditation, and shall be included as part of the covered in-hospital services as specified in subsection (a). Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system, and services performed by mutual self-help groups; and
- (3) Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a [licensed] physician [or], psychologist, or clinical social worker certified pursuant to chapter 321 and must be reasonably expected to produce remission of the patient’s condition. An individualized treatment plan approved by a clinical social worker for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist. Services

covered under this paragraph shall be included as part of the covered outpatient services as specified in subsection (a).

(c) Mental illness benefits.

- (1) Covered benefits for mental health services set forth in this subsection shall be limited to coverage for diagnosis and treatment of mental disorders. All mental health services shall be provided under an individualized treatment plan approved by a [licensed] physician [or], psychologist, or clinical social worker and must be reasonably expected to improve the patient's condition. An individualized treatment plan approved by a clinical social worker for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist;
- (2) In-hospital and nonhospital residential mental health services as a covered benefit under this chapter shall be provided in a hospital or a nonhospital residential facility. The services to be covered shall include those services required for licensure and accreditation, and shall be included as part of the covered in-hospital services as specified in subsection (a)[.];
- (3) Mental health partial hospitalization as a covered benefit under this chapter shall be provided by a hospital or a mental health outpatient facility. The services to be covered under this paragraph shall include those services required for licensure and accreditation and shall be included as part of the covered in-hospital services as specified in subsection (a)[.]; and
- (4) Mental health outpatient services shall be a covered benefit under this chapter and shall be included as part of the covered outpatient services as specified in subsection (a).''

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 21, 1997.)

## ACT 274

S.B. NO. 717

A Bill for an Act Relating to Parent Education for Separating Parties.

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

SECTION 1. The legislature finds that divorce is an extremely difficult process for adults. Psychologists report that divorce involves levels of stress and grief equaled only by the death of a spouse or child. Divorce is equally difficult for children: they grieve for the loss of their intact family.

The purpose of this Act is to establish a surcharge on family court filing fees which would be deposited into a special fund used to fund parent education programs in all circuits. These programs will educate parents on the impact their separation will have on their children and to help separating parties avoid future litigious disputes. It is the intent of the legislature that the programs be self sustaining from the special fund.

SECTION 2. Chapter 607, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§607- Surcharge for parent education for separating parties with children; special fund.** (a) In addition to the fees prescribed for a matrimonial action under section 607-5, the court shall collect a surcharge of \$35 at the time of filing the initial complaint or petition.

(b) No surcharge shall be assessed:

(1) Against any party who has received a waiver of filing fees;

(2) Against any party proceeding on behalf of the State or any of the various counties; or

(3) If neither party has a minor child.

(c) Any respondent in a matrimonial action with a minor child may be requested to make a \$15 donation which shall be deposited into the special fund.

(d) Surcharges subject to this section shall be limited to one payment per case.

(e) There is established within the state treasury the parent education special fund into which shall be deposited revenues assessed under subsection (a), interest and investment earnings, grants, donations, and contributions from private or public sources. The fund shall be administered by the judiciary, subject to the conditions specified in subsection (f).

(f) The special fund shall be used solely for expenditures related to providing education on all islands for separating parents and their children. Revenues deposited into the special fund may be used for existing or enhanced parent education programs administered by the judiciary, or for grants or purchases of service pursuant to chapter 42D. All appropriations or authorizations from the special fund shall be expended by the judiciary.

(g) The judiciary shall submit an annual financial report to the legislature, prior to the convening of each regular session, which shall include an accounting of all deposits and expenditures from the fund.”

SECTION 3. There is appropriated out of the parent education special fund the sum of \$154,075, or so much thereof as may be necessary for fiscal year 1997-1998, and the same sum, or so much thereof as may be necessary for fiscal year 1998-1999 to carry out the purposes of this Act.

The sums appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 1997.

(Approved June 21, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 275

S.B. NO. 718

A Bill for an Act Relating to Pre-Sentence Diagnosis and Report.

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

SECTION 1. Section 706-601, Hawaii Revised Statutes, is amended to read as follows:

**“§706-601 Pre-sentence diagnosis and report.** (1) [The] Except as provided in subsections 3 and 4, the court shall order a pre-sentence correctional diagnosis of the defendant and accord due consideration to a written report of the diagnosis before imposing sentence where:

- (a) The defendant has been convicted of a felony; or
- (b) The defendant is less than twenty-two years of age and has been convicted of a crime.
- (2) The court may order a pre-sentence diagnosis in any other case.

(3) With the consent of the court, the requirement of a pre-sentence diagnosis may be waived by agreement of both the defendant and the prosecuting attorney.

(4) The court on its own motion may waive a pre-sentence correctional diagnosis where:

- (a) A prior pre-sentence diagnosis was completed within one year preceding the sentencing in the instant case;
- (b) The defendant is being sentenced for murder or attempted murder in any degree; or
- (c) The sentence was agreed to by the parties and approved by the court under Rule 11 of the Hawaii Rules of Penal Procedure.”

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 21, 1997.)

## ACT 276

S.B. NO. 727

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 87-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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, [with the exception of] including rate credits or reimbursements from any carrier or self-insured plan or any earning or interest derived therefrom, may be used to stabilize health benefits plan or long-term care benefits plan rates and with approval of the legislature through appropriation of funds for other expenses necessary to effectuate these purposes. Notwithstanding any law to the contrary, any rate credit or reimbursement from any carrier or self-insured plan in excess of funds used to stabilize health benefits plan or long-term

care benefits plan costs, and for other expenses authorized by the legislature or any earning or interest derived therefrom shall be returned to the State or the county for deposit into the appropriate general[,] fund if the moneys are returned from:

- (1) A plan that provides health benefits to retirees or the surviving spouses of deceased retirees or employees killed in the performance of their duty whose coverage is financed in whole or in part by the State or by the county; or
- (2) A plan that provides health benefits to employees; provided that the amount returned to the general fund shall be only that portion financed by the State or by the county on behalf of the employee.”

SECTION 2. Section 87-22.3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§87-22.3**~~]]~~ **Determination of health benefits plans.** Pursuant to section 87-4, the board of trustees shall provide health benefits to employee-beneficiaries in the following manner:

- (1) For those employee-beneficiaries who are not participating in a health benefits plan of an employee organization (hereafter “nonparticipating employee-beneficiaries”), the board of trustees shall establish health benefits plans and the requirements for eligibility under the health benefits plans. Any rate credit or reimbursement from any carrier [of any earnings or interest] derived from [the] employee-beneficiary rate contributions to health benefits plans of nonparticipating employee-beneficiaries or interest derived therefrom [shall] may be used to improve the respective health benefits plans of nonparticipating employee-beneficiaries or to reduce the employee-beneficiary’s respective share of monthly contributions to a health plan[.]; or
- (2) For employee-beneficiaries who participate in the health benefits plan of an employee organization, the board of trustees shall pay a monthly contribution for each employee-beneficiary, in the amount provided in section 87-4(a), or the actual monthly cost of the coverage, whichever is less, towards the purchase of health benefits under the health benefits plan of an employee organization.”

SECTION 3. Section 87-22.5, Hawaii Revised Statutes, is amended to read as follows:

“**§87-22.5 Determination of dental plan benefits.** Pursuant to section 87-4, the board of trustees shall provide dental plan benefits to the children of employee-beneficiaries who have not attained the age of nineteen in the following manner:

- (1) For those children of employee-beneficiaries who are not participating in a dental program of an employee organization (hereafter called “non-participating employee-beneficiaries”), the board shall determine a dental plan and eligibility requirements for such benefits based upon a statutory monthly contribution per enrolled child[. Any rate credit or reimbursement from any carrier of any earnings or interest derived from the dental plan of non-participating [employee-beneficiaries] shall be used to improve the dental plan benefits of non-participating [employee-beneficiaries].];
- (2) For those children of employee-beneficiaries who participate in the dental program of an employee organization, the board shall allot the statutory monthly contribution per enrolled child or the actual monthly cost of the child’s coverage, whichever is less, towards the purchase of



dental plan benefits under the dental program of an employee organization; provided that no enrolled child shall have more than one allotment a month[.]; or

- (3) Paragraphs (1) and (2) notwithstanding, an employee-beneficiary shall be required to enroll all of the employee-beneficiary's children who are under the age of nineteen in the children's dental plan for non-participating employee-beneficiaries or the dental program of an employee organization."

SECTION 4. Section 87-23, Hawaii Revised Statutes, is amended to read as follows:

**“§87-23 Determination of benefits under the group life benefit program or group life insurance program.** Pursuant to section 87-4, the board of trustees shall provide benefits under a group life benefit program or group life insurance program to employees in the following manner:

- (1) For those employees who are not participating in a group life benefit program or group life insurance program of an employee organization (hereafter “nonparticipating employees”), the board shall determine a group life insurance benefit plan and eligibility requirements for such benefits based upon the amount to be contributed per employee under section 87-4(c)[. Any rate credit or reimbursement from any carrier of any earnings or interest derived from the group life insurance plan of nonparticipating employees shall be used to improve the group life insurance benefits of nonparticipating employees.];
- (2) For those employees who participate in a group life benefit program or group life insurance program of an employee organization, the board shall pay a monthly contribution for each employee, in the amount determined under section 87-4(c), or the actual monthly cost of the coverage, whichever is less, towards the purchase of benefits under the group life benefit program or group life insurance program of an employee organization[.]; or
- (3) Paragraphs (1) and (2) notwithstanding, an employee who is participating in a group life benefit program or group life insurance program of an employee organization may continue such plan and pay all of the premiums required while enrolled under paragraph (1); provided that no employee shall have more than one contribution from the board per month.”

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

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved June 21, 1997.)

#### Note

1. So in original.

A Bill for an Act Relating to Trademark Counterfeiting.

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

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to part VII to be appropriately designated and to read as follows:

**“§708- Trademark counterfeiting.** (1) A person commits the offense of trademark counterfeiting who knowingly manufactures, produces, displays, advertises, distributes, offers for sale, sells, or possesses with the intent to sell or distribute any item bearing or identified by a counterfeit mark, knowing that the mark is counterfeit.

(2) As used in this section:

“Counterfeit mark” means any spurious mark that is identical to or confusingly similar to any print, label, trademark, service mark, or trade name registered in accordance with chapter 482 or registered on the Principal Register of the United States Patent and Trademark Office.

“Sale” includes resale.

(3) Trademark counterfeiting is a class C felony.

(4) In any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all counterfeit marks and the forfeiture and destruction or other disposition of all items bearing a counterfeit mark, and all personal property, including any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this section, in accordance with the procedures set forth in chapter 712A.”

SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 708- relating to trademark counterfeiting; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or

ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
  - (ii) Where the instant conviction is for a class A felony—six years, eight months;
  - (iii) Where the instant conviction is for a class B felony—three years, four months;
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
  - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
  - (iii) Where the instant conviction is for a class B felony—six years, eight months;
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
  - (ii) Where the instant conviction is for a class A felony—twenty years;
  - (iii) Where the instant conviction is for a class B felony—ten years;
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 3. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“§712A-4 **Covered offenses.** 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, trademark counterfeiting, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law;
- (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

**ACT 278**

- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.”

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.<sup>1</sup>

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

(Approved June 21, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 278**

S.B. NO. 823

A Bill for an Act Relating to Firearms.

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

SECTION 1. Section 134-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall acquire the ownership of a firearm, whether usable or unusable, serviceable or unserviceable, modern or antique, registered under prior law or by a prior owner or unregistered, either by purchase, gift, inheritance, bequest, or in any other manner, whether procured in the State or imported by mail, express, freight, or otherwise, until the person has first procured from the chief of police of the county of the person’s place of business or, if there is no place of business, the person’s residence or, if there is neither place of business nor residence, the person’s place of sojourn, a permit to acquire the ownership of a firearm as prescribed in this section[; provided that when]. When title to any firearm is acquired by inheritance or bequest, the foregoing permit shall be obtained before taking possession of a firearm[.]; provided that upon presentation of a copy of the death certificate of the owner making the bequest, any heir or legatee may transfer the inherited or bequested firearm directly to a dealer licensed under section 134-31 or licensed by the United States Department of the Treasury without complying with the requirements of 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 June 21, 1997.)

## ACT 279

S.B. NO. 835

A Bill for an Act Relating to Physicians.

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

SECTION 1. Section 624-25.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) As used in this section:

“Licensed health maintenance organization” means a health maintenance organization licensed in Hawaii under chapter 432D.

“Peer review committee” means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

“Preferred provider organization” or “preferred provider network” means a partnership, association, corporation, or other entity which delivers or arranges for the delivery of health services, and which has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

[(1)] “Professional society” or “society” means any association or other organization of persons engaged in the same profession [or]<sub>2</sub> occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice[;].

[(2)] “Peer review committee” means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital or clinic whose function is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; and

(3) “Hospital or clinic quality] “Quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital [or], clinic, health maintenance organization, preferred provider organization, or preferred provider network providing medical, dental, or optometric care, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

(b) Neither the proceedings nor the records of peer review committees, or [hospital or clinic] quality assurance committees shall be subject to discovery. For the purposes of this section, “records of [hospital or clinic] quality assurance committees” are limited to recordings, transcripts, minutes, summaries, and reports of committee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports which state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at

the direction of, [such] the committees. Except as hereinafter provided, no person in attendance at a meeting of the committee shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.”

SECTION 2. Section 663-1.7, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), (d), and (e) to read as follows:

“(a) As used in this section[, “professional”]; [“society” or “society” means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice; “peer review committee” means a committee created by a professional society, or by the medical or administrative staff of a licensed hospital or clinic, whose function is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; “ethics committee” means a committee that may be an interdisciplinary committee appointed by the administrative staff of a licensed hospital, whose function is to consult, educate, review, and make decisions regarding ethical questions, including decisions on life-sustaining therapy; and “hospital or clinic quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital or clinic, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.]

“Ethics committee” means a committee that may be an interdisciplinary committee appointed by the administrative staff of a licensed hospital, whose function is to consult, educate, review, and make decisions regarding ethical questions, including decisions on life-sustaining therapy.

“Licensed health maintenance organization” means a health maintenance organization licensed in Hawaii under chapter 432D.

“Peer review committee” means a committee created by a professional society, or by the medical or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

“Preferred provider organization” and “preferred provider network” means a partnership, association, corporation, or other entity which delivers or arranges for the delivery of health services, and which has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

“Professional society” or “society” means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the profes-

sional standards of the persons engaged in its profession or occupation or specialty practice.

“Quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

(b) There shall be no civil liability for any member of a peer review committee, ethics committee, or [hospital or clinic] quality assurance committee, or for any person who files a complaint with or appears as a witness before [such] those committees, for any acts done in the furtherance of the purpose for which the peer review committee, ethics committee, or [hospital or clinic] quality assurance committee was established; provided that:

- (1) The member, witness, or complainant acted without malice; and
- (2) In the case of a member, the member was authorized to perform in the manner in which the member did.

(c) There shall be no civil liability for any person who participates with or assists a peer review committee or [hospital or clinic] quality assurance committee, or for any person providing information to a peer review committee or [hospital or clinic] quality assurance committee for any acts done in furtherance of the purpose for which the peer review committee or [hospital or clinic] quality assurance committee was established, unless such information is false and the person providing it knew such information was false.

(d) This section shall not be construed to confer immunity from liability upon any professional society, hospital, [or] clinic, health maintenance organization, preferred provider organization, or preferred provider network, nor shall it affect the immunity of any shareholder or officer of a professional corporation; provided that there shall be no civil liability for any professional society [or], hospital [or], clinic, health maintenance organization, preferred provider organization, or preferred provider network in communicating any conclusions reached by one of its peer review committees, ethics committees, or [hospital or clinic] quality assurance committees relating to the conformance with professional standards of any person engaged in the profession or occupation of which the membership of the communicating professional society consists, to a peer review committee, an ethics committee, or [hospital or clinic] quality assurance committee of another professional society [or], hospital [or], clinic, health maintenance organization, preferred provider organization, or preferred provider network whose membership is comprised of persons engaged in the same profession or occupation, or to a duly constituted governmental board or commission or authority having as one of its duties the licensing of persons engaged in that same profession or to a government agency charged with the responsibility for administering a program of medical assistance in which services are provided by private practitioners.

(e) The final peer review committee of a medical society, hospital, [or] clinic, health maintenance organization, preferred provider organization, or preferred provider network, or other health care facility shall report in writing every adverse decision made by it to the department of commerce and consumer affairs; provided that final peer review committee means that body whose actions are final with respect to a particular case; and provided further that in any case where there are levels of review nationally or internationally, the final peer review committee for the purposes of this subsection shall be the final committee in this State. The [hospital or clinic] quality assurance committee shall report in writing to the department of commerce and consumer affairs any information which identifies patient care by any person engaged in a profession or occupation which does not meet hospital [or],

clinic, health maintenance organization, preferred provider organization, or preferred provider network standards and which results in disciplinary action unless such information is immediately transmitted to an established peer review committee. The report shall be filed within thirty business days following an adverse decision. The report shall contain information on the nature of the action, its date, the reasons for, and the circumstances surrounding the action; provided that specific patient identifiers shall be expunged. If a potential adverse decision was superseded by resignation or other voluntary action that was requested or bargained for in lieu of medical disciplinary action, the report shall so state. The department shall prescribe forms for the submission of reports required by this section. Failure to comply with this subsection shall be a violation punishable by a fine of not less than \$100 for each member of the committee.”

SECTION 3. Section 671D-4, Hawaii Revised Statutes, is amended by amending the definitions of “clinical privileges”, “health care entity”, and “professional review action” to read as follows:

““Clinical privileges” includes privileges, membership on the medical staff[,] or panel, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

“Health care entity” means:

- (1) A hospital that is licensed by the State to provide health care services;
- (2) An entity, including a licensed health maintenance organization, preferred provider organization, or preferred provider network, or group medical practice, that [provides] is involved in providing health care services and that follows a formal peer review process for the purpose of furthering quality health care as may be determined under rules or guidelines which may be adopted under section 671D-13 [of this chapter];
- (3) A professional society or committee thereof of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care as may be determined under rules or guidelines which may be adopted under section 671D-13 [of this chapter];

provided that “health care entity” shall not include a professional society or committee thereof if, within the previous five years, the society has been found by the Federal Trade Commission or any court to have engaged in any anticompetitive practice which had the effect of restricting the practice of licensed health care practitioners.

“Professional review action” means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician which conduct affects or could affect adversely the health or welfare of a patient or patients, and adversely affects the clinical privileges, or membership in a professional society[,] or provider panel, of the physician. [Such] This term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. For purposes of this chapter an action shall not be considered to be based on the competence or professional conduct of a physician if the action is primarily based on any of the following:

- (1) The physician’s association, or lack of association, with a professional society or association;



- (2) The physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business;
- (3) The physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;
- (4) A physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or
- (5) Any other matter that does not relate to the competence or professional conduct of a physician."

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 21, 1997.)

## ACT 280

S.B. NO. 846

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-11, Hawaii Revised Statutes, is amended to read as follows:

**“§329-11 Authority to schedule controlled substances.** (a) Annually, upon the convening of each [annual] regular session of the state legislature, the department of public safety shall report to the legislature additions, deletions, or revisions in the schedules of substances[,] enumerated in sections 329-14, 329-16, 329-18, 329-20, and 329-22, and any other recommendations [which] that it deems necessary. [The] Three months prior to the convening of each regular session, the department of public safety shall [not recommend] post public notice, at the state capitol and in the office of the lieutenant governor for public inspection, of the department's recommendations to the legislature concerning any additions, deletions, or revisions in [such] these schedules [until after notice and an opportunity for a hearing is afforded all interested parties, except such hearing]; provided that the posting shall not be required if official notice has been received that the substance has been added, deleted, or rescheduled as a controlled substance under federal law. In making a determination regarding a substance, the department of public safety shall assess the degree of danger or probable danger of the substance by considering the following:

- (1) The actual or probable abuse of the substance including:
  - (A) Its history and current pattern of abuse;
  - (B) The scope, duration, and significance of abuse; and
  - (C) A judgment of the degree of actual or probable detriment [which] that may result from the abuse of the substance;
- (2) The biomedical hazard of the substance including:
  - (A) Its pharmacology: the effects and modifiers of effects of the substance;

- (B) Its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychic or physiological dependence;
  - (C) Risk to public health and particular susceptibility of segments of the population; and
  - (D) Existence of therapeutic alternatives for substances [which] that are or may be used for medical purposes;
- (3) A judgment of the probable physical and social impact of widespread abuse of the substance;
  - (4) Whether the substance is an immediate precursor of a substance already controlled under this part; and
  - (5) The current state of scientific knowledge regarding the substance.

(b) After considering the factors enumerated [above,] in subsection (a), the department of public safety shall make a recommendation to the legislature, specifying to what schedule the substance should be added, deleted, or rescheduled if it finds that the substance has a degree of danger or probable danger. The department of public safety may make [such] its recommendation to the legislature prior to the submission of its annual report, in which case the department of public safety shall publish and give notice to the public of [such] the recommendation.

(c) If the legislature designates a substance as an immediate precursor, substances [which] that are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If a substance is added, deleted, or rescheduled as a controlled substance under federal law and notice of the designation is given to the department of public safety, the department of public safety shall recommend that a corresponding change in Hawaii law be made. The department of public safety shall similarly designate the substance as added, deleted, or rescheduled under this chapter, after the expiration of thirty days from publication in the Federal Register of a final order, and [such] this change shall have the effect of law. If a substance is added, deleted, or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the state legislature has not made the corresponding changes in this chapter, the temporary designation of the added, deleted, or rescheduled substance shall be nullified.

(e) The administrator may make an emergency scheduling by placing a substance into schedule I, II, III, IV, or V on a temporary basis, if the administrator determines the action is necessary to address or avoid a current or imminent danger to the health and safety of the public. If a substance is added or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the state legislature has not enacted the corresponding changes in this chapter, the temporary designation of the added or rescheduled substance shall be nullified."

SECTION 2. Section 329-32, Hawaii Revised Statutes, is amended to read as follows:

**“§329-32 Registration requirements.** (a) Every person who:

- (1) Manufactures, distributes, prescribes, or dispenses any controlled substance within this State;
- (2) Proposes to engage in the manufacture, distribution, prescription, or dispensing of any controlled substance within this State; or
- (3) Dispenses or proposes to dispense any controlled substance for use in this State by shipping, mailing, or otherwise delivering the controlled substance from a location outside this State;

shall obtain a registration issued by the department of public safety in accordance with the department’s rules. A licensed or registered health care professional who

acts as the authorized agent of a practitioner and who administers controlled substances at the direction of the practitioner[,] shall not be 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 this part.

(c) Except as otherwise provided by law, the following persons shall not be required to 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 warehouse, or an employee thereof, whose possession of any controlled substance is in the usual course of the person's business or employment; and
- (3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner.

(d) The department of public safety[, by rule,] may waive the registration or filing requirement for certain manufacturers, distributors, prescribers, or dispensers by rule if:

- (1) It is consistent with the public health and safety; and
- (2) The department of public safety states the specific reasons for the waiver and the time period for which the waiver is to be valid.

(e) A separate registration shall be 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.

(g) The department of public safety may require a registrant to submit [such] documents or written statements of fact relevant to a registration [as] that the department deems necessary to determine whether the registration should be granted or denied. The failure of the registrant to provide the documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the registrant of the opportunity to present the documents or statements for consideration by the department in granting or denying the registration.

(h) The failure to renew the controlled substance registration on a timely basis or to pay the applicable fees or payment with a check that is dishonored upon first deposit shall cause the registration to be automatically forfeited."

SECTION 3. Section 329-38, Hawaii Revised Statutes, is amended to read as follows:

**"§329-38 Prescriptions.** (a) No controlled substance in [Schedule] 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] schedule II shall affix to the package a label showing [the]:

- (A) The date of dispensing[, the];
- (B) The name, strength, and quantity issued of the drug[, the];
- (C) The dispensing practitioner's name and address[, the];
- (D) The name of the patient[, the];
- (E) The date the potency of the drug expires if that date is available from the manufacturer or principal labeler[, directions]; and<sup>1</sup>
- (F) 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] schedule II controlled substances ordered, administered, prescribed, and dispensed shall be maintained for two years. All [Schedule] 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] schedule II may be refilled.

(b) The transfer of original prescription information for a controlled substance listed in [Schedules] schedule III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis, subject to the following requirements:

- (1) The transfer shall be communicated directly between two licensed pharmacists, and the transferring pharmacist shall:
  - (A) Write or otherwise place the word "VOID" on the face of the invalidated prescription;
  - (B) Record on the reverse of the invalidated prescription the name, address, and DEA registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and
  - (C) Record the date of the transfer and the name of the pharmacist transferring the information;
- (2) The pharmacist receiving the transferred prescription information shall:
  - (A) Write or otherwise place the word "transfer" on the face of the transferred prescription;
  - (B) Record all information required to be on a prescription, including:
    - (i) The date of issuance of original prescription;
    - (ii) The original number of refills authorized on original prescription;
    - (iii) The date of original dispensing;
    - (iv) The number of valid refills remaining and date of last refill;
    - (v) The pharmacy's name, address, DEA registration number, and original prescription number from which the prescription information was transferred; and
    - (vi) The name of transferor pharmacist;
- (3) Both the original and transferred prescription must be maintained for a period of two years from the date of last refill; and
- (4) The procedure allowing the transfer of prescription information for refill purposes is permissible only between pharmacies located on the same island in this State.

Failure to comply with [the provisions of] this subsection shall void the authority of the pharmacy to transfer prescriptions or receive a transferred prescription to or from another pharmacy.

(c) No controlled substance in [Schedule] schedule III, IV, or V may be dispensed without a written or oral prescription of a practitioner, except when a controlled substance is dispensed directly by a practitioner, other than a pharmacist, to an ultimate user. The practitioner, in dispensing a controlled substance in [Schedule] schedule III, IV, or V, shall affix to the package a label showing:

- (1) The date of dispensing;
- (2) The name, strength, and quantity issued of the drug;
- (3) The dispensing practitioner's name and business address;
- (4) The name of the patient;
- (5) The date the potency of the drug expires, if that date is available from the manufacturer or the principal labeler;
- (6) Directions for use; and
- (7) Cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all [Schedule] schedule III, IV, and V controlled substances administered, prescribed, and dispensed shall be maintained for two years. Prescriptions and records of dispensing shall be retained in conformance with the requirements of section 329-36 unless otherwise provided by law. Prescriptions may not be filled or refilled more than three months after the date of the prescription or be refilled more than two times after the date of the prescription, unless the prescription is renewed by the practitioner.

(d) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

- (1) A prescription for a controlled substance shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall be upon the prescribing practitioner, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or for legitimate and authorized research shall not be deemed a prescription within the meaning and intent of this section, and the person who knowingly fills such a purported prescription, as well as the person who issues the prescription, shall be subject to the penalties provided for violations of this chapter;
  - (2) A prescription may not be issued to allow 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 the purpose of "detoxification treatment" or "maintenance treatment" [; and]. Nothing in this section shall prohibit a physician or authorized hospital staff from administering or dispensing narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction; and
  - (4) An individual practitioner may not prescribe or dispense a substance included in [Schedule] schedule II, III, IV, or V for that individual practitioner's personal use, except in a medical emergency.
- (e) Prescriptions for controlled substances shall be issued only as follows:
- (1) All prescriptions for controlled substances shall be dated as of, and signed on, the day when the prescriptions were issued and shall bear [the]:
    - (A) The full name and address of the patient[,]; and [the]
    - (B) The name, address, and registration number of the practitioner.

A practitioner may sign a prescription in the same manner as the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity, such as five (5)), to indicate the amount of controlled substance to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or by typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of the practitioner, but the prescribing practitioner shall be responsible in case the prescription does not conform in all essential respects to this chapter and any rules adopted pursuant to this chapter. A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section;

- (2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans Affairs facility or other facility serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by the physician:
  - (A) The registration number of the hospital or other institution; and
  - (B) The special internal code number assigned to the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.

Each written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician; and

- (3) An official exempted from registration shall include on all prescriptions issued by the official:
  - (A) The official's branch of service or agency (e.g., "U.S. Army" or "Public Health Service"); and
  - (B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The service identification number for a Public Health Service employee shall be the employee's Social Security identification number.

Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer.

(f) A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of the pharmacist's professional practice and either registered individually or employed in a registered pharmacy or registered institutional practitioner.

(g) Partial filling of controlled substance prescriptions shall be determined as follows:

- (1) The partial filling of a prescription for a controlled substance listed in schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription). The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling; provided that if the remaining portion is not or cannot be filled within the seventy-two-hour period, the pharmacist shall notify the prescribing individual practitioner. No further quantity shall be supplied beyond seventy-two hours without a new prescription; and
- (2) The partial filling of a prescription for a controlled substance listed in schedule III, IV, or V is permissible; provided that:

- (A) Each partial filling is recorded in the same manner as a refilling;
- (B) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;
- (C) No dispensing occurs more than three months after the date on which the prescription was issued; and
- (D) The prescription is refilled no more than two times after the initial date of the prescription, unless the prescription is renewed by the practitioner.”

SECTION 4. Section 329-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) It is unlawful for any person knowingly or intentionally:
- (1) To distribute as a registrant a controlled substance classified in [Schedules] schedule 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] that 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;
  - (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] that 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[.]; or
  - (7) To make, distribute, possess, or sell any prescription form, whether blank, faxed, computer generated, photo copied, or reproduced in any other manner without the authorization of the licensed practitioner.”

SECTION 5. Section 329-54, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A practitioner engaged in medical [practice or] research is not required or compelled to furnish the name or identity of a [patient or] research subject to the department of public safety, nor may the practitioner be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of [an individual] any research subject that the practitioner is obligated to keep confidential.”

SECTION 6. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The information required by this section shall be transmitted: on an electronic device that is compatible with the receiving device of the central repository; or by computer diskette, magnetic tape, or pharmacy universal claim form that meets the specifications provided in the rules of the designated state agency. [Effective no later than six months after June 18, 1996, the] The information to be transmitted under subsection (b) shall include at least the following for each dispensation:

- (1) The patient’s name;
- (2) The patient’s identification number;
- (3) The patient’s date of birth;
- (4) The eight-digit national drug code number of the substance dispensed;
- (5) The date of dispensation;
- (6) The quantity and number of refills authorized;
- (7) The practitioner’s Drug Enforcement Administration registration number;
- (8) The pharmacy’s National Association of Boards of Pharmacy number and location; and
- (9) The practitioner’s practice specialty and subspecialties, as determined by the applicable licensure boards.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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 21, 1997.)

**Note**

- 1. Should be underscored.

**ACT 281**

S.B. NO. 938

A Bill for an Act Relating to Nonresident Income Tax.

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§235- Special rules for nonresidents and part-year residents.** There shall be imposed for each taxable year upon the entire taxable income of every nonresident or part-year resident which is derived from sources in this State a tax which shall be equal to the tax computed on the basis of the rates prescribed by section 235-51 or 235-53, as appropriate, as if the nonresident or part-year resident were a resident multiplied by the ratio of Hawaii adjusted gross income to total adjusted gross income from all sources.”

SECTION 2. New statutory material is underscored.<sup>1</sup>



SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1996.

(Approved June 21, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 282**

S.B. NO. 952

A Bill for an Act Relating to Consumer Protection.

*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  
ASSISTIVE TECHNOLOGY WARRANTY ACT**

§ -1 **Definitions.** When used in this chapter unless the context otherwise requires:

“Assistive device” means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this State which is used to assist a person with a disability (as defined in 42 U.S.C. §§12101 et seq.) in connection with a major life activity including but not limited to mobility, vision, hearing, speech, communication, maneuvering, and manipulation of a person’s environment. Assistive devices include but are not limited to manual wheelchairs, motorized wheelchairs, motorized scooters, and other aides that enhance the mobility of an individual; hearing aides, telephone communication devices for the deaf, assistive listening devices, and other aides that enhance an individual’s ability to hear; voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight impaired individual’s ability to communicate; and any other device that enables a person with a disability to communicate, see, hear, speak, manipulate the person’s environment, move, or maneuver.

“Assistive device dealer” means a person who is in the business of selling new assistive devices.

“Assistive device lessor” means a person who leases new assistive devices to consumers, or who holds the lessor’s residual interest under a written lease, to new assistive devices leased to consumers.

“Collateral charges” means those additional charges to a consumer wholly incurred as a result of the acquisition of the assistive device. For the purposes of this chapter, collateral charges include but are not limited to items installed by the manufacturer, its agent, assistive device dealer or assistive device lessor, finance charges and financing costs, general excise tax, and other governmental charges, taxes, or fees.

“Consumer” means any of the following:

- (1) The purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale;
- (2) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device;

- (3) A person who may enforce any warranty applicable to the assistive device; or
- (4) A person who leases an assistive device from an assistive device lessor under a written lease.

“Demonstrator” means an assistive device used primarily for the purpose of demonstration to the public.

“Early termination cost” means an expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to the manufacturer. The term includes a penalty for prepayment under a finance arrangement.

“Early termination savings” means an expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to a manufacturer. The term includes any interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

“Incidental charges” means those reasonable costs incurred by the consumer, including but not limited to the costs of repair, the costs of return, and the costs of obtaining alternative assistance or alternative assistive devices, which are directly caused by the nonconformity or nonconformities which are the subject of the complaint, but shall not include loss of use, loss of income, or personal injury claims.

“Manufacturer” means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, distributor branch, and a warrantor of the manufacturer’s assistive device, but does not include an assistive device dealer.

“Nonconformity” means a defect, malfunction, or condition that fails to conform to any warranty applicable to an assistive device, but does not include a defect, malfunction, or condition that results from accident, abuse, neglect, modification, or alteration of the assistive device by persons other than the manufacturer, its agent, distributor, or authorized assistive device dealer, or assistive device lessor.

**§ -2 Warranties; repair.** (a) No assistive device shall be sold, leased, or delivered in this State to a consumer unless accompanied by a written warranty under which the manufacturer warrants that the assistive device is fit for the ordinary purposes for which the device is used, and undertakes to pay the full cost of both parts and labor necessary to repair any nonconformity. This warranty shall require the manufacturer directly or through its agents to repair or, at the election of the manufacturer, reimburse the consumer for the reasonable costs of repairing the nonconformity. This warranty is supplementary and not in lieu of any other express warranties or implied warranties applicable to the assistive device.

(b) The duration of the warranty provided in this section shall not be less than one year after first possession of the assistive device by the consumer. The terms of this warranty shall be tolled for and extended by any period of time during which:

- (1) The assistive device is out of service by reason of repair under any other warranty;
- (2) The assistive device is in the possession of the manufacturer or its authorized agent, representative, assistive device dealer, or assistive device lessor for the purpose of repairing the assistive device under the terms of this warranty;

- (3) Repair services are not available to the consumer because of war, invasion, strike, fire, flood, or other natural disaster; or
- (4) The consumer has notified the manufacturer or its authorized agent or representative that the assistive device is inoperable, but cannot reasonably present the assistive device to the manufacturer or its authorized agent or representative and the manufacturer has refused to pay the charges to transport the assistive device to the manufacturer, its authorized agent, representative, or repair agency.

(c) The applicable warranty period shall end thirty days from the date of completion of any repair required by this chapter as to the defect repaired if the warranty would otherwise have expired during that period.

(d) If a manufacturer fails to give the written warranty as required by this section, the manufacturer nevertheless shall be deemed to have given the warranty as a matter of law.

(e) If a new assistive device does not conform to all applicable warranties and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's agents, distributors, or authorized assistive device dealers, and makes the assistive device available for repair before the end of the warranty period, then the manufacturer, or, at its option and expense, its agent, representative, distributor, authorized assistive device dealer, or authorized assistive device lessor shall make any repairs that are necessary to conform the assistive device to the warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty.

(f) A consumer shall make an assistive device available for repair by presenting it to the manufacturer, its agent, representative, authorized assistive device dealer, or authorized assistive device lessor prior to the expiration of the warranty period and providing the manufacturer, its agent, representative, authorized assistive device dealer, or authorized assistive device lessor written notice of the nonconformity. The manufacturer or authorized person shall immediately accept return of the assistive device when it is so presented. The assistive device shall be deemed out of service commencing the day it is presented, notwithstanding any failure to accept its return on that day.

During the applicable warranty period and the return period, the manufacturer shall pay the reasonable costs of transporting or shipping the assistive device to the manufacturer, agent, representative, authorized assistive device dealer, authorized assistive device lessor, or repair agency located nearest to the consumer.

(g) The written warranty to be provided pursuant to this chapter shall be a full warranty as the term is described in the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and shall be designated as such on the face of the warranty. Nothing in this subsection should be construed to limit the manufacturer's obligation to comply with all requirements set forth in this chapter.

**§ -3 Assistive device replacement or refund.** (a) If the manufacturer or its agents fail to correct a nonconformity as required by a warranty after a reasonable opportunity to repair, the manufacturer shall accept return of the assistive device from the consumer and refund the full purchase price or replace the assistive device, as follows:

- (1) If the consumer requests a refund, the manufacturer shall accept return of the assistive device from the consumer and, as the case may be, either:
  - (A) Refund to the consumer and to a holder of a perfected security interest in the consumer's assistive device, as their interests may appear on the records kept by the Bureau of Conveyances, the full purchase price plus all collateral charges and incidental charges,

with adjustments for any modifications that either increase or decrease the market value of the assistive device, less a reasonable allowance for use; or

- (B) Refund to the assistive device lessor and to a holder of a perfected security interest in the assistive device, as their interests may appear on the records kept by the Bureau of Conveyances, the current value of the written lease, and refund to the consumer the amount that the consumer paid under the written lease plus all collateral charges and incidental charges, with adjustment for any modifications that either increase or decrease the market value of the assistive device, less a reasonable allowance for use;

- (2) If the consumer requests an assistive device replacement, the manufacturer, within thirty days of the request, shall provide the consumer with a comparable new assistive device. Within ten days after receipt of the assistive device replacement, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal title thereto.

(b) For purposes of subsection (a):

- (1) The "current value of the written lease" equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings;
- (2) A "reasonable allowance for use" shall not exceed the amount obtained by multiplying the total amount the consumer paid or for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, its agent, assistive device lessor, or assistive device dealer; and
- (3) It shall be presumed that a manufacturer has had a "reasonable opportunity to repair" if the manufacturer or its agents fails to repair the same nonconformity with two attempts, or the assistive device is out of service, including by reason of attempts to repair one or more nonconformities, for a cumulative total of more than thirty business days after the consumer has returned it for repair.

(c) No person shall enforce the lease against the consumer after the consumer receives a refund.

§ -4 **Nonconformity disclosure requirement.** No assistive device returned by a consumer or assistive device lessor in this State or another state shall be sold or leased in this State unless the nature of the defect experienced by the original buyer or lessee is clearly and conspicuously disclosed on a separate document that must be signed by the manufacturer and the purchaser or lessor and must be in ten point, capitalized type, in substantially the following form:

**"IMPORTANT: THIS DEVICE WAS RETURNED TO THE MANUFACTURER BECAUSE A DEFECT(S) COVERED BY A MANUFACTURER'S WARRANTY WAS NOT REPAIRED AFTER A REASONABLE OPPORTUNITY FOR REPAIR AS PROVIDED BY HAWAII LAW."**

§ -5 **Other remedies.** (a) Nothing in this chapter shall in any way limit the rights or remedies available to consumers, or to the State under any other law.

(b) Any agreement entered into by a consumer for the purchase or lease of an assistive device that waives, limits, or disclaims any of the rights set forth in this chapter shall be void as contrary to public policy.

(c) In addition to pursuing other remedies, a consumer may bring an action to recover damages caused by a violation of this chapter. The court shall award a consumer who prevails in the action twice the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney fees, and any equitable relief that the court may determine is appropriate. A failure by a manufacturer to provide the warranty required by section -2 or the notice provided by section -4 shall constitute prima facie evidence of an unfair or deceptive act or practice under chapter 480. Any action brought under this chapter by a consumer must be initiated within one year following the expiration of the warranty period.

**§ -6 Manufacturer's duty to provide reimbursement for temporary replacement of assistive devices; penalties.** Whenever an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the manufacturer, its agent, representative, assistive device dealer, assistive device lessor, or repair agency dealer from whom it was purchased or exchanged for the purpose of repairing a nonconformity, the manufacturer shall provide directly to the consumer for the duration of the repair period a replacement assistive device or reimbursement for the cost incurred by the consumer to rent a replacement assistive device, if at least one of the following conditions exists:

- (1) The repair period exceeds or is expected to exceed ten working days, including the day on which the device is tendered for repair; or
- (2) The repair is of the same nonconformity for which the assistive device has been tendered for repair on at least two previous occasions."

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

(Approved June 21, 1997.)

## ACT 283

S.B. NO. 969

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 308-3, Hawaii Revised Statutes, is amended to read as follows:

**“§308-3 Fines and other penalties.** The board of regents may enforce its rules [and regulations] by imposing fines not to exceed [\$25] \$100 per violation [or], by removing the vehicle of the offender from the area within the university's jurisdiction, or both. The owner of any vehicle so towed away shall be responsible for and pay all costs incurred in the towing and storage. Any [car] vehicle so towed away and unclaimed thirty days thereafter shall be sold at public auction by the university. The university shall pay all costs of towing and storage and other costs connected with the sale out of the university parking revolving fund. The fund shall be reimbursed for the costs from the proceeds of the sale and the remaining balance, if any, shall be paid to the owner of the vehicle; provided that if the proceeds of the sale are not claimed by the owner of the vehicle within sixty days after notice, the proceeds shall be deposited in the university parking 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 June 21, 1997.)

ACT 284

S.B. NO. 986

A Bill for an Act Relating to Nonconsensual Common Law Liens.

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

SECTION 1. Section 507D-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Party in interest” means any owner, title holder, mortgagee, or other person holding a recorded or perfected security interest in real or personal property.”

SECTION 2. Section 507D-2, Hawaii Revised Statutes, is amended by amending the definitions of “lien”, “lien claimant”, and “nonconsensual common law lien” to read as follows:

““Lien” means a recorded instrument that creates an encumbrance on or affects title or ownership of property.

“Lien claimant” means the [purported lien holder.] person who executes or records or causes or materially assists in causing the lien to be prepared, executed, or recorded.

“Nonconsensual common law lien” means a lien that:

- (1) Is not provided for by a specific statute;
- (2) Does not depend upon, require by its terms, or call for the consent of the owner of the property affected for its existence; and
- (3) Is not a court-imposed equitable or constructive lien.”

SECTION 3. Section 507D-4, Hawaii Revised Statutes, is amended to read as follows:

“[[§507D-4]] Contesting validity of recorded instruments[.]; injunctions. (a) [Any person whose real or personal property is subject to a recorded claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition to commence a proceeding in the appropriate circuit court to contest the validity of that instrument.] Any party in interest in real or personal property which is subject to a claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition in the appropriate circuit court to contest the validity of that purported lien and to enjoin the lien claimant from making further filings with the registrar. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner’s attorney setting forth a concise statement of the facts upon which the petition is based. The procedure for obtaining injunctions and temporary restraining orders shall apply in cases brought under this section or section 507D-7(b).

(b) Subsection (a) shall not apply to any instrument that is recorded by the United States, the State, or any county.

(c) In any action brought under subsection (a), the court may rule without a hearing, on the basis of the affidavits submitted by the parties, unless one of the parties establishes a genuine issue of material fact.

(d) If the court finds that the petition raises a genuine issue of material fact, it shall issue an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the order, and show cause, if any, why the claim of lien should not be stricken and other relief granted. The order shall clearly state that if the lien claimant fails to appear at the time and place stated, the claim of lien shall be stricken and released and the lien claimant shall be ordered to pay actual damages, costs, and reasonable attorneys' fees. The order shall further state that if the court finds the lien to be frivolous, the court may order the lien claimant to pay either actual damages or \$5,000, whichever is greater.]”

SECTION 4. Section 507D-7, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) If the circuit court finds the purported lien invalid, it shall order the registrar to expunge the instrument purporting to create it, and order the lien claimant to pay actual damages, costs of suit, and reasonable attorneys' fees. This order shall be presented to the registrar for recordation[,] and shall have the effect of voiding the lien from its inception. If the circuit court finds the purported lien is frivolous, the prevailing party in any action brought under section 507D-4 shall be awarded costs of suit, reasonable attorneys' fees, and either actual damages or \$5,000, whichever is greater. The foregoing award shall be made in the form of a joint and several judgment issued in favor of the prevailing party and against each lien claimant and also against each person who owns or controls the activities of the lien claimant if the lien claimant is not a natural person.

(b) [If any person submits or is responsible for submitting an instrument for recordation which is frivolous, as determined by the court, more than two times in a calendar year, upon application of either the person aggrieved, the registrar, or the government counsel representing the government officer or employee affected by the lien, the appropriate circuit court may issue an order to the registrar directing the registrar not to record during the next five years any further instruments submitted for recordation by that person, unless that person obtains leave of court to file another instrument.] If the circuit court finds the purported lien is frivolous, upon application of a party in interest, the registrar, or the government counsel representing the government officer or employee affected by the purported lien, the court may also issue appropriate injunctive relief against the lien claimant to preclude further filings of any kind with the registrar for a period of five years, unless that person obtains leave of court to file another instrument with the registrar. The order shall be enforced in the manner for enforcement of injunctions. This order may be presented to the registrar for recordation. [This] Proceedings under this subsection shall not preclude a person from proceeding under subsection (a) of this section or section 507D-4 and recovering damages, penalties, costs, and attorneys' fees.

(c) Nothing in this chapter shall inhibit or preclude any [person] party in interest from seeking any other common law, statutory, or other equitable remedy.”

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.

**ACT 285**

SECTION 6. This Act shall apply to all nonconsensual common law liens, whenever executed or recorded.

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 21, 1997.)

**ACT 285**

S.B. NO. 989

A Bill for an Act Relating to Torts.

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

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- Use of school grounds; assumption of risk.** (a)<sup>1</sup> Any person who enters school grounds for the purposes of using the school’s grounds, facilities, or equipment for recreational purposes, and who is not a student or member of the faculty or administration of that school, is deemed to assume the risk of liability for any injuries or death resulting from the use of the grounds, facilities, or equipment. This assumption of risk shall not apply if:

- (1) The person is an invitee or licensee to whom a duty of care is owed by the school; provided that the person has received prior written authorization from the school principal or other responsible person to use the school’s grounds, facilities, or equipment; or
- (2) The injuries or death were caused by wilful or wanton misconduct, including but not limited to the wilful or malicious failure to guard or warn against a dangerous condition, use, or structure which was knowingly created or perpetuated, and wilful or malicious failure to guard or warn against a dangerous activity which was knowingly perpetuated.”

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. New statutory material is underscored.<sup>2</sup>

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

(Approved June 21, 1997.)

**Notes**

- 1. No subsection (b).
- 2. Edited pursuant to HRS §23G-16.5.



## ACT 286

S.B. NO. 1016

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may: (1) modify or eliminate any of the restrictions specified in subsection (a); [(2)] extend or modify the fixed rental period of the lease; or [(3)] extend the term of the lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, Department of Veterans Affairs, Small Business Administration, [Farmers Home Administration,] United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or any other federal mortgage lending agency qualified to do business in the State, and their respective successors and assignees, or to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates; provided that the private lender shall be qualified to do business in the State; provided further that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) The rental shall not be less than the rental for the preceding term; and
- (4) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.”

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 21, 1997.)

## ACT 287

S.B. NO. 1064

A Bill for an Act Relating to Ballot Access for Political Parties.

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

SECTION 1. Section 11-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any party which does not meet the following requirements or the requirements set forth in sections 11-62 to [11-63,] 11-64, shall be subject to disqualification:

- (1) A party must have had candidates running for election at the last general election for any of the offices listed in [paragraphs] paragraph (2) [to (5)] whose terms had expired. This does not include those offices which were vacant because the incumbent had died or resigned before the end of the incumbent's term; and
- (2) The party received at least ten per cent of all votes cast [for];  
  - (A) For any of the offices voted upon by all the voters in the State;
- [(3) The party received at least ten per cent of all the votes cast in]  
  - (B) In at least fifty per cent of the congressional districts;
- [(4) The party received at least ten per cent of all the votes cast in]  
  - (C) In at least the six senatorial districts with the lowest votes cast for the office of state senator; or
- [(5) The party received at least ten per cent of all the votes cast in]  
  - (D) In at least fifty per cent of the representative districts for the office of state representative."

SECTION 2. Section 11-62, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Any group of persons hereafter desiring to qualify as a political party for election ballot purposes in the State shall file with the chief election officer a petition as [hereinafter] provided[.] in the section. The petition for qualification as a political party shall:

- (1) Be filed not later than 4:30 p.m. on the one hundred [fiftieth] seventieth day prior to the next primary;
- (2) Declare as concisely as may be the intention of signers thereof to qualify as a statewide political party in the State and state the name of the new party;
- (3) Contain the [signatures] name, signature, residence address, date of birth, and other information as determined by the chief election officer of currently registered voters comprising not less than one per cent of the total registered voters of the State as of the last preceding general election;
- (4) Be accompanied by the names and addresses of the officers of the central committee and of the respective county committees of the political party and by the party rules; and
- (5) Be upon the form prescribed and provided by the chief election officer."

2. By amending subsection (d) to read:

“(d) Each group of persons desiring to qualify as a political party [shall qualify under this section for], having first qualified as a political party by petition under this section, and having been qualified as a political party for three consecutive general elections[, after which the group] by petition or pursuant to section 11-61(b), shall be deemed a political party for the following ten-year period[.]. The ten-year period shall begin with the next regularly scheduled general election; provided that each party qualified under this section shall continue to field candidates for public office during the ten-year period following qualification. After each ten-year period, the party qualified under this section shall either remain qualified under the standards set forth in section 11-61, or requalify under this section 11-62.”

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 21, 1997.)

## ACT 288

S.B. NO. 1069

A Bill for an Act Relating to Candidate Nomination Papers.

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

SECTION 1. Section 12-3, Hawaii Revised Statutes, is amended to read as follows:

“**§12-3 Nomination paper;<sup>1</sup> format; limitations.** (a) [The name of no candidate] No candidate's name shall be printed upon any official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed in the candidate's behalf and in the name by which the candidate is commonly known. The nomination paper shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

- (1) A statement by the registered voters signing the form [of the district from which the candidate is running signing the form] that they are eligible to vote for the candidate [at the next election];
- (2) A statement by the registered voters signing the form that they nominate the candidate for the office identified on the nomination paper[;] issued to the candidate;
- (3) The residence address and county in which the candidate resides;
- (4) The legal name of the candidate [and], the name by which the candidate is commonly known, if different, the office for which the candidate is running, and the candidate's party affiliation or nonpartisanship; all of which [name and office] are to be placed on the nomination paper by the chief election officer or the clerk prior to releasing the form to the candidate;
- (5) Space for the [names of the registered voters signing the form and their district or districts and precinct or precincts;] name, signature, date of birth, Social Security number, and residence address of each registered voter signing the form, and other information as determined by the chief election officer;
- (6) A sworn certification by self-subscribing oath by the candidate that the candidate [will qualify] qualifies under the law for the office the candidate is seeking[;] and that the candidate has determined that, except for the information provided by the registered voters signing the nomination papers, all of the information on the nomination papers is true and correct;
- (7) A sworn certification by self-subscribing oath by a party candidate that the candidate is a member of the party;
- (8) A sworn certification[, ] by self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of [Article] article II, section 7, of the Constitution of the State of Hawaii; [and]
- (9) A sworn certification by self-subscribing oath by the candidate that the candidate is in compliance with section 831-2, dealing with felons, and is eligible to run for office; and

(9) (10) The name the candidate wishes [inserted] printed on the ballot and the [post office] mailing address of the candidate.

(b) [No signatures] Signatures of registered voters shall not be counted, unless they are upon the nomination paper having the format set forth above, written or printed thereon, and if there are separate sheets to be attached to the nomination paper, the sheets shall have the name of the [person] candidate, the candidate's party affiliation or nonpartisanship, and the office and district for which the candidate is running placed thereon by the chief election officer or the clerk. The nomination paper and separate sheets shall be provided by the chief election officer or the clerk.

(c) Nomination papers shall not be filed in behalf of any person for more than one party or for more than one office; nor shall any person file nomination papers both as a party candidate and as a nonpartisan candidate.

(d) The office and district for which the candidate is running [and], the candidate's name, and the candidate's party affiliation or nonpartisanship may not be changed from that indicated on the nomination paper and separate sheets. If the candidate wishes to run for an office or district different from that for which the nomination paper states[,] or under a different party affiliation or nonpartisanship, the candidate may request the appropriate nomination paper from the chief election officer or clerk and have it signed by the required number of registered voters.

(e) Nomination papers that contain alterations or changes made by anyone other than the chief election officer or the clerk to the candidate's information, the candidate's party affiliation or nonpartisanship, the office to which the candidate seeks nomination, or the oath of loyalty or affirmation, after the nomination paper was issued by the chief election officer or clerk, shall be void and will not be accepted for filing by the chief election officer or clerk.

(f) Nomination papers which are incomplete and do not contain all of the certifications, signatures, and requirements of this section shall be void and will not be accepted for filing by the chief election officer or clerk."

SECTION 2. Section 12-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [No name] Names on nomination papers shall not be counted, unless the signer is a registered voter and is eligible to vote for the candidate. The chief election officer or clerk shall use the most currently compiled general county register available at the time the nomination paper is presented for filing to determine the eligibility of the registered voters to sign for the candidate. Voter registration affidavits that have not been entered into the voter register by the clerk shall not be considered or accepted for this check. At the time of filing, the chief election officer or clerk may reject the candidate's nomination paper for lack of sufficient signers who are eligible to vote for the candidate."

SECTION 3. Section 12-8, Hawaii Revised Statutes, is amended to read as follows:

**"§12-8 Nomination papers;<sup>1</sup> challenge; evidentiary hearings and decisions.** (a) All nomination papers filed in conformity with section 12-3 shall be deemed valid unless objection is made thereto by a registered voter, an officer of a political party whose name is on file with the chief election officer, the chief election officer, or the county clerk in the case of a county office. All objections shall be filed in writing not later than 4:30 p.m. on the thirtieth day or the next earliest working day prior to [that election day. An objection in a primary or special election by a registered voter or county clerk shall be filed not later than 4:30 p.m. on the thirtieth

day or the next earliest working day prior to that primary or special election day. In case] the primary or special election.

(b) If an objection is made[, notice thereof shall be given including the placement of the notice in the mail] by a registered voter, the candidate objected thereto shall be notified of the objection by the chief election officer or the clerk in the case of county offices by registered or certified mail [to the candidate objected thereto].

(c) If an objection is filed by an officer of a political party with the circuit court, the candidate objected thereto shall be notified of the objection by an officer of the political party by registered or certified mail.

[(b) The] (d) Except for objections by an officer of a political party filed directly with the circuit court, the chief election officer or the clerk in the case of county offices shall have the necessary powers and authority to reach a preliminary decision on the merits of the objection; provided that nothing in this subsection shall be construed to extend to the candidate a right to an administrative contested case hearing as defined in section 91-1(5). The chief election officer or the clerk in the case of county offices shall render a preliminary decision not later than five working days after the objection is filed.

[(c)] (e) If the chief election officer or clerk in the case of county offices determines that the objection may warrant the disqualification of the candidate, the chief election officer or clerk shall file a complaint in the circuit court for a determination of the objection; provided that such complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the seventh working day after the objection was filed.

(f) If a political party objects to the nomination paper filed by a candidate because the candidate is not a member of the party pursuant to the party's rules filed in conformance with section 11-63, an officer of the party whose name appears on file with the chief election officer shall file a complaint in the circuit court for a prompt determination of the objection; provided that the complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the thirtieth working day or the next earliest working day prior to that election day.

[(d)] (g) If an officer of a political party whose name appears on file with the chief election officer, the chief election officer, or clerk in the case of county offices files a complaint in the circuit court, the circuit court clerk shall issue to the defendants named in the complaint a summons to appear before the court not later than 4:30 p.m. on the fifth day after service thereof.

[(e)] (h) The circuit court shall hear the complaint in a summary manner and at the hearing the court shall cause the evidence to be reduced to writing and shall not later than 4:30 p.m. on the fourth day after the return give judgment fully stating all findings of fact and of law. The judgment shall decide the objection presented in the complaint, and a certified copy of the judgment shall forthwith be served on the chief election officer or the clerk, as the case may be.

[(f)] (i) If the judgment disqualifies the candidate, the chief election officer or the clerk shall follow the procedures set forth in sections 11-117 and 11-118 regarding the disqualifications of candidates."

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 21, 1997.)

## Note

1. Prior to amendment “:” appeared here.

## ACT 289

S.B. NO. 1114

A Bill for an Act Relating to Real Estate Brokers and Salespersons.

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

SECTION 1. The purpose of this Act is to:

- (1) Add a definition of “continuing education” for real estate brokers and salespersons;
- (2) Remove the waivers from continuing education requirements for license renewal;
- (3) Eliminate the authority of the real estate commission to provide continuing education activities effective July 1, 1998, at which time a private organization may be allowed to administer the continuing education program; and
- (4) Require the legislative reference bureau to conduct a study, including developing appropriate legislation to propose to the legislature, on the privatization of the continuing education program for real estate licenses.

This Act retains the authority of the real estate commission to establish educational requirements for licensure of real estate brokers and salespersons.

SECTION 2. Section 467-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Continuing education” means a course:

- (1) With a curriculum level above the current minimal competency entry level in any of the following areas:
    - (A) Protection of the general public in its real estate transactions;
    - (B) Consumer protection; or
    - (C) Improvement of the licensee’s competency and professional standards and practice; and
  - (2) That is:
    - (A) Approved by the commission and delivered by an approved continuing education instructor;
    - (B) A national course taught by a nationally certified instructor certified by the National Association of REALTORS or its affiliates;  
or
    - (C) A national course taught by a nationally certified instructor certified by, including but not limited to, the Building Owners and Managers Association, the Community Associations Institute, or other national organization approved by the commission;
- provided that the continuing education course is offered by an approved continuing education provider. Continuing education courses shall not require an examination.”

SECTION 3. Section 467-11.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Prior to the license renewal of a real estate broker or real estate salesperson, the licensee shall provide the commission with proof of having attended ten hours of continuing education or its equivalent as determined by the commission during the two-year period preceding the application for renewal. [Upon individual application and payment of the proper fee, the commission shall waive this requirement for the following reasons:

- (1) The licensee has, for twenty or more years,
  - (A) Held a continuously active Hawaii real estate broker’s or real estate salesperson’s license; and
  - (B) Been employed full-time as a real estate broker or real estate salesperson; including during the three consecutive licensing bienniums immediately preceding the application for renewal;
- (2) The licensee, as a trustee of a Hawaii charitable trust, has been involved in real estate as a full-time occupation for the past licensing biennium preceding the application for renewal;
- (3) The licensee, as an active Hawaii licensed attorney or an active Hawaii licensed accountant, has been involved in real estate as a full-time occupation for the past licensing biennium preceding the application for renewal; or
- (4) The licensee, as a participant in Hawaii public service, has been involved in real estate or real estate laws for the past four consecutive licensing bienniums immediately preceding the application for renewal; provided that a licensee appointed to the commission is excluded.]

Failure to satisfy the continuing education requirement by the license expiration date shall result in the license being automatically placed on an “inactive” status.

(b) To reactivate a license which has been placed on an “inactive” status, the licensee shall submit to the commission proof of having satisfied the continuing education requirement of this section, a complete application setting forth [such] the information as may be prescribed or required by the commission, and payment of the proper fee. [Continuing education courses, as approved by the commission, may include but are not limited to:

- (1) Protection of the general public in its real estate transactions;
- (2) Consumer protection;
- (3) Improvement of the licensee’s competency and professional standards and practice; and
- (4) A curriculum level above the current minimal competency entry level.]”

SECTION 4. (a) The legislative reference bureau shall conduct a comprehensive study of the continuing education program for real estate licenses, including the feasibility of allowing a private organization to administer the program.

The study shall include but not be limited to:

- (1) An evaluation of the existing continuing education program and laws that affect the license renewal of all real estate brokers and real estate salespersons;
- (2) An analysis to determine whether the provision and delivery of continuing education programs by private organizations, such as the Hawaii Association of REALTORS, is more cost efficient and effective in protecting the public;
- (3) An evaluation of the educational quality and the availability of a sufficient diversity of courses of varying difficulty if the continuing education program is privatized;

- (4) Identifying any public policy issues involved;
  - (5) Determining the most appropriate organization, such as the Hawaii Association of REALTORS, to oversee and conduct the continuing education program;
  - (6) A survey of comparable continuing education programs and experiences in other states;
  - (7) Recommended guidelines for the oversight of the continuing education program to protect the public interest and assure the improvement of the licensee's competency and professional standards; and
  - (8) Any other issue that may surface during the evaluation and study.
- (b) The following parties shall cooperate with the legislative reference bureau in conducting this study:
- (1) The real estate commission;
  - (2) The Hawaii Real Estate Research and Education Center;
  - (3) The Hawaii Association of REALTORS;
  - (4) The Hawaii Association of Real Estate Schools;
  - (5) The Building Owners and Managers Association;
  - (6) The Community Associations Institute; and
  - (7) The University of Hawaii.
- (c) The legislative reference bureau shall submit a report with its findings and recommendations, including proposed legislation to privatize, to the legislature no later than twenty days prior to the convening of the regular session of 1998.

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 the amendments to section 467-11.5(b), Hawaii Revised Statutes, of section 3 of this Act shall take effect on July 1, 1998.

(Approved June 21, 1997.)

**ACT 290**

S.B. NO. 1160

A Bill for an Act Relating to Electric Vehicles.

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

SECTION 1. The legislature finds that the State relies primarily on the consumption of imported oil to satisfy its energy needs. The legislature further finds that because oil is a limited resource, the State must develop and implement mechanisms to reduce the consumption of oil and other petroleum-based products in Hawaii.

The legislature further finds that the residents of the State consume a large quantity of gasoline for motor vehicle use. According to recent statistics, there are over nine hundred thousand registered motor vehicles on Hawaii's roads and highways. Because of this, Hawaii's drivers consumed over three hundred seventy-five million gallons of gasoline in 1990.

One possible mechanism of reducing the consumption of petroleum products is to promote the use of newer technologies in everyday life. The legislature recognizes that many advances have already been made in the field of transportation. The emergence of alternatives to fossil-fueled vehicles has the potential to significantly reduce our dependency on petroleum-based products.



The purpose of this Act is to:

- (1) Improve the transportation of people and goods through the expanded use of electric vehicles by undertaking a program of financial and regulatory incentives designed to promote the purchase or lease of such vehicles;
- (2) Obtain the benefits to the state economy of lessened dependence on imported petroleum products through greater reliance on vehicles that utilize domestically-produced electricity as a source of energy; and
- (3) Preserve and enhance air quality by encouraging the widespread use of vehicles that are emissions-free in operation.

SECTION 2. It is the policy of the State to support the development and widespread consumer acceptance of electric vehicles within the State. This policy is intended to accelerate the use of a substantial number of electric vehicles in the State to attain significant reductions in air pollution, improve energy efficiency in transportation, and reduce the State's dependence on imported oil or petroleum products. Exempting electric vehicles from various requirements applicable to conventional, internal combustion engine-powered vehicles may encourage operators to choose electric vehicles.

SECTION 3. The department of transportation shall:

- (1) Establish and adopt rules pursuant to chapter 91, Hawaii Revised Statutes, for the registration of an electric vehicle in this State; and
- (2) Establish and issue a special license plate to designate that the vehicle to which the license plate is affixed is an electric vehicle.

SECTION 4. An electric vehicle on which a license plate described in section 3 is affixed shall be exempt from:

- (1) The payment of parking fees, including those collected through parking meters, charged by any governmental authority, other than a branch of the federal government, when being operated in this State; and
- (2) High occupancy vehicle restrictions or other traffic control measures.

SECTION 5. For a period of five years from the effective date of this Act, the motor vehicle registration fee and other fees, if any, assessed upon or associated with the registration of an electric vehicle in this State, including any fees associated with the issuance of a license plate described in section 3, shall be waived; provided that the department of transportation shall review the incentive program every two years to determine the proper level of incentives for continuation of the program.

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved June 21, 1997.)

## ACT 291

S.B. NO. 1191

A Bill for an Act Relating to Insurance.

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

SECTION 1. It is the intent of the legislature to meet the compliance requirements under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). The purpose of this Act is to bring Hawaii's insurance code in

compliance with HIPAA so that the State may retain its jurisdiction over health insurance.

SECTION 2. Title 24, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§ - **Conformity to federal law.** (a) The provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA), as it relates to group and individual health insurance, shall apply to title 24, except:

- (1) Where state law provides greater health benefits or coverage than the HIPAA then the state law shall be applicable;
- (2) This section shall not be applicable or affect life insurance, endowment, or annuity contracts, or any supplemental contract thereto, described in section 431:10A-101(4);
- (3) The following definitions shall be used when applying HIPAA:
  - (A) “Employee” means an employee who works on a full-time basis with a normal work week of twenty hours or more;
  - (B) “Group health issuer” means all persons offering benefits under group health plans, but shall not include those persons offering benefits exempted from title I of HIPAA under section 706(c) of the Employee Retirement Income Security Act of 1974 and sections 2747 and 2791(c) of the Public Health Service Act; and
  - (C) “Small employer” means an employer who employs between one and no more than fifty employees;
- (4) All group health issuers shall offer group health plans to small employers whose employees live, work, or reside in the group health issuer’s service areas; provided that the commissioner may exempt a group health issuer if the commissioner determines that the group health issuer does not have the capacity to deliver services adequately to enrollees of additional groups given its obligation to existing employer groups; and
- (5) A group health issuer shall be prohibited from imposing any preexisting condition exclusion.
  - (b) The insurance commissioner may adopt rules to implement, clarify, or conform title 24 to the HIPAA.
  - (c) The adoption of HIPAA for the purposes of title 24 is not an adoption for any purposes for income taxes under chapter 235.”

SECTION 3. The State shall have jurisdiction over any matter that HIPAA permits, including jurisdiction over enforcement.

SECTION 4. The insurance commissioner shall convene a task force for the purpose of reviewing all the provisions of the federal Health Insurance and Portability and Accountability Act of 1996 (HIPAA) and recommend mechanisms to ensure complete, timely, and the least disruptive adoption of the provisions of that Act within both the public and private sectors of the health care system.

The task force at a minimum shall determine the adequacy and availability of affordable coverage of HIPAA eligibles, determine the economic impact of nonresident HIPAA eligibles accessing individual coverage in Hawaii, and recommend mechanisms to achieving access to a satisfactory level of affordable individual coverage for HIPAA eligibles.

The task force shall include representatives from the private and public sectors of the health care system and other persons with a stake in the implementation of HIPAA.

The task force shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 1998.”

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on June 30, 1997.

(Approved June 21, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 292

S.B. NO. 1264

A Bill for an Act Relating to the Automated Fingerprint Identification System.

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

SECTION 1. 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<sup>1</sup> provisions of this chapter. The rules and standards may include limitations and restrictions concerning the fingerprinting and photographing of any child in police custody[; provided], except that when any child of the age of twelve years or older who comes within section 571-11(1) is taken into custody for committing an act which, if committed by an adult would be a felony, a misdemeanor, or a petty misdemeanor [or for an act involving theft in excess of \$100 or criminal property damage in excess of \$100, the rules and standards] any limitation or restriction concerning fingerprinting 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 2. Section 846-2.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general shall select and enforce systems of identification, including fingerprinting, without the necessity of a court order, of all adults arrested for a criminal offense, children who are twelve years of age or older who come within section 571-11(1) and who are taken into custody for committing an act which, if committed by an adult would be a felony, a misdemeanor, or a petty misdemeanor [or for an act involving theft in excess of \$100 or criminal property damage in excess of \$100,] and all persons to whom penal summonses have been issued for a criminal offense and who have been convicted or granted a deferred acceptance of guilty or nolo contendere plea or a conditional discharge, and provide for the collection, recording, and compilation of data and statistics relating to crime; provided that, unless a child’s [electronic or] physical fingerprint record is otherwise authorized to be entered into the system, and notwithstanding any law to the contrary, the attorney general shall purge any child’s electronic [or physical]

fingerprint record entered into the identification system pursuant to this subsection, upon court order, or when the child attains the age of twenty-five years, when the child is determined not to be responsible for committing the act for which the fingerprints were taken, or when the child is not informally adjusted under section 571-31.4 and a petition is not filed within one year from the date the child is taken into custody. The court shall notify the attorney general when a child is determined not to be responsible for committing the act for which the fingerprints were taken. A child's fingerprint record shall not be transmitted to any system outside the State.

The several counties shall provide the necessary equipment and the compensation of the persons required to install and carry out the work of the systems of identification and statistics in their respective jurisdictions; provided that those expenses in connection with matters exclusively within the control of the State shall be borne by the State; and provided further that the State shall provide for the management and equipment maintenance of the computerized fingerprint identification system.

The systems shall be uniform throughout the State, shall be continuous in operation, and shall be maintained as far as possible in a manner as shall be in keeping with the most approved and modern methods of identification and of the collection and compilation of the statistics.

The attorney general shall keep a uniform record of the work of the courts, prosecuting officers, the police, and other agencies or officers for the prevention or detection of crime and the enforcement of law in a form suitable for the:

- (1) Study of the cause and prevention of crime and delinquency and of the efforts made and efficacy thereof to detect or prevent crime and to apprehend and punish violators of law; and
- (2) Examination of the records of the operations of those officers and the results thereof."

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 21, 1997.)

**Note**

- 1. Prior to amendment "the" appeared here.

**ACT 293**

S.B. NO. 1266

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291- Driving after license suspended or denied for noncompliance with an order of support; penalties.** (a) No person whose driver's license has been suspended, denied, or otherwise restricted pursuant to section 576D-A shall operate a motor vehicle upon the public streets, roads, or highways of this State while the person's license remains suspended or denied.

(b) Any person convicted of violating this section shall be sentenced as follows:

- (1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section:
  - (A) A term of imprisonment at least three consecutive days but not more than thirty days;
  - (B) A fine not less than \$250 but not more than \$1,000; and
  - (C) License suspension or denial shall continue until written authorization of compliance is issued by the child support enforcement agency, the office of child support hearings, or the family court;
 and
- (2) For an offense which occurs within five years of a prior conviction under this section:
  - (A) Thirty days imprisonment;
  - (B) A fine of \$1,000; and
  - (C) License suspension or denial shall continue until written authorization of compliance pursuant to section 576D-A issued by the child support enforcement agency, the office of child support hearings, or the family court.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 9 to be appropriately designated and to read as follows:

**“§431- Suspension or denial of license for noncompliance with support order.** In addition to any other acts or conditions provided by law, the commissioner shall refuse to renew, reinstate, or restore, or shall deny or suspend any license if the commissioner has received certification from the child support enforcement agency pursuant to the terms of section 576D-A that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, following receipt of certification pursuant to this section, the commissioner shall renew, reinstate, restore, or grant the license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or the family court. Sections 92-17, 431:9-235, 431:9-236, 431:9-237, 431:9-238, 431:9-239, and 431:9-240 shall not apply to a refusal to renew, reinstate, or restore a license or to a license suspension or denial pursuant to this section.”

SECTION 3. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§436B- Suspension or denial of license for noncompliance with child support order.** In addition to any other acts or conditions provided by law, the licensing authority shall refuse to renew, reinstate, or restore, or shall deny or suspend any license if the authority has received certification from the child support enforcement agency pursuant to the terms of section 576D-A that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the licensing authority shall renew, reinstate, restore, or grant the license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court. Sections 92-17, 436B-20, 436B-21, 436B-24, and 436B-25 shall not apply to a license suspension or denial pursuant to this section.”

SECTION 4. Chapter 485, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§485- Suspension or denial of license for noncompliance with child support order.** In addition to any other acts or conditions provided by law, the commissioner shall refuse to renew, reinstate, or restore, or shall deny or suspend any license if the authority has received certification from the child support enforcement agency pursuant to the terms of section 576D-A that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support order. Unless otherwise provided by law, the commissioner shall renew, reinstate, restore, or grant the license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court. Sections 92-17, 485-15, and 485-16 shall not apply to a refusal to renew, reinstate, or restore a license or to a license suspension or denial pursuant to this section.”

SECTION 5. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§571- Support order, decree, judgment, or acknowledgment; social security number.** The social security number of any individual who is a party to a divorce decree, or subject to a support order or paternity determination, or has made an acknowledgment of paternity issued under this chapter or chapter 576, 580, or 584 shall be placed in the records relating to the matter.”

SECTION 6. Chapter 576D, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

**“§576D-A Suspension or denial of licenses.** (a) Upon a determination that an obligor is not in compliance with an order of support as defined in section 576D-1 or that an individual failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, and that the obligor or individual is the holder of or an applicant for a license issued by a licensing authority in this State, the agency shall serve notice upon the obligor or individual of the agency’s intent to certify the obligor or individual as noncompliant with an order of support or a subpoena or warrant relating to a paternity or child support proceeding, which shall direct the appropriate licensing authority to deny or suspend the license, or to deny the application for renewal, reinstatement, or restoration of such license.

(b) The notice shall be sent by regular mail to both the last known address of record of the obligor or individual as shown in the records of the licensing authority and the address of record of the obligor or individual as shown in the agency’s child support record and shall contain the following information:

- (1) Identification of the license, certificate, permit, or registration subject to suspension, nonrenewal, nonreinstatement, nonrestoration, or denial;
- (2) The name, social security number, if available, date of birth, if known, and each applicable child support case number or numbers of the obligor or individual;
- (3) The amount of the arrears, the amount of the monthly child support obligation, and reference to the support order upon which the support amount and arrears are based or the subpoena or warrant that the individual has failed to comply with;
- (4) A statement that the obligor or individual may contest the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of a license by requesting a hearing in writing which shall be received by the agency within thirty days of the date of service of the notice of intent to suspend, not renew, not reinstate, not restore, or deny the license;

- (5) A statement that the obligor may contact the agency in writing within thirty days of receiving the notice and enter into a monthly payment agreement for the arrears owed, and if an agreement is entered into within thirty days of making contact with the agency, the agency shall not pursue the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of the license;
- (6) A statement that an individual not in compliance with a subpoena or warrant relating to a paternity or child support proceeding may contact the agency in writing within thirty days after receiving the notice and enter into an agreement to provide the information or appear at the proceedings, and if so, the agency shall not pursue the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of the license; and
- (7) A statement that if the obligor or individual makes a timely request as specified in paragraph (4), the agency shall stay the action until a decision is made.

(c) If the obligor or individual:

- (1) Fails to contact the agency in writing within thirty days of the date of service of the notice;
- (2) Is not in compliance with an order of support or failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, and does not timely enter into an agreement under subsection (d); or
- (3) If the office issues a decision that the obligor or an individual is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding,

the agency shall certify in writing to the licensing authority that the obligor is not in compliance with an order of support or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, and shall authorize the immediate suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of any license held or applied for by the obligor or individual. The agency shall provide a copy of the certification to the obligor or individual.

Upon receipt of the certification, the licensing authority shall suspend any license that the obligor or individual holds or deny any license for which the obligor or individual applies without further review or hearing concerning the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial.

Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal, reinstatement, or restoration of a license, a certification issued by the agency suspending, not renewing, not reinstating, not restoring, or denying a license shall be implemented by the licensing authority and continue in effect until the licensing authority receives a written release of suspension or denial from the agency, the office of child support hearings, or the family court.

(d) The obligor may enter into a payment agreement with the agency if the obligor makes contact with the agency within thirty days of the date of the notice, or the individual may enter into an agreement to provide the information requested in the subpoena or appear at the proceeding required by the warrant.

(e) If the obligor or the individual requests an administrative hearing in writing within thirty days of the service of the notice as provided in subsection (b), the office shall schedule a hearing to determine whether the obligor is not in compliance with a support order or whether the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding. The hearing shall be conducted in accordance with chapters 91 and 576E. The issues before the hearings officer shall be limited to whether the obligor is in compliance with an order of support or whether the individual is in compliance with a subpoena

or warrant relating to a paternity or child support proceeding. The hearings officer shall issue a written decision within ten days of the hearing. If the hearings officer decides that the obligor is not in compliance with a support order or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, the license held or applied for by the obligor or individual shall be denied or suspended and shall not be renewed, reinstated, or restored.

(f) The decision of the hearings officer shall be final and shall be subject to judicial review as provided in chapter 91. Any suspension or denial under this section shall not be stayed pending judicial review.

(g) In the event that an obligor or individual holds more than one license, any determination regarding suspension or denial of one license is sufficient to suspend or deny any other license within a thirty-day period after the first certification of suspension, nonrenewal, nonreinstatement, nonrestoration, or denial.

(h) When the conditions which resulted in the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial no longer exist, the agency shall provide the obligor or individual with written confirmation that the obligor is in compliance with the order of support or that the individual is in compliance with the subpoena or warrant relating to a paternity or child support proceeding, and the agency, office, or the family court shall issue an authorization cancelling the certification in writing to the licensing authority.

(i) If a license is suspended or denied under this section, any funds paid by the obligor or individual to the licensing authority shall not be refunded by the licensing authority, and the licensing authority may charge a fee for reinstating or restoring a license. The licensing authority may also charge the obligor or individual a reasonable fee to cover the administrative costs incurred by the licensing authority in complying with this section.

(j) The agency shall adopt rules necessary for the implementation and administration of this section. The licensing authority shall adopt rules necessary for the implementation and administration of this section.

**§576D-B Implementation of income withholding.** (a) For cases being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the income of an obligor who receives income on a periodic basis and who has a support obligation imposed by a support order issued or modified in the State before October 1, 1996, if not otherwise subject to withholding, shall become subject to withholding as provided in subsection (b) if arrearages or delinquency occur, without the need for a judicial or administrative hearing. The agency shall implement such withholding without the necessity of any application in the case of a child with respect to whom services are already being provided under Title IV-D and shall implement on the basis of an application for services under Title IV-D in the case of any other child on whose behalf a support order has been issued or modified. In either case, such withholding shall occur without the need for any amendment to the support order involved or for any further action by the court or other entity which issued such order.

(b) If the obligor who receives income on a periodic basis becomes delinquent in making payments under a support order in an amount at least equal to the support payable for one month, the agency shall issue an income withholding order that shall include an amount to be paid for current support and towards the delinquency. The order shall be served upon the employer by certified mail or personal service, or transmitted to the employer through electronic means.

(c) Upon the agency's receipt of an interstate income withholding request from another jurisdiction, the agency may issue an income withholding order to collect the support imposed upon the obligor by a support order issued or modified by the other state. The order shall include an amount adequate to ensure that past due



payments and payments which will become due in the future under the terms of the support order will be paid.

(d) A copy of the order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued.

(e) Upon sending the order of income withholding to the employer, the agency shall send a notice of the withholding to each obligor to whom subsections (b) and (c) apply. The notice shall inform the obligor:

- (1) That the withholding has commenced;
- (2) That the obligor may request a hearing in writing within fourteen days of the date of the notice;
- (3) That, unless the obligor files a written request for a hearing within fourteen days of the date of the notice, the money received from the income withholding will be distributed to the custodial parent or, in an interstate case, the obligee in the other jurisdiction, or in the case where the children are receiving public assistance, to the State;
- (4) That the only defense to income withholding is mistake of fact; and
- (5) Of the information that was provided to the employer with respect to the employer's duties pursuant to section 576E-16.

(f) The agency may delay the distribution of collections toward arrearages or delinquency until the resolution of any requested hearing regarding the arrearages or delinquency.

(g) Upon timely receipt of a request for a hearing from the obligor, the agency shall refer the matter to the office and a hearing shall be conducted pursuant to chapters 91 and 576E.

(h) Upon receiving an order of income withholding from the agency, the employer is subject to the requirements of section 576E-16(b) through (h).

**§576D-C Financial institution data match system.** (a) The agency may enter into agreements with financial institutions doing business in the State to develop and operate a data match system for the purposes of support enforcement, using automated data exchanges to the maximum extent feasible.

(b) The financial institution shall provide to the agency, on a quarterly basis, the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past due support, as identified by the agency by name and social security number or other taxpayer identification number.

(c) In response to a notice of lien or levy, the financial institution shall surrender or encumber assets held by such institution to the agency on behalf of any noncustodial parent who is subject to a child support lien arising by operation of law against real and personal property for delinquent support owed by the noncustodial parent who resides in or owns property in the State and those liens shall be accorded full faith and credit when the agency or other entity seeking to enforce the lien has complied with the procedural rules of the State and, if applicable, section 501-102.

(d) The agency may pay a reasonable fee to a financial institution for conducting the data match provided for in this section, not to exceed the actual costs incurred by the institution.

(e) A financial institution shall not be liable under any state law to any person for:

- (1) The disclosure of information to the agency under this section;
- (2) The encumbrance or surrender of any assets held by such financial institution in response to a notice of lien or levy issued by the agency as provided for in subsection (c); or

- (3) Any other action taken in good faith to comply with the requirements of this section.

(f) Unless otherwise required by applicable law, a financial institution furnishing a report or providing information to the agency under this section shall not disclose to a depositor or an account holder that the name of such person has been received from or furnished to the agency; provided that an institution may disclose to its depositors or account holders that under the bank match system the agency has the authority to request certain identifying information on certain depositors or account holders. If an institution wilfully violates this section, the institution shall pay to the agency the lesser of \$1,000 or the amount on deposit or in the account of the person to whom such disclosure was made. An institution shall incur no obligation or liability to a depositor or account holder or any other person arising from the furnishing of a report or information to the agency under this section, or from the failure to disclose to a depositor or account holder that the name of such person was included in a list furnished by the agency or in a report furnished by the institution to the agency. An institution may charge an account levied on by the agency a fee, as determined by the agency, of not less than \$20 nor more than \$50 which shall be deducted from such account prior to remitting any funds to the agency.

- (g) For purposes of this section:

“Account” means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or a money-market mutual fund account.

“Financial institution” means every financial institution doing business in the State, as defined in section 412:1-109, and the term also includes but is not limited to any benefit association, insurance company, safe deposit company, money-market mutual fund, or entity similar to the foregoing authorized to do business in the State.

“Financial record” means the same as the term in section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. §3401).

“Money-market mutual fund” means every regulated investment company within the meaning of section 851(a) of the Internal Revenue Code of 1986, as amended, which seeks to maintain a constant net asset value of one dollar in accordance with 17 C.F.R. §270.2a-7.

**§576D-D Duty of employers to report new hires to the agency; civil penalties for failure to comply with reporting; national new hire directory.** (a) Beginning October 1, 1998, each employer in the State shall report to the agency within twenty days of hire the name, address, and social security number of each new employee along with the name, federal identification number, and address of the employer. Each report shall be made on a W-4 form or its equivalent, and may be transmitted by first class mail, magnetically, or electronically. If an employer is transmitting reports to the agency magnetically or electronically, the report shall be transmitted twice monthly not less than twelve days nor more than sixteen days apart. The agency shall maintain these reports as the state directory of new hires.

(b) Employers failing to report the information required in subsection (a) shall be subject to a civil penalty of \$25 or, if the failure is the result of a conspiracy between the employer and the employee not to supply the required report or to supply a false or incomplete report, a \$500 fine.

(c) Within three working days after the date information is reported to the agency’s state directory of new hires, the agency shall furnish the information to the national directory of new hires. The agency shall furnish extracts of the reports required to the national directory of new hires on a quarterly basis concerning the wages and compensation paid to individuals, by such dates, in such format, and

containing such information as the United States Secretary of Health and Human Services shall specify in regulations.

**§576D-E Wilful violations; penalties.** Unless otherwise provided, any person or entity in the State including for-profit, nonprofit, and labor organizations, and any agency, board, commission, authority, court, or committee of the State or its political subdivisions who knowingly, intentionally, or wilfully violates any section of this chapter or any request of the agency pursuant to this chapter shall be guilty of a petty misdemeanor.

**§576D-F Investigators.** (a) The attorney general shall commission child support enforcement investigators who shall have all powers and authority of a police officer or a deputy sheriff to fulfill their official responsibilities; provided that a person so appointed and commissioned shall not carry firearms.

(b) The duties of the commissioned investigators shall be to locate absent parents for the establishment of paternity, and for obtaining and enforcing orders of support.

(c) The agency shall have access, including automated inquiry access, to the records of all entities in the State for information on the employment, compensation, and benefits of any individual member, employee, or contractor of such entity, in order to accomplish the purposes of the child support program. The entities include, but are not limited to for-profit, nonprofit, and labor organizations, and any agency, board, commission, authority, court, or committee of the State or its political subdivisions, notwithstanding any provision for confidentiality. Subject to safeguards on privacy and confidentiality and subject to the nonliability of entities that afford access under this section, the agency shall also have access to records held by private entities with respect to individuals who owe or are owed support, or against or with respect to whom a support obligation is sought consisting of:

- (1) The names and addresses of individuals and the names and addresses of the employers of such individuals as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized pursuant to section 576E-2; and
- (2) Information, including information on assets and liabilities, on such individuals held by financial institutions.

(d) Other state or territorial agencies administering a program under Title IV-D shall have access, including automated inquiry access, to the records of all entities in the State for information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, to the same extent and with the same restrictions as child support enforcement investigators pursuant to this chapter.”

SECTION 7. Chapter 580, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated to read as follows:

**“§580- Divorce decree, support order; social security number.** The social security number of any individual who is party to a divorce decree or subject to a support order issued under this chapter shall be placed in the records relating to the matter.”

SECTION 8. Chapter 584, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§584- Paternity judgment, acknowledgment, support order; social security number.** The social security number of any individual who is subject to a

paternity judgment or acknowledgment, or support order issued under this chapter shall be placed in the records relating to the matter.

**§584- Filing of acknowledgments and adjudications with department of health.** All voluntary acknowledgments and adjudications of paternity by judicial process shall be filed with the department of health for comparison with information in the state case registry. Filing of the adjudications of paternity shall be the responsibility of the natural mother or such person or agency as the court shall direct.

**§584- Temporary support order based on probable paternity.** In all contested paternity actions where a presumption of paternity as defined in section 584-4 exists, upon motion by a party, the court shall order temporary support for the child pending a judicial determination of parentage.”

SECTION 9. Chapter 634, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§634- Presumption of notice and service of process in child support cases.** Whenever notice and service of process is required for child support enforcement proceedings subsequent to an order issued pursuant to chapter 571, 576 or its successor, 576E, 580, or 584, upon a showing that diligent effort has been made to ascertain the location of a party, notice and service of process shall be presumed to be satisfied upon delivery of written notice to the most recent residential or employer address on file with the state case registry pursuant to section 571-52.6.”

SECTION 10. Section 183D-22, Hawaii Revised Statutes, is amended to read as follows:

**“§183D-22 Application and issuance of licenses; fees.** (a) A hunting license shall be issued to a person by an agent of the department upon:

- (1) Written application in the form prescribed by the department;
- (2) Payment of a hunting license fee or any other hunting related fee the board may require as provided in this chapter; and
- (3) Showing of a valid hunter education certificate or written exemption issued under section 183D-28.

The application shall require a statement under oath of the applicant’s name, address, domicile or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes.

(b) The hunting license fee shall be:

- (1) \$10 for any person who has resided in the State for one year or longer, or who is a member of the armed forces of the United States on active duty and the spouse and children thereof, or who elects to forgo the exemption provided in paragraph (3);
- (2) \$95 for all other persons; and
- (3) Free to all Hawaii residents sixty-five years of age or older and to all persons with Hansen’s disease who are residents of Kalaupapa, Molokai.

(c) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license if the department has received certification from the child support enforcement agency pursuant to section 576D-A that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, restore, or reinstate such a license only upon receipt of an authorization

from the child support enforcement agency, the office of child support hearings, or the family court.”

SECTION 11. Section 188-50, Hawaii Revised Statutes, is amended to read as follows:

**“§188-50 License; application; fees; restrictions.** (a) It is unlawful for any person, except children below nine years of age, to fish, take, or catch any introduced freshwater game fish without first obtaining a license. Children exempt by this section may fish, provided they are accompanied by a licensed person. The department of land and natural resources may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter and to set fees for freshwater game fish fishing.

(b) The licenses shall be issued by agents of the department of land and natural resources upon written application in such form as may be prescribed by the department together with payment of a fee. The application shall require a statement under oath of the applicant’s name, address, domicile or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes. All licenses shall expire and become void one year from the date of issuance, except the tourist license which shall expire and become void thirty days after the date of issuance; provided that no fees or charges shall be made for licenses issued to persons sixty-five years of age or<sup>1</sup> older. A duplicate license may be issued upon affidavit that the original license has been lost or destroyed and upon the payment of a duplicate license fee. The fees for licenses and duplicate licenses shall be established by the department by rules adopted in accordance with chapter 91. The department shall set the fees in an amount that, when combined with the fees provided for in sections 188-37 and 189-2, shall be reasonably necessary to supplement the funding for:

- (1) Enforcement of this chapter and section 189-2; and
- (2) The activities set forth in section 187A-11.

(c) No person to whom a license has been issued under this section shall permit any other person to carry, display, or use the license for any purpose. Every person to whom a license has been issued under this section shall show the license upon demand of any officer authorized to enforce the fishing laws of the State. No person shall refuse any officer the examination or inspection of any bag or container of any kind used to carry fish or any vehicle or conveyance used to transport fish.

The department, upon written application, may issue a permit to a club or group of minors, not less than five in number, for unlicensed fishing where such activity will be supervised by responsible adults. All adults accompanying the excursions, however, shall themselves be licensed. The application shall state the area to be visited, the dates for the excursion, the name of the organization or group, and shall be signed by an adult advisor of the group. The permits shall expire and become void thirty days after issuance. The department may determine other terms and conditions of the permits.

(d) Where a bag limit is specified for the catching of freshwater fish, each licensee may take only one bag per day. This restriction to one bag applies to each minor participating in unlicensed group excursions for which permits have been issued under this section. The catch of a child below the age of nine years shall be deemed part of the catch of the licensed adult accompanying the child.

(e) 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<sup>2</sup> expiration of one year from the date of revocation.

(f) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the department has received certification from the

child support enforcement agency pursuant to section 576D-A that the licensee or applicant is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, restore, or reinstate a license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court.”

SECTION 12. Section 286-102, Hawaii Revised Statutes, is amended to read as follows:

“**§286-102 Licensing.** (a) No person, except one exempted under section 286-105, one who holds an instruction permit under section 286-110, one who holds a commercial driver’s license issued under section 286-239, or a commercial driver’s license instruction permit issued under section 286-236, shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

(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<sup>3</sup> 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.

(c) No person shall receive a driver’s license without surrendering to the examiner of drivers all valid driver’s licenses in the person’s possession. All licenses so surrendered shall be returned to the issuing authority, together with information that the person is licensed in this State; provided that with the exception of driver’s licenses issued by any Canadian province, a foreign driver’s license may be returned to the owner after being invalidated pursuant to issuance of a Hawaii license; and provided further that the examiner of drivers shall notify the authority that issued the foreign license that the license has been invalidated and returned because the owner is now licensed in this State. No person shall be permitted to hold more than one valid driver’s license at any time.

(d) In addition to other qualifications and conditions by or pursuant to this part, the right of an individual to hold a motor vehicle operator’s license or permit issued by the county is subject to the requirements of section 576D-A.

Upon receipt of certification from the child support enforcement agency pursuant to section 576D-A that an obligor or individual who owns or operates a motor vehicle is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, the examiner of drivers shall suspend the license and right to operate motor vehicles and confiscate the license of the obligor. The examiner of drivers shall not reinstate an obligor’s or individual’s license until the child support enforcement agency, the office of child support hearings, or the family court issues an authorization that states the obligor or individual is in compliance with an order

of support or has complied with a subpoena or warrant relating to a paternity or child support hearing.

The licensing authority may adopt rules pursuant to chapter 91 to implement and enforce the requirements of this section.”

SECTION 13. Section 286-241.4, Hawaii Revised Statutes, is amended to read as follows:

**“§286-241.4 Authority of examiner of drivers to suspend, revoke, or cancel commercial driver’s license or permit.** (a) The examiner of drivers may suspend, revoke, or cancel any commercial driver’s license or permit without a hearing when the examiner of drivers has probable cause to believe that the licensee is disqualified under section 286-240(c) through (h). [Upon suspension, revocation, or cancellation of the commercial driver’s license or permit, the driver’s license or permit shall be surrendered to the examiner of drivers by the licensee or permittee.]

(b) The examiner of drivers shall deny or suspend any commercial driver’s license pursuant to the terms of 576D-A when the examiner of drivers receives certification from the child support enforcement agency that the licensee is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Both the licensee and the licensee’s employer shall be notified of the suspension.

(c) Upon suspension, revocation, or cancellation of the commercial driver’s license or permit, the driver’s license or permit shall be surrendered to the examiner of drivers by the licensee or permittee.

(d) Unless otherwise provided by law, the licensing authority shall reinstate, renew, or approve the license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court.”

SECTION 14. Section 286-241.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§286-241.5]] Notification and hearing.** When the examiner of drivers suspends, revokes, or cancels a commercial driver’s license or permit under section [286-241.4<sup>3</sup>] 286-241.4(a), the examiner of drivers shall immediately notify the licensee and afford the licensee an opportunity for a hearing.”

SECTION 15. Section 321-15, Hawaii Revised Statutes, is amended to read as follows:

**“§321-15 Annual registration; fees, failure to register.** (a) Every person holding a license to practice any occupation specified in section 321-13(a)(1) shall reregister with the department of health, in accordance with the rules of the department, before February 1 of each year and shall pay a reregistration fee. The failure, neglect, or refusal of any person holding such a license to reregister or pay the reregistration fee, after thirty days of delinquency, shall constitute a forfeiture of the person’s license; provided that the license shall be restored upon written application therefor together with a payment of all delinquent fees and an additional late reregistration fee that may be established by the director of health. All fees collected pursuant to this section shall be deposited into the environmental health program enhancement and education fund established under section 321-27.

(b) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the department has received certification from the

child support enforcement agency pursuant to the terms of section 576D-A that the licensee or applicant is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the department shall grant, renew, restore, or reinstate a license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court.”

SECTION 16. Section 321-393, Hawaii Revised Statutes, is amended to read as follows:

“[[§321-393]] License required. (a) Except as otherwise provided by law, no person, other than a physician, shall engage or hold themselves out as practicing midwifery without first obtaining and holding a valid license to do so in accordance with this part and any rules adopted by the department.

(b) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the department has received certification from the child support enforcement agency pursuant to section 576D-A that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, pursuant to the terms of section 576D-A. The department shall grant, renew, restore, or reinstate a license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court.”

SECTION 17. Section 338-11, Hawaii Revised Statutes, is amended to read as follows:

“§338-11 Form of certificates. The forms of certificates shall include as a minimum the items required by the respective standard certificates as recommended by the Public Health Service, National Center for Health Statistics, subject to approval of and modification by the department of health. In addition, the forms of death certificates shall require the individual’s social security number. The form and use of the certificates shall be subject to sections 338-16 to 338-18.”

SECTION 18. Section 353-22.8, Hawaii Revised Statutes, is amended to read as follows:

“[[§353-22.8]] Orders for payment of child support. The director of public safety shall comply with orders for payment of child support from inmate individual trust accounts to the child support enforcement agency pursuant to section 571-52, 571-52.2, 576D-B, or 576E-16 [and], this section[.], or chapter 576 or its successor. When the total of all new deposits and credits to the inmate’s individual trust account in a given month is less than or equal to \$15, no payment shall be made for child support that month out of the trust account. When the total of all new deposits and credits to the inmate’s individual trust account in a given month exceeds \$15, no more than thirty per cent of the total new deposit or credit to the individual’s trust account shall be paid for child support out of the account for that month.”

SECTION 19. Section 445-10, Hawaii Revised Statutes, is amended to read as follows:

“§445-10 Term of license. (a) Subject to section 445-5, all licenses issued for carrying on the several businesses[,] or doing the acts specified in this chapter



[enumerated,] shall be issued by the treasurer in accordance with the terms and conditions and for the fees specified in this chapter [enumerated], for the respective terms of one year from the several dates of issue.

(b) The treasurer shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the treasurer has received certification from the child support enforcement agency pursuant to the terms of section 576D-A that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the treasurer shall grant, reinstate, renew, or restore the license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court."

SECTION 20. Section 466J-8, Hawaii Revised Statutes, is amended to read as follows:

**"§466J-8 Denial, revocation, or suspension of license.** (a) The board shall have the power to deny, revoke, or suspend any license issued or applied for in accordance with this chapter, upon proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice as a radiographer or a radiation therapy technologist;
- (2) Is mentally incompetent;
- (3) Is guilty of unprofessional conduct; or
- (4) Has knowingly or repeatedly violated this chapter.

(b) Before denying, suspending, or revoking any license[,] pursuant to subsection (a), the board shall furnish the licensee a notice in writing as prescribed by section 91-9 and shall afford the licensee an opportunity to be heard in person and by or with counsel. Any order denying a license, or suspending or revoking a license shall be rendered not later than fifteen days after the hearing, and any aggrieved person may appeal the order as provided in chapter 91.

(c) The board shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the board has received certification from the child support enforcement agency pursuant to the terms of section 576D-A that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the board shall issue, renew, restore, or reinstate the license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court. Subsection (b) shall not apply to a license suspension pursuant to this subsection."

SECTION 21. Section 501-102, Hawaii Revised Statutes, is amended to read as follows:

**"§501-102 Filing liens, etc., notice.** Every conveyance, lien, attachment, order, decree, instrument, or entry affecting registered land, which would under existing laws, if recorded, filed, or entered in the bureau of conveyances, affect the real estate to which it relates, shall, if registered, filed or recorded, or entered in the office of the assistant registrar in the bureau of conveyances, be notice to all persons from the time of such registering, filing, recording, or entering. This section shall not be construed to relate to state or federal tax liens[,] or child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapters 231 [and], 505,<sup>4</sup> and 576D, respectively. The recordation of the child support order or judgment in the bureau of conveyances shall be deemed, at

such time, for all purposes and without any further action, to place a lien on land registered in the land court under this chapter.”

SECTION 22. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding section 571-52, the court [or the child support enforcement agency] shall order an assignment of future income when:

- (1) The court has ordered any person (hereinafter the “obligor”) to make periodic payments toward the support of a child pursuant to a court or administrative order, judgment, or decree;
- (2) The court or administrative order, judgment, or decree provides for an automatic assignment of the obligor’s income upon the obligor’s failure to timely pay any child support that the obligor is required to pay through the child support enforcement agency or directly to the obligee; and
- (3) The [child support enforcement agency] court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments which would become due over a one-month period under the order, judgment, or decree providing for child support [and notifies the court].

The order shall take effect without necessity of further action of the court [or child support enforcement agency], except when a hearing is requested under subsection (c).”

SECTION 23. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

“(c) The court or the clerk of the court [or the child support enforcement agency] shall provide the obligor written notice at least fourteen days in advance of entering an automatic income assignment and inform the obligor the automatic income assignment will issue on a certain date unless the obligor files with the court or the clerk of the court [or the child support enforcement agency, whichever provided the notice,] a written objection to the automatic assignment and a written request for a hearing. If the obligor files the written objection and the written request, the court or the clerk of the court [or the child support enforcement agency] shall not issue the automatic assignment of future income until a hearing is held and the matter resolved. The court [and the child support enforcement agency] shall establish and implement other notice procedures as may be necessary to adequately protect the obligor’s right to procedural due process.

(d) The order for automatic assignment shall operate as an assignment by the obligor to the child support enforcement agency and shall be binding upon any person who is or shall become obligated to the obligor for payment of income and who has been served with a [certified] copy of the assignment order. [The copy of the order may be certified by the court or the office of child support hearings as a true copy of the order.] The assignment shall be terminated when appropriate by the court or the clerk of the court or the child support enforcement agency; provided that payment of all overdue support shall not be the sole basis for terminating the assignment. In the event that the obligee retains private counsel or proceeds pro se, the obligee shall have primary responsibility for terminating the assignment. If the obligee fails to terminate the assignment when appropriate, the obligee shall reimburse the obligor to the extent of any overpayment. If the assignment is not terminated when appropriate, the obligor may seek reimbursement for any overpayment from the obligee or from the child support enforcement agency, to the extent

the overpayment was disbursed to the department of human services. The child support enforcement agency shall establish procedures by rule in accordance with chapter 91 for the prompt reimbursement for any overpayment to the obligor.

(e) An employer receiving an assignment order shall send the amounts withheld to the designated obligee or, if requested, to this State's child support enforcement agency within five working days after the obligor is paid. The employer shall begin withholding no later than the first pay period occurring within [fourteen] seven business days following the date a [certified] copy of the order is mailed to the employer. As used in this subsection, the term "business day" means a day on which the employer's office is open for regular business. The employer shall withhold funds as directed in the order, except that when an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (1) The employer's fee for processing an income assignment order;
- (2) The maximum amount permitted to be withheld from the obligor's income under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b));
- (3) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the order.

An employer who complies with an income assignment order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the order.

An employer who is required to withhold amounts from the income of more than one obligor may remit a sum total of the amounts in one check, with a listing of the amounts applicable to each obligor.

Within [five] two working days after receipt of the amounts withheld by the employer, the child support enforcement agency shall disburse those amounts to the obligee for the benefit of the child[.], except that the child support enforcement agency may delay the distribution of collections toward arrearages until the resolution of any timely request for a hearing with respect to such arrearages."

SECTION 24. Section 571-52.6, Hawaii Revised Statutes, is amended to read as follows:

**“[[§571-52.6]] Child support order, judgment, or decree; accident and sickness insurance coverage.** Each order, judgment, or decree under this chapter or chapter 576[,] or its successor, 580, or 584 ordering a person to pay child support shall include [a provision concerning] the following provisions:

- (1) Both the obligor and the obligee are required to file with the state case registry, through the child support enforcement agency, upon entry of the child support order and to update as appropriate, information on the identity and location of the party, including social security number, residential and mailing addresses, telephone number, driver's license number if different from social security number, and name, address, and telephone number of the party's employer; and
- (2) The liability of that person for accident and sickness insurance coverage when available at reasonable cost."

SECTION 25. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

**“§572-6 Application; license; limitations.** To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person’s full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages, if any, have been dissolved by death or dissolution. If all prior marriages have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent’s signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe.”

SECTION 26. Section 576D-1, Hawaii Revised Statutes, is amended as follows:

1. By adding six new definitions to be appropriately inserted and to read:

““Compliance with an order of support” means that an obligor:

- (1) Is not delinquent in payments in an amount equal to or greater than the sum of payments for current child support and spousal support when ordered in conjunction with child support for a three-month period with regard to driver’s licenses and recreational licenses and a six-month period with regard to professional and vocational licenses;
- (2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-A(d); or
- (3) Has obtained or maintained health insurance coverage as required by a child support order.

“License” means any license, certification, registration, or permit issued by a licensing authority for recreational purposes, or to conduct a trade or business, including a license to practice a profession or vocation, or a license to operate any motor vehicle, boat, airplane, or helicopter.

“Licensing authority” means any unit of the state or county government, including agencies, departments, boards, commissions, or authorities, or any other entity within the State or county authorized by statute to grant or deny licenses.

“Office” means the office of child support hearings established pursuant to chapter 576E.

“Order of support” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child

who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief. An order of support may include spousal support when ordered to be paid in conjunction with child support.

"Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or a former spouse who is living with a child or children for whom the individual also owes support."

2. By amending the definitions of the following to read:

"Debtor parent" means any person who is delinquent in payment of [court-ordered] child support payments or who owes a public assistance debt."

"Obligor" means [an absent parent<sup>5</sup>] a responsible parent by court or administrative order obligated to pay child support[.] or who is obligated by court order to pay spousal support in conjunction with child support."

SECTION 27. 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 for the purpose of locating absent and custodial parents;
- (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 parent is collecting unemployment compensation and, if so, to arrange, either through agreement with the parent or by bringing legal process, to have a portion of the compensation withheld, to fulfill the parent's 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[;] or its successor;
- (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 upon the agency being authorized to provide Title IV-D services, and shall include provisions on advance notice to the debtor parent whose information is being reported 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 enforce 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;
- (10) Establish and utilize procedures for periodic review and modification of child support orders in accordance with Title IV-D; [and]
- (11) Provide notice not less than once every three years to those parents subject to an order of support informing the parents of their right to request the agency to review and, if appropriate, adjust the order of support pursuant to the guidelines established under section 576D-7;
- (12) Establish and operate a state case registry which contains records of:
  - (A) Each case in which services are being provided by the agency under the state plan; and
  - (B) Each support order established or modified in the State on or after October 1, 1998.

Such records shall use standardized data elements for both parents, including but not limited to names, residential and mailing addresses, telephone numbers, driver's license numbers, names, addresses, and telephone number of the party's employer, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers, and contain such other information as required by the United States Secretary of the Department of Health and Human Services. In each case with respect to subparagraph (A) and where a support order has been established, the case record shall include the amount of monthly or other periodic support owed under the order, and other amounts, including but not limited to arrearages, due under the order, the amounts collected under the order, the birthdate of any child for whom the order requires the provision of support, and the amount of any lien imposed;

- (13) Perform other duties required under chapter \_\_\_\_\_, the Uniform Interstate Family Support Act; and
- (11) (14) Perform other duties required under Title IV-D.

(b) The procedures required under subsection (a)(5), (6), (7), (8), (9), and (10) shall be established by rule in accordance with chapter 91."

SECTION 28. 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, shall update the guidelines at least once every four years.

(d) The establishment of the guidelines or 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.

(e) The responsible or custodial parent for which child support has previously been ordered shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the child support enforcement agency for review and adjustment of the child support order more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances."

SECTION 29. Section 576D-10.5, Hawaii Revised Statutes, is amended to read as follows:

**"§576D-10.5 Liens.** (a) Whenever any obligor through judicial or administrative process in this State or any other state has been ordered to pay an allowance for the support, maintenance, or education of a child, or for the support and

maintenance of a spouse or former spouse in conjunction with child support, and the obligor becomes delinquent in those payments [in an amount equal to or greater than the sum of payments which would become due over a three-month period], a lien shall arise on the obligor's real and personal property and the obligor's real and personal property shall be subject to [lien and] foreclosure, distraint, seizure and sale, or order to withhold and deliver, which shall be executed in accordance with applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

(b) Whenever the dependents of the obligor receive public assistance moneys, the child support enforcement agency or its designated counsel may establish the public assistance debt through an appropriate judicial or administrative proceeding. Upon the establishment of the public assistance debt, it shall be subject to collection action, and the real and personal property of the obligor shall be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver[, which shall be executed in accordance with applicable state law].

(c) The child support order or judgment filed through judicial or administrative proceedings in this State or any other state shall be recorded in the bureau of conveyances [or filed in the office of the assistant registrar of the land court after filing in the office of the clerk of the circuit court]. The recordation of the order or judgment in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. The lien shall become effective immediately upon recordation of the child support order and shall attach to all interests in real or personal property then owned or subsequently acquired by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.

(d) No fee shall be charged the child support enforcement agency or its designated counsel for recording or filing of the liens provided for in this section or for the recording or filing of any releases requested in conjunction with the liens.

(e) Any lien provided for by this section shall take priority over any lien subsequently acquired or recorded except tax liens.

(f) The lien shall be enforceable by the child support enforcement agency or its designated counsel or by the obligee by suit in the appropriate court or by bringing an action in an administrative tribunal or shall be enforceable as a claim against the estate of the obligor[.] or by any lawful means of collection.

(g) The child support enforcement agency, its designated counsel or the obligee, where appropriate, shall issue certificates of release upon satisfaction of the lien. Certificates of release of any real property shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court. Recordation of the certificate of release shall be the responsibility of the obligor."

SECTION 30. Section 576D-11, Hawaii Revised Statutes, is amended to read as follows:

**"§576D-11 Staff.** The attorney general shall appoint, without regard to chapters 76 and 77, an administrator; an assistant administrator who shall serve as controller and whose duties shall include but not be limited to designing and implementing controls over all financial management systems, including electronic data processing systems, and developing an appropriate staffing plan; and a staff attorney to serve as the supervisor of the administrative process activities and staff. In addition, the attorney general shall appoint, pursuant to chapters 76 and 77, other personnel as may be required to discharge the functions of the child support enforcement agency. The staff attorney shall not be considered to be a deputy attorney general under chapter 28. [The attorney general shall commission child support enforcement investigators who shall have and may exercise all the powers



and authority of a police officer or a deputy sheriff to fulfill their official responsibilities; provided that persons so appointed and commissioned shall not carry firearms. The duties of the commissioned investigators shall be to locate absent parents, to establish paternity, and to obtain and enforce court orders of support. The child support enforcement agency shall have access, including automated inquiry access, to the records of any agency, board, commission, authority, court, or committee of the State or the counties notwithstanding any provisions for confidentiality, except that the child support enforcement agency shall be subject to the same restrictions on disclosure of the records as the originating agency pursuant to section 92F-19(b).]''

SECTION 31. Section 576D-12, Hawaii Revised Statutes, is amended to read as follows:

**“§576D-12 Protection of records; divulging confidential information prohibited; penalties.** (a) The agency and its agents shall keep such records as may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant for support services or recipient of public assistance shall be confidential. The use or disclosure of information concerning any applicant or recipient shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when their official duties are directly concerned with the administration and implementation of any child support enforcement plan or program approved by Title IV-A through D, or under Titles II, X, XIV, XVI, XIX, or XX of the Social Security Act, including but not limited to any legal counsel working on behalf of the agency;
- (2) Disclosure to the extent necessary to provide information to family support payors or payees or their authorized representatives regarding payments received by the agency and the status of their support accounts; provided that the information shall be disclosed to an authorized representative only if the request is accompanied by a written waiver of the payor or payee concerned;
- (3) Disclosure to consumer reporting agencies as provided in section 576D-6(a)(6);
- (4) Other agencies or persons connected with the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;
- (5) Employees acting within the scope and course of their employment with the department as may be approved by the agency; and
- (6) Purposes directly connected with any investigation, enforcement, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program in paragraph (1); and
- (7) Disclosure to the family court as may be deemed necessary by the family court for any case pending before a court or for purposes of implementation of section 571-51.5.

(b) Disclosure to any committee or legislative body (federal, state, or county) of any information that identifies by name and address any applicant or recipient shall be prohibited.

(c) The agency shall not disclose information relating to the location of one party to another party if the agency knows a protective order has been entered with respect to the other party. The agency shall not disclose information related to the location of one party to another if the agency has reason to believe that disclosure of the information may result in physical or emotional harm to the other party.

[(c)] (d) The agency shall adopt and enforce such rules as may be necessary to prevent improper acquisition or use of confidential information. Any information obtained pursuant to this section by officials, employees, or legal counsel working on behalf of the agency may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall be kept in confidential records or files, which shall not be subject to any other law permitting inspection of government records. The agency and its agents shall determine whether the inspection is in connection with the official duties or within the scope and course of employment.

[(d)] (e) The use of the records, and other communications of the agency or its agents by any other agency or department of the government to which they may be furnished, shall be limited to the purposes for which they are furnished.

[(e)] (f) Any person, including any person who is authorized by this section to obtain information, who, knowing the information obtained is from confidential records or files of the agency, intentionally discloses the information other than as authorized by law, or who intentionally or knowingly aids or abets in the inspection or disclosure of the applications or records by any person not authorized by this section to inspect such applications or records, shall be guilty of a misdemeanor, unless a greater penalty is otherwise provided by law.

[(f)] (g) Nothing in this section shall require the sealing of family court records or preclude the disclosure of information by the family court relating to any case pending before a court or for purposes of implementation of section 571-51.5.”

SECTION 32. Section 576E-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read:

““Compliance with an order of support” means that an obligor:

- (1) Is not delinquent in payments in an amount equal to or greater than the sum of payments which would become due for current child support, and spousal support when ordered in conjunction with child support, for a three-month period with regard to driver’s and recreational licenses and for a six-month period with regard to professional and vocational licenses;
- (2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-A(d); or
- (3) Has obtained or maintained health insurance coverage as required by a child support order.

“License” means any license, certification, registration, or permit issued by a licensing authority for recreational purposes, or to conduct a trade or business, including a license to practice a profession or vocation, or a license to operate any motor vehicle, boat, airplane, or helicopter.

“Licensing authority” means any unit of the State or county government, including agencies, departments, boards, commissions, or authorities, or any other entity within the State or county authorized by statute to grant or deny licenses.

“Order of support” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support,

health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief."

SECTION 33. Section 576E-2, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-2 Attorney general; powers.** Notwithstanding any other law to the contrary, the attorney general, through the agency and the office, shall have concurrent jurisdiction with the court in all proceedings in which a support obligation is established, modified, or enforced, including, but not limited to, proceedings under chapters 571, 580, 584, and 576, the Uniform Reciprocal Enforcement of Support Act[.] or its successor. The attorney general, through the agency and the office, may establish, modify, suspend, terminate, and enforce child support obligations and collect or enforce spousal support using the administrative process provided in this chapter on all cases for which the department has a responsibility under Title IV-D of the Social Security Act, including but not limited to welfare and nonwelfare cases in which the responsible parent is subject to the department's jurisdiction, regardless of the residence of the children for whom support is sought. These powers shall include, but not be limited to, the power to:

- (1) Conduct investigations into the ability of parties to pay support and into nonpayment of support;
- (2) Administer oaths, issue subpoenas, and require production of books, accounts, documents, and evidence;
- (3) Establish, modify, suspend, terminate, or enforce a child support order and to collect or enforce a spousal support order in conjunction with a child support order;
- (4) Determine that a party has not complied with a court or administrative order and make recommendations to the court or other agency with respect to contempt or other appropriate proceedings;
- (5) Establish arrearage;
- (6) Establish a public assistance debt under section 346-37.1;
- (7) Order and enforce assignment of future income under section 576E-16, [and] chapter 571[:], and section 576D-B;
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order issued by another state or foreign jurisdiction, except as modified or limited by this chapter; [and]
- (9) Determine that an obligor owes past-due support with respect to a child receiving assistance under a state program funded under Title IV-A of the Social Security Act, including Aid to Families with Dependent Children and Temporary Assistance to Needy Families and petition the court to issue an order that requires the obligor to pay such support in accordance with a plan approved by the court or, if the obligor is subject to such a plan and is not incapacitated, participate in work activities, as defined in 42 U.S.C. §607(d), as the court deems appropriate;
- (10) Order genetic testing pursuant to chapter 584 for the purpose of establishing paternity;
- (11) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order issued by another state or foreign jurisdiction, except as modified or limited by this chapter and chapter 576 or its successor; and
- [9] (12) Delegate the powers and authority described in this section to hearings officers and employees of the agency."

SECTION 34. Section 576E-4, Hawaii Revised Statutes is amended to read as follows:

“**§576E-4 Service.** (a) Service of the notice provided in section 576E-5 shall be by personal service or certified mail, return receipt requested. After initial service is effected, additional service upon a party shall be satisfied by regular mail to the party’s last known address.

(b) Service of the notice of hearing pursuant to the request for hearing under section 576E-6 of a party shall be satisfied by regular mail to the party’s address provided with the request for hearing, or if not provided, to the party’s last known address.

(c) In any child support enforcement proceedings subsequent to an order, upon a showing that diligent effort has been made to ascertain the location of a party, notice and service of process shall be presumed to be satisfied upon delivery of written notice to the most recent residential or employer address on file with the state case registry pursuant to section 571-52.6.”

SECTION 35. Section 576E-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In exercising the powers conferred upon the attorney general in section 576E-2, the hearings officers shall have the authority to conduct hearings and enter the following orders:

- (1) Child support orders which have the effect of modifying, suspending, terminating, or enforcing the child support provisions of orders of the family courts;
  - (2) Child support orders establishing, modifying, suspending, terminating, or enforcing child support obligations;
  - (3) Orders enforcing the collection of spousal support when child support is being established, modified, or enforced;
  - (4) Income withholding orders pursuant to section 576E-16;
  - (5) Automatic income assignment orders pursuant to [section] sections 571-52.2[;]and 576D-B;
  - (6) Interstate income withholding orders pursuant to [section 576E-16.5;] chapter 576 or its successor;
  - (7) State income tax refund setoff orders pursuant to section 231-54;
  - (8) Orders determining whether Aid to Families with Dependent Children pass through payments were properly distributed;
  - (9) Orders determining whether a party should be required to post bond in order to secure payment of past due support pursuant to section 576D-6;
  - (10) Medical insurance coverage orders; [and]
  - (11) Orders suspending or denying the granting, the renewal, the reinstatement, or the restoration of licenses or applications of an obligor or individual for noncompliance with an order of support or failure to comply with a subpoena or warrant relating to a paternity or child support proceeding, and authorizations allowing the reinstatement of suspended licenses or consideration of license applications pursuant to section 576D-A; and
- [ (11) (12) Orders in other child support areas as authorized by the attorney general.”

SECTION 36. Section 576E-11, Hawaii Revised Statutes, is amended to read as follows:

“§576E-11 Administrative orders; required findings. Every order entered pursuant to this chapter shall specify, where applicable, the following:

- (1) The amount of periodic support to be paid by a party with directions as to the manner of payment;
- (2) The amount of child support arrearage, if any, that has accrued under an existing court or administrative order;
- (3) The amount of public assistance debt, if any, accrued under section 346-37.1;
- (4) The amount of the periodic payment to be made in liquidation of such public assistance debt, if any, or child support arrearage, if any;
- (5) A statement that a party's taxes shall be set off against the amount of such public assistance debt, if any, or child support arrearage, if any;
- (6) The extent of the party's responsibility to provide medical insurance coverage for the dependent child involved in the case, or otherwise to pay the reasonable and necessary medical expenses of the dependent child;
- (7) The name and birth date of the dependent child;
- (8) A statement that the property of the party is subject to collection action, including but not limited to, withholding of income, unemployment compensation, workers' compensation, and retirement benefits, seizure of property, disclosure of information relating to the party's debts to consumer credit reporting agencies, and federal and state tax refund setoff;
- (9) A statement that violations of the administrative order are punishable as contempt of court; [and]
- (10) A statement notifying the parties of the right to judicial review of administrative orders, and the procedure for obtaining such review[.]; and
- (11) Identifying information for each party, including social security number, residential and mailing addresses, telephone number, driver's license number if different from the social security number, and name, address, and telephone number of the party's employer, unless there is a finding that such disclosure of information would unreasonably put at risk the health, safety, or liberty of a party or child.”

SECTION 37. 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 a review of the order and, if appropriate, shall commence administrative proceedings pursuant to sections 576E-5 through 576E-9. The need to provide for the child's health care needs through health insurance or other means shall be a basis for the agency to commence administrative proceedings pursuant to section 576E-5.

(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 establishment of the guidelines or 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) The responsible parent or custodial parent shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the child support enforcement agency for review and adjustment of child support more than once in any three-year period if the second or subsequent request is supported by proof of a substantial or material change of circumstances.

[(d)] (e) 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.

[(e)] (f) In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, at least three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency upon the child reaching the age of nineteen years. In addition, if applicable, the agency or hearings officer may issue an order terminating existing assignments against the responsible parent's income and income assignment orders."

SECTION 38. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The income withholding order issued pursuant to subsection (a) or section 576D-B shall be effective immediately after service upon an employer of a [true] copy of the order, which service may be effected by certified or registered mail [or], by personal delivery[.], or by transmission through electronic means. Thereafter, the employer shall for each pay period, withhold from the income due to the responsible parent from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the designated obligee, or upon request, to the child support enforcement agency of this State, as much as may remain payable to the responsible parent for such pay period up to the amount specified in the order as being payable during the same period. The employer shall immediately inform the agency of any change that would affect the income withholding order or the disbursement thereof.

(c) Compliance by an employer with the income withholding order issued pursuant to subsection (a) or section 576D-B shall operate as a discharge of the employer's liability to the responsible parent for that portion of the responsible parent's earnings withheld and transmitted to the agency, whether or not the employer has withheld the correct amount. For each payment made pursuant to an income withholding order, the employer may deduct and retain as an administrative

fee an additional amount of \$2 from the income owed to the responsible parent. The total amount withheld from the obligor's income, including the administrative fee, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)). Any income withholding order shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, and shall not be subject to the exemptions or restrictions contained in part III of chapter 651 and in chapters 652 and 653. An employer who fails to comply with an income withholding order under this section or section 576D-B shall be liable to the obligee or the agency for the full amount of all sums ordered to be withheld and transmitted. An employer receiving an income withholding order shall transmit amounts withheld to the agency within five working days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing within [fourteen] seven business days following the date a copy is mailed to the employer.

As used in this subsection, the term "business day" means a day on which the employer's office is open for regular business. The employer shall withhold funds as directed in the order, except that when an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (1) The employer's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b));
- (3) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the order.

An employer who is required to withhold amounts from the income of more than one employee may remit to the agency a sum total of all such amounts in one check with a listing of the amounts applicable to each employee.

Within [five] two working days after receipt of the amounts withheld by the employer, the agency shall disburse the amounts to the obligee for the benefit of the child[,], except that the agency may delay the distribution of collections toward arrearages until the resolution of any timely requested hearing with respect to such arrearages."

SECTION 39. Section 576E-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Where the responsible parent is ordered [pursuant to section 576E-11(5)] to provide medical insurance coverage for the dependent child, the agency shall[, in addition to any income withholding order issued pursuant to section 576E-16,] forward a copy of the support order, by registered or certified mail or by personal service, to the responsible parent's employer or union when the responsible parent fails to provide written proof to the agency, within thirty days of receipt of the order, that the insurance has been obtained or that application for insurance coverage has been made.”

SECTION 40. Section 580-47, Hawaii Revised Statutes, is amended to read as follows:

**“§580-47 Support orders; division of property.** (a) Upon granting a divorce, or thereafter if, in addition to the powers granted in subsections (c) and (d), jurisdiction of those matters is reserved under the decree by agreement of both parties or by order of court after finding that good cause exists, the court may make any further orders as shall appear just and equitable (1) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties; (2) compelling either party to provide for the support and maintenance of the other party; (3) finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate; and (4) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether community, joint, or separate, and the attorney’s fees, costs, and expenses incurred by each party by reason of the divorce. In making these further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case. In establishing the amounts of child support, the court shall use the guidelines established under section 576D-7. Provision may be made for the support, maintenance, and education of an adult or minor child and for the support, maintenance, and education of an incompetent adult child whether or not the petition is made before or after the child has attained the age of majority. In those cases where child support payments are to continue due to the adult child’s pursuance of education, the agency, three months prior to the adult child’s nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child’s nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent’s income and income assignment orders.

In addition to any other relevant factors considered, the court, in ordering spousal support and maintenance, shall consider the following factors:

- (1) Financial resources of the parties;
- (2) Ability of the party seeking support and maintenance to meet his or her needs independently;
- (3) Duration of the marriage;
- (4) Standard of living established during the marriage;
- (5) Age of the parties;
- (6) Physical and emotional condition of the parties;
- (7) Usual occupation of the parties during the marriage;
- (8) Vocational skills and employability of the party seeking support and maintenance;
- (9) Needs of the parties;
- (10) Custodial and child support responsibilities;
- (11) Ability of the party from whom support and maintenance is sought to meet his or her own needs while meeting the needs of the party seeking support and maintenance;



- (12) Other factors which measure the financial condition in which the parties will be left as the result of the action under which the determination of maintenance is made; and
- (13) Probable duration of the need of the party seeking support and maintenance.

The court may order support and maintenance to a party for an indefinite period or until further order of the court; provided that in the event the court determines that support and maintenance shall be ordered for a specific duration wholly or partly based on competent evidence as to the amount of time which will be required for the party seeking support and maintenance to secure adequate training, education, skills, or other qualifications necessary to qualify for appropriate employment, whether intended to qualify the party for a new occupation, update or expand existing qualification, or otherwise enable or enhance the employability of the party, the court shall order support and maintenance for a period sufficient to allow completion of the training, education, skills, or other activity, and shall allow, in addition, sufficient time for the party to secure appropriate employment.

(b) An order as to the custody, management, and division of property and as to the payment of debts and the attorney's fees, costs and expenses incurred in the divorce shall be final and conclusive as to both parties subject only to appeal as in civil cases. The court shall at all times, including during the pendency of any appeal, have the power to grant any and all orders that may be necessary to protect and provide for the support and maintenance of the parties and any children of the parties to secure justice, to compel either party to advance reasonable amounts for the expenses of the appeal including attorney's fees to be incurred by the other party, and to amend and revise such orders from time to time.

(c) No order entered under the authority of subsection (a) 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 establishment of the guidelines or 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 need to provide for the child's health care needs through health insurance or other means shall be a basis for petitioning for a modification 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, 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 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.

(e) The responsible parent or the custodial parent shall have a right to petition the family court or the child support enforcement agency not more than once every three years for review and adjustment of the child support order without having to show a change in circumstances. The responsible or custodial parent shall not be precluded from petitioning the family court or the child support enforcement agency for review and adjustment more than once in any three-year period if the second or

subsequent request is supported by proof of a substantial or material change of circumstances.

[(e)] (f) Attorney’s fees and costs. The court hearing any motion for orders either revising an order for the custody, support, maintenance, and education of the children of the parties, or an order for the support and maintenance of one party by the other, or a motion for an order to enforce any such order or any order made under subsection (a) of this section, may make such orders requiring either party to pay or contribute to the payment of the attorney’s fees, costs, and expenses of the other party relating to such motion and hearing as shall appear just and equitable after consideration of the respective merits of the parties, the relative abilities of the parties, the economic condition of each party at the time of the hearing, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case.”

SECTION 41. Section 584-3.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§584-3.5]]~~ **Expedited process of paternity.** (a) To expedite the establishment of paternity, each public and private birthing hospital or center and the department of health shall provide unwed parents the opportunity to voluntarily acknowledge the paternity of a child during the period immediately prior to or following the child’s birth. The voluntary acknowledgment of paternity shall be in writing and shall consist of a single form signed under oath by both the natural mother and the natural father~~[. Designated]~~ and signed by a witness. The voluntary acknowledgment of paternity form shall include the Social Security number of each parent. Prior to the signing of the voluntary acknowledgment of paternity form, designated staff members of such facilities shall provide to both the mother and the alleged father, if he is present at the facility:

- (1) Written materials regarding paternity establishment;
- (2) Forms necessary to voluntarily acknowledge paternity;
- (3) [A] Oral and written [description] descriptions of the alternatives to, the legal consequences of, and the rights and responsibilities of acknowledging paternity[;], including, if one parent is a minor, any right afforded due to minority status; and
- (4) The opportunity to speak with staff who are trained to provide information and answer questions about paternity establishment.

The completed voluntary acknowledgment forms shall clearly identify the name and position of the staff member who provides information and answers questions of the parents regarding paternity establishment. The provision by designated staff members of the facility of the information required by this section shall not constitute the unauthorized practice of law. Each facility shall send to the department of health the original acknowledgment of paternity containing the Social Security numbers, if available, of both parents, with the information required by the department of health so that the birth certificate issued includes the name of the legal father of the child, which shall be promptly recorded by the department of health.

- (b) The child support enforcement agency shall:
  - (1) Provide to any person or facility the necessary:
    - (A) Materials and forms and a written description of the rights and responsibilities related to voluntary acknowledgment of paternity; and
    - (B) Training, guidance, and written instructions regarding voluntary acknowledgment of paternity;
  - (2) Annually assess each facility’s paternity establishment program; and

- (3) Determine if a voluntary acknowledgment has been filed with the department of health whenever it receives an application for paternity establishment services.

(c) Notwithstanding sections 338-17.7 and 338-18(b), the department of health shall disclose to the child support enforcement agency, upon request, all voluntary acknowledgment of paternity forms on file with the department of health.

[(c)] (d) As used in this section:

“Agency” means the child support enforcement agency.

“Birthing center” means any facility outside a hospital that provides maternity services.

“Birthing hospital” means any hospital with licensed obstetric-care units, any hospital licensed to provide obstetric services, or any licensed birthing center associated with a hospital.

“Facility” means a birthing hospital or a birthing center.

(e) The signed voluntary acknowledgment of paternity shall constitute a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment:

(1) Within sixty days of signature; or

(2) Before the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order to which the signatory is a party,

whichever is sooner.

(f) Following the sixty-day period referred to in subsection (e), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger. The legal responsibilities of any signatory arising from the acknowledgment, including child support obligations, shall not be suspended during the challenge, except for good cause shown.

(g) The courts and office of child support hearings of this State shall give full faith and credit to affidavits for the voluntary acknowledgment of paternity signed in any other state and these affidavits shall constitute legal findings of paternity subject to subsections (e) and (f).

(h) Judicial and administrative proceedings shall not be required or permitted to ratify an unchallenged acknowledgment of paternity.”

SECTION 42. Section 584-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A man is presumed to be the natural father of a child if:

- (1) He and the child’s natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

- (2) Before the child’s birth, he and the child’s natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

- (A) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or

- (B) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;
- (3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
  - (A) He has acknowledged his paternity of the child in writing filed with the department of health;
  - (B) With his consent, he is named as the child's father on the child's birth certificate; or
  - (C) He is obligated to support the child under a written voluntary promise or by court order;
- (4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child;
- (5) Pursuant to section 584-11, he submits to court ordered genetic testing and the results, as stated in a report prepared by the testing laboratory, do not exclude the possibility of his paternity of the child; provided the testing used has a power of exclusion greater than 99.0 per cent and a minimum combined paternity index of five hundred to one; or
- (6) [He files with the department of health:
  - (A)] A voluntary, written acknowledgment of paternity of the child<sup>3</sup> signed by him under oath[; and] is filed with the department of health.
  - [(B) A voluntary, written acknowledgment of paternity of the child, signed by the natural mother under oath.]

The department of health shall prepare a new certificate of birth for the child in accordance with section 338-21. The voluntary acknowledgment of paternity by the presumed father filed with the department of health pursuant to this paragraph shall be the basis for establishing and enforcing a support obligation through a judicial proceeding. [This subsection shall not preclude the presumed father from subsequently filing a motion objecting to the voluntary acknowledgment of paternity. The motion shall state the factual basis for placing the issue of paternity before the court.]”

SECTION 43. Section 584-11, Hawaii Revised Statutes, is amended to read as follows:

**“§584-11 Genetic tests.** (a) The court may, and upon request of a party, shall, require the child, mother, or alleged father to submit to genetic tests, including blood tests. If the requesting party is the mother or the alleged father, the court shall require that the request be made pursuant to a sworn statement. The sworn statement made by the party must either:

- (1) Allege paternity setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or
- (2) Deny paternity setting forth facts establishing a reasonable possibility of the non-existence of sexual contact between the parties. The testing utilized must have a power of exclusion greater than ninety-nine point zero per cent (99.0%) and a minimum combined paternity index of five hundred to one, and shall be performed by an expert qualified as an examiner of genetic markers, appointed by the court. The laboratory performing the testing shall be one approved by an accreditation body designated by the United States Secretary of Health and Human Services.

(b) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of genetic markers.

(c) In all cases, the court shall determine the number and qualifications of the experts.

(d) “Genetic test” means the testing of inherited or genetic characteristics (genetic markers) and includes blood testing for paternity purposes.

(e) In any trial brought under this chapter, a report of the facts and results of genetic tests ordered by the court under this chapter shall be admissible in evidence by affidavit of the person whose name is signed to the report, attesting to the procedures followed in obtaining the report. A report of the facts and results of genetic tests shall be admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made. The genetic testing performed shall be of a type generally acknowledged as reliable by accreditation bodies designated by the United States Secretary of Health and Human Services. An alleged parent or party to the paternity action who objects to the admission of the report concerning the genetic test results must file a motion no later than twenty days after receiving a copy of the report and shall show good cause as to why a witness is necessary to lay the foundation for the admission of the report as evidence. The court may, sua sponte, or at a hearing on the motion determine whether a witness shall be required to lay the foundation for the admission of the report as evidence. The right to call witnesses to rebut the report is reserved to all parties.

(f) Should an original test result be contested, the court shall order further genetic testing with payment of the testing to be advanced and paid for by the contesting party.”

SECTION 44. Section 584-16, Hawaii Revised Statutes, is amended to read as follows:

**“§584-16 Costs.** The court may order reasonable fees of counsel, experts, and the child’s guardian ad litem, and other costs of the action and pre-trial proceedings, including genetic tests, subject to the provisions of section 584-11(f), to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the State, or such person as the court shall direct.”

SECTION 45. Section 584-18, Hawaii Revised Statutes, is amended to read as follows:

**“§584-18 Modification of judgment or order.** (a) The court shall have continuing jurisdiction to modify or revoke a judgment or order:

- (1) For future education and support; and
- (2) With respect to matters listed in section 584-15(c) and (d) and section 584-17(b), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 584-15(d) may specify that the judgment or order may not be modified or revoked.

(b) In those cases where child support payments are to continue due to the adult child’s pursuance of education, the child support enforcement agency, three months prior to the adult child’s nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child, to the child support enforcement agency, prior to the child’s nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and

plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent's income and income assignment orders.

(c) The need to provide for the child's health care needs through health insurance or other means shall be a basis for petitioning for a modification of the support order."

SECTION 46. Section 605-1, Hawaii Revised Statutes, is amended to read as follows:

**"§605-1 Attorneys, qualifications.** (a) The supreme court may examine, admit, and reinstate as practitioners in the courts of the State, such persons as it may find qualified for that purpose, who have taken the prescribed oath of office. The supreme court shall have the sole power to revoke or suspend the license of any such practitioner.

(b) In order to be licensed by the supreme court, a person shall be of good moral character, and shall satisfy such residence and other requirements as the supreme court may prescribe.

(c) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with an order of support as defined in section 576D-1 and has not failed to comply with a subpoena or warrant relating to a paternity or child support hearing."

SECTION 47. Section 576E-16.5, Hawaii Revised Statutes, is repealed.

SECTION 48. In codifying the new sections added by section 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 49. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>6</sup>

SECTION 50. This Act shall take effect upon its approval.

(Approved June 21, 1997.)

Notes

1. Prior to amendment "and" appeared here.
2. Prior to amendment "the" appeared here.
3. Prior to amendment "," appeared here.
4. Comma should not be underscored.
5. Prior to amendment "obligated by" appeared here.
6. Edited pursuant to HRS §23G-16.5.

## ACT 294

S.B. NO. 1267

A Bill for an Act Relating to Child Support Enforcement.

*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- Judgments for support.** Every judgment for child support, including a judgment for reimbursement or other arrears, shall be presumed to be paid and discharged on the thirty-third birthday of the child for which the order of support was rendered or by the expiration of the latest period provided in section 657-5, whichever date is later.”

SECTION 2. Section 576D-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The establishment of the guidelines or 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. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

SECTION 3. Section 576D-10, Hawaii Revised Statutes, is amended to read as follows:

“**§576D-10 Collection and disbursement of child support; direct payment exception.** (a) The agency shall collect and disburse child support payments when [a court] an order requires the collection and disbursement. Notwithstanding any other law to the contrary, the agency shall maintain a special interest bearing account for child support payments. Moneys collected by the agency for child support payments shall not be deposited into the state treasury, but shall be deposited into this account. Moneys to be disbursed by the agency for child support payments shall be disbursed from this account without appropriation or allotment. The interest realized from this account shall be used for related costs of the maintenance and operation of the account and the balance shall be deposited into the state treasury to the credit of the general fund.

(b) Any child support payments required by a court order effective on June 30, 1986, to be made to a court or clerk of the court and disbursed to a custodial parent shall be made to the agency after June 30, 1986. The agency shall disburse the payments as appropriate under the court order.

(c) At the time a child support obligation is first established or at any time thereafter, the court may approve an alternative arrangement for the direct payment of child support from the obligor to the custodial parent as an exception to the provisions for income withholding through the agency, as required by sections 571-52.2(a)(1), 571-52.3, and 576E-16(a).

(d) The court may approve an alternative arrangement for the direct payment of child support where either:

- (1) The obligor or custodial parent demonstrates and the court finds that there is good cause not to require immediate withholding; or

- (2) A written agreement is reached between the obligor and the custodial parent and signed by both parties;

provided that in either case where child support has been ordered previously, an alternative arrangement for direct payment shall be approved only where the obligor provides proof of the timely payment of previously ordered support. For purposes of this section, good cause to approve an alternative arrangement shall be based upon a determination by the court, either in writing or on the record, that implementing income withholding would not be in the best interests of the child. Such a determination shall include a statement setting forth the basis of the court's conclusion.

(e) Any alternative arrangement for direct payment shall provide that either parent may void the arrangement at any time and apply for services from the agency to act as agent to receive payments from the obligor parent. The alternative arrangement for direct payment also shall provide that, if the subject dependents of the obligor parent commence receiving public assistance, including but not limited to public assistance from the department of human services under chapter 346, [Hawaii Revised Statutes,] foster care under section 571-48, [Hawaii Revised Statutes,] Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or if either parent applies for services from the [child support enforcement] agency, the agency may immediately void the direct payment arrangement by sending written notice by regular mail to the custodial and obligor parents at their last known addresses, as disclosed in the alternative arrangement agreement.

(f) The alternative arrangement for direct payment agreement shall include the most recent addresses of the custodial and obligor parent. If the obligor parent alleges direct payment of child support to the custodial parent after the subject dependents of the court-approved alternative arrangement become recipients of public assistance, including but not limited to public assistance from the department of human services under chapter 346, [Hawaii Revised Statutes,] foster care under section 571-48, [Hawaii Revised Statutes,] Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or after the custodial parent applies for services from the agency, and after receiving proper notification of the change of payee to the [child support enforcement] agency, then the obligor shall have the burden of proving that the child support payments were made by presenting written evidence, including but not limited to cancelled checks or receipts.

(g) No alternative arrangement for direct payment shall be approved where the obligor or the custodial parent is receiving services under Title IV-D or where the dependents of the obligor receive public assistance, including but not limited to public assistance from the department of human services under chapter 346, foster care under section 571-48, [Hawaii Revised Statutes,] Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or where the obligor owes a public assistance debt.

(h) Any alternative arrangement for direct payment shall pertain only to the method of payment of child support. The amount of child support shall be determined according to the child support guidelines pursuant to section 576D-7 and section 576E-15.

(i) The alternative arrangement for direct payment shall become effective upon approval and filing by the court. For any order approved pursuant to this section on or after October 1, 1998, each party must send a certified copy of the order to the state case registry established under section 576D-6.

(j) The agency shall not be required to maintain records while an order obtained pursuant to this section is in effect, except for any payments received and disbursed by the agency."

SECTION 4. Section 576E-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:



“(c) The establishment of the guidelines or 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. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

SECTION 5. Section 580-47, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No order entered under the authority of subsection (a) 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] the support, maintenance, and education. The establishment of the guidelines or 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. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

SECTION 6. Section 584-9 of the 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 natural mother, each man presumed to be the father under section 584-4, [and] each man alleged to be the natural father, and the child support enforcement agency, if public assistance moneys are or have been paid for the support of the subject child, 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 the natural mother or a man alleged or presumed to be the father of the child is a minor, the court shall also cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the legal parent or guardian who has physical custody of the minor. The court may appoint a guardian ad litem to represent the minor in the proceedings. If the legal parent 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, upon request of the child support enforcement agency, 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 576D, if an application for services is made.] child support

enforcement agency. Fees may be charged of the applicant for child support enforcement agency's services as provided for by chapter 576D.”

SECTION 7. Section 584-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Upon neglect or refusal to give [such] this security, or upon default of the father or [his] the father's surety in compliance with the terms of the judgment, the court may order the forfeiture of any such security and the application of the proceeds thereof toward the payment of any sums due under the terms of the judgment and may also sequester the father's personal estate, and the rents and profits of [his] the father's real estate, and may appoint a receiver thereof, and may cause the father's personal estate, including any salaries, wages, commissions, or other moneys owed to him and the rents and profits of his real estate, to be applied toward the meeting of the terms of the judgment, to the extent that the court, from time to time, deems just and reasonable. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement[.], including but not limited to medical insurance premiums, such as for MedQuest, which cover the periods of pregnancy, childbirth, and confinement. The court may further order the noncustodial parent to reimburse the custodial parent, the child, or any public agency for reasonable expenses incurred prior to entry of judgment, including support, maintenance, education, and funeral expenses expended for the benefit of the child.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 21, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 295**

S.B. NO. 1268

A Bill for an Act Relating to the Uniform Interstate Family Support Act.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM INTERSTATE FAMILY SUPPORT ACT**

**ARTICLE 1  
GENERAL PROVISIONS**

§ -101 **Definitions.** In this chapter:

“Child” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

“Child support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

“Duty of support” means an obligation imposed or imposed by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

“Home state” means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

“Income” includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State.

“Income withholding order” means an order or other legal process directed to an obligor’s employer as defined by sections 571-52, 571-52.2, and 571-52.3, to withhold support from the income of the obligor.

“Initiating state” means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

“Initiating tribunal” means the authorized tribunal in an initiating state.

“Issuing state” means the state in which a tribunal issues a support order or renders a judgment determining parentage.

“Issuing tribunal” means the tribunal that issues a support order or renders a judgment determining parentage.

“Law” includes decisional and statutory law and rules and regulations having the force of law.

“Obligee” means:

- (1) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
- (2) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
- (3) An individual seeking a judgment determining parentage of the individual’s child.

“Obligor” means an individual, or the estate of a decedent:

- (1) Who owes or is alleged to owe a duty of support;
- (2) Who is alleged but has not been adjudicated to be a parent of a child; or
- (3) Who is liable under a support order.

“Register” means to file a support order or judgment determining parentage in the family court of this State.

“Registering tribunal” means a tribunal in which a support order is registered. The child support enforcement agency of this State shall be deemed the registering tribunal for the receipt and processing of all registration requested by another child support enforcement agency or an individual who has applied for child support enforcement agency services, and the child support enforcement agency of

this State shall register the request in the appropriate tribunal. The family court shall be the registering tribunal for all other requests for registration.

“Responding state” means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

“Responding tribunal” means the authorized tribunal in a responding state.

“Spousal support order” means a support order for a spouse or former spouse of the obligor.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

- (1) An Indian tribe; and
- (2) A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.

“Support enforcement agency” means a public official or agency authorized to seek:

- (1) Enforcement of support orders or laws relating to the duty of support pursuant to chapters 576D and 576E;
- (2) Establishment or modification of child support pursuant to chapters 346, 576D, 576E, 580, and 584;
- (3) Determination of parentage pursuant to chapter 584; or
- (4) Location of obligors or their assets.

“Support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney’s fees, and other relief.

“Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

§ -102 **Tribunals of State.** The family court, the child support enforcement agency as defined by the registering tribunal in section -101, and the office of child support hearings are the tribunals of this State.

§ -103 **Remedies cumulative.** Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

## ARTICLE 2 JURISDICTION

### PART I. EXTENDED PERSONAL JURISDICTION

§ -201 **Bases for jurisdiction over nonresident.** In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual’s guardian or conservator if:

- (1) The individual is personally served with summons or notice within this State;

- (2) The individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in this State;
- (4) The individual resided in this State and provided prenatal expenses or support for the child;
- (5) The child resides in this State as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in the office of health status monitoring maintained in this State by the department of health; or
- (8) There is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

§ **-202 Procedure when exercising jurisdiction over nonresident.** A tribunal of this State exercising personal jurisdiction over a nonresident under section -201 may apply section -316 (Special rules of evidence and procedure) to receive evidence from another state, and section -318 (Assistance with discovery) to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 shall not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this chapter.

## PART II. PROCEEDINGS INVOLVING TWO OR MORE STATES

§ **-203 Initiating and responding tribunal of State.** Under this chapter, a tribunal of this State may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

§ **-204 Simultaneous proceedings in another state.** (a) A tribunal of this State may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed in this State after a pleading is filed in another state only if:

- (1) The petition or comparable pleading in this State is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
- (2) The contesting party timely challenges the exercise of jurisdiction in the other state; and
- (3) If relevant, this State is the home state of the child.

(b) A tribunal of this State may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed in this State before a petition or comparable pleading is filed in another state if:

- (1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State;
- (2) The contesting party timely challenges the exercise of jurisdiction in this State; and
- (3) If relevant, the other state is the home state of the child.

§ **-205 Continuing, exclusive jurisdiction.** (a) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a child support order:

- (1) As long as this State remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
  - (2) Until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.
- (b) A tribunal of this State issuing a child support order consistent with the law of this State may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter.
- (c) If a child support order of this State is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:
- (1) Enforce the order that was modified as to amounts accruing before the modification;
  - (2) Enforce nonmodifiable aspects of that order; and
  - (3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.
- (d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this chapter or a law substantially similar to this chapter.
- (e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.
- (f) A tribunal of this State issuing a support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

**§ -206 Enforcement and modification of support order by tribunal having continuing jurisdiction.** (a) A tribunal of this State may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this State that has continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section -316 (Special rules of evidence and procedure) to receive evidence from another state and section -318 (Assistance with discovery) to obtain discovery through a tribunal of another state.

(c) A tribunal of this State which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

### **PART III. RECONCILIATION OF MULTIPLE ORDERS**

**§ -207 Recognition of controlling child support orders.** (a) If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this State or another state with regard to the same obligor and child, a tribunal of this State shall apply the following rules

in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

- (1) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.
- (2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.
- (3) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this State having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this State, a party may request a tribunal of this State to determine which order controls and must be so recognized under subsection (b). The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) is the tribunal that has continuing, exclusive jurisdiction under section -205.

(e) A tribunal of this State which determines by order the identity of the controlling order under subsection (b)(1) or (2) or which issues a new controlling order under subsection (b)(3) shall state in that order the basis upon which the tribunal made its determination.

(f) Within thirty days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

**§ -208 Multiple child support orders for two or more obligees.** In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this State shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this State.

**§ -209 Credit for payments.** Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State.

### ARTICLE 3 CIVIL PROVISIONS OF GENERAL APPLICATION

**§ -301 Proceedings under this chapter.** (a) Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

(b) This chapter provides for the following proceedings:

- (1) Establishment of an order for spousal support or child support pursuant to Article 4;

- (2) Enforcement of a support order and income withholding order of another state without registration pursuant to Article 5;
- (3) Registration of an order for spousal support or child support of another state for enforcement pursuant to Article 6;
- (4) Modification of an order for child support or spousal support issued by a tribunal of this State pursuant to Article 2, part 2;
- (5) Registration of an order for child support of another state for modification pursuant to Article 6;
- (6) Determination of parentage pursuant to Article 7; and
- (7) Assertion of jurisdiction over nonresidents pursuant to Article 2, part 1.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

§ **-302 Action by minor parent.** A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

§ **-303 Application of law of State.** Except as otherwise provided by this chapter, a responding tribunal of this State:

- (1) Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and
- (2) Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this State.

§ **-304 Duties of initiating tribunal.**<sup>1</sup> Upon the filing of a petition authorized by this chapter, an initiating tribunal of this State shall forward three copies of the petition and its accompanying documents:

- (1) To the responding tribunal or appropriate support enforcement agency in the responding state; or
- (2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this chapter or a law or procedure substantially similar to this chapter, a tribunal of this State may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

§ **-305 Duties and powers of responding tribunal.** (a) When a responding tribunal of this State receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section -301(c) (Proceedings under this chapter), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this State, to the extent otherwise authorized by law, may do one or more of the following:

- (1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;



- (2) Order an obligor to comply with a child support order, specifying the amount and the manner of compliance;
- (3) Order income withholding;
- (4) Determine the amount of any arrearages, and specify a method of payment;
- (5) Enforce orders by civil or criminal contempt, or both;
- (6) Set aside property for satisfaction of the support order;
- (7) Place liens and order execution on the obligor's property;
- (8) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
- (9) Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
- (10) Order the obligor to seek appropriate employment by specified methods;
- (11) Award reasonable attorney's fees and other fees and costs; and
- (12) Grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the child support order is based.

(d) A responding tribunal of this State may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this State issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

**§ -306 Inappropriate tribunal.** If a petition or comparable pleading is received by an inappropriate tribunal of this State, that tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another state and notify the petitioner where and when the pleading was sent.

**§ -307 Duties of support enforcement agency.** (a) The child support enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

- (1) Take all steps necessary to enable an appropriate tribunal in this State or another state to obtain jurisdiction over the respondent and to process all registration requests received from an individual who has applied for child support enforcement agency services or support enforcement agencies in other jurisdictions;
- (2) Request an appropriate tribunal to set a date, time, and place for a hearing;
- (3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
- (4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;
- (5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

§ -308 **Duty of attorney general.** If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

§ -309 **Private counsel.** An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

§ -310 **Duties of child support enforcement agency as state information agency.** (a) The child support enforcement agency is the state information agency under this chapter.

(b) The state information agency shall:

- (1) Compile and maintain a current list, including addresses, of the tribunals in this State which have jurisdiction under this chapter and any support enforcement agencies in this State and transmit a copy to the state information agency of every other state;
- (2) Maintain a register of tribunals and support enforcement agencies received from other states;
- (3) Forward to the appropriate tribunal in the place in this State in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal, an individual, or the state information agency of the initiating state; and
- (4) Obtain information concerning the location of the obligor and the obligor's property within this State not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

§ -311 **Pleadings and accompanying documents.** (a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under section -312 (Nondisclosure of information in exceptional circumstances), the petition or accompanying documents must provide, so far as is known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

**§ -312 Nondisclosure of information in exceptional circumstances.**

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

**§ -313 Costs and fees.** (a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 (Enforcement and Modification of Support Order After Registration), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

**§ -314 Limited immunity of petitioner.** (a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this State to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this State to participate in the proceeding.

**§ -315 Nonparentage as defense.** A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

**§ -316 Special rules of evidence and procedure.** (a) The physical presence of the petitioner in a responding tribunal of this State is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified petition, an affidavit, a document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this State by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of this State may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this State shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

§ -317 **Communications between tribunals.** A tribunal of this State may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this State may furnish similar information by similar means to a tribunal of another state.

§ -318 **Assistance with discovery.** A tribunal of this State may:

- (1) Request a tribunal of another state to assist in obtaining discovery; and
- (2) Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

§ -319 **Receipt and disbursement of payments.** A support enforcement agency or tribunal of this State shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

#### ARTICLE 4 ESTABLISHMENT OF SUPPORT ORDER

§ -401 **Petition to establish support order.** (a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this State may issue a support order if:

- (1) The individual seeking the order resides in another state; or
  - (2) The support enforcement agency seeking the order is located in another state.
- (b) The tribunal may issue a temporary child support order if:
- (1) The respondent has signed a verified statement acknowledging parentage;
  - (2) The respondent has been determined by or pursuant to law to be the parent; or
  - (3) There is other clear and convincing evidence that the respondent is the child's parent.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor

and may issue other orders pursuant to section -305 (Duties and powers of responding tribunal).

**ARTICLE 5**  
**ENFORCEMENT OF ORDER OF ANOTHER STATE**  
**WITHOUT REGISTRATION**

§ **-501 Employer's receipt of income withholding order of another state.** An income withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under sections 571-52, 571-52.2, and 571-52.3, without first filing a petition or comparable pleading or registering the order with a tribunal of this State.

§ **-502 Employer's compliance with income withholding order of another state.** (a) Upon receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State.

(c) Except as otherwise provided in subsection (d) and section -503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:

- (1) The duration and the amount of periodic payments of current child support, stated as a sum certain;
- (2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;
- (3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
- (4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and
- (5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

- (1) The employer's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income; and
- (3) The times within which the employer must implement the withholding order and forward the child support payment.

§ **-503 Compliance with multiple income withholding orders.** If an obligor's employer receives multiple income withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

§ **-504 Immunity from civil liability.** An employer who complies with an income withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's

withholding of child support from the obligor's income as to that income withholding order.

§ **-505 Penalties for noncompliance.** An employer who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.

§ **-506 Contest by obligor.** (a) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this State in the same manner as if the order had been issued by a tribunal of this State. Section -604 (Choice of law) applies to the contest.

(b) The obligor shall give notice of the contest to:

- (1) A support enforcement agency providing services to the obligee;
- (2) Each employer that has directly received an income withholding order; and
- (3) The person or agency designated to receive payments in the income withholding order; or if no person or agency is designated, to the obligee.

§ **-507 Administrative enforcement of orders.** (a) A party seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this State.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

## ARTICLE 6 ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

### PART I. REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER.

§ **-601 Registration of order for enforcement.** A support order or an income withholding order issued by a tribunal of another state may be registered in this State for enforcement.

§ **-602 Procedure to register order for enforcement.** (a) A support order or income withholding order of another state may be registered in this State by sending the following documents and information to the registering tribunal:

- (1) A letter of transmittal to the registering tribunal requesting registration and enforcement;
- (2) Two copies, including one certified copy, of all orders to be registered, including any modification of an order;
- (3) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;

- (4) The name of the obligor and, if known:
  - (A) The obligor's address and social security number;
  - (B) The name and address of the obligor's employer and any other source of income of the obligor; and
  - (C) A description and the location of property of the obligor in this State not exempt from execution; and
- (5) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

**§ -603 Effect of registration for enforcement.** (a) A support order or income withholding order issued in another state is registered when the order is filed in a tribunal of this State.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State.

(c) Except as otherwise provided in this article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

**§ -604 Choice of law.** (a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for arrearages, the statute of limitation under the laws of this State or of the issuing state, whichever is longer, applies.

## PART II. CONTEST OF VALIDITY OR ENFORCEMENT

**§ -605 Notice of registration of order.** (a) When a support order or income withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

- (1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State;
- (2) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice;
- (3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
- (4) Of the amount of any alleged arrearages.

(c) Upon registration of an income withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to sections 571-52, 571-52.2, 571-52.3, and 576E-16.

**§ -606 Procedure to contest validity or enforcement of registered order.** (a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section -607 (Contest of registration or enforcement).

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

**§ -607 Contest of registration or enforcement.** (a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) The issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) The order was obtained by fraud;
- (3) The order has been vacated, suspended, or modified by a later order;
- (4) The issuing tribunal has stayed the order pending appeal;
- (5) There is a defense under the law of this State to the remedy sought;
- (6) Full or partial payment has been made; or
- (7) The statute of limitation under section -604 (Choice of law) precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this State.

(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, a tribunal of this State shall issue an order confirming the order.

**§ -608 Confirmed order.** Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

### **PART III. REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER**

**§ -609 Procedure to register child support order of another state for modification.** A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this State in the same manner provided in part I if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

**§ -610 Effect of registration for modification.** A tribunal of this State may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this State, but the registered order may be modified only if the requirements of section -611 (Modification of child support order of another state) have been met.



§ **-611 Modification of child support order of another state.** (a) After a child support order issued in another state has been registered in this State, the responding tribunal of this State may modify that order only if section -613 does not apply and after notice and hearing it finds that:

- (1) The following requirements are met:
  - (A) The child, the individual obligee, and the obligor do not reside in the issuing state;
  - (B) A petitioner who is a nonresident of this State seeks modification; and
  - (C) The respondent is subject to the personal jurisdiction of the tribunal of this State; or
- (2) The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this State and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child-support orders for the same obligor and child, the order that controls and must be so recognized under section -207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this State becomes the tribunal having continuing, exclusive jurisdiction.

§ **-612 Recognition of order modified in another state.** A tribunal of this State shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to this chapter or a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

- (1) Enforce the order that was modified only as to amounts accruing before the modification;
- (2) Enforce only nonmodifiable aspects of that order;
- (3) Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
- (4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

§ **-613 Jurisdiction to modify child support order of another state when individual parties reside in this State.** (a) If all of the parties who are individuals reside in this State and the child does not reside in the issuing state, a tribunal of this State has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2, this Article, and the procedural and

substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 shall not apply.

§ -614 **Notice to issuing tribunal of modification.** Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

## ARTICLE 7 DETERMINATION OF PARENTAGE

§ -701 **Proceeding to determine parentage.** (a) A tribunal of this State may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this State shall apply chapter 584 and the rules of this State on choice of law.

## ARTICLE 8 INTERSTATE RENDITION

§ -801 **Grounds for rendition.** (a) For purposes of this article, “governor” includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The governor of this State may:

- (1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this State with having failed to provide for the support of an obligee; or
- (2) On the demand by the governor of another state, surrender an individual found in this State who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

§ -802 **Conditions of rendition.** (a) Before making a demand that the governor of another state surrender an individual charged criminally in this State with having failed to provide for the support of an obligee, the governor of this State may require a prosecutor of this State to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this State surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the

demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

## ARTICLE 9 MISCELLANEOUS PROVISIONS

§ -901 **Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ -902 **Short title.** This chapter may be cited as the Uniform Interstate Family Support Act.”

SECTION 2. Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

“§571-14 **Jurisdiction; adults.** The court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child’s parent or guardian or by any other person having the child’s legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2).
- (2) To try any adult charged with:
  - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
  - (B) An offense, other than a felony, against the person of the defendant’s husband or wife;
  - (C) Any violation of an order issued pursuant to chapter 586; or
  - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged.

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584.
- (4) In proceedings under chapter 575, the Uniform Desertion and Non-support Act, and under chapter [576, the Uniform Reciprocal Enforcement of Support Act.]           , the Uniform Interstate Family Support Act.
- (5) For commitment of an adult alleged to be mentally defective or mentally ill.
- (6) In all proceedings for support between parent and child or between husband and wife.
- (7) In all proceedings for waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-22.
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders.
- (9) In all proceedings to appoint a guardian of the person of an adult.

(10) For the protection of dependent adults under chapter 346, part X. In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.”

SECTION 3. Section 571-52.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§571-52.6]]~~ **Child support order, judgment, or decree; accident and sickness insurance coverage.** Each order, judgment, or decree under this chapter or chapter [576,] \_\_\_, 580, or 584 ordering a person to pay child support shall include a provision concerning the liability of that person for accident and sickness insurance coverage when available at reasonable cost.”

SECTION 4. Section 576E-2, Hawaii Revised Statutes, is amended to read as follows:

“**§576E-2 Attorney general; powers.** Notwithstanding any other law to the contrary, the attorney general, through the agency and the office, shall have concurrent jurisdiction with the court in all proceedings in which a support obligation is established, modified, or enforced, including[,] but not limited to[,] proceedings under chapters 571, 580, 584, and [576, the Uniform Reciprocal Enforcement of Support Act.] \_\_\_, the Uniform Interstate Family Support Act. The attorney general, through the agency and the office, may establish, modify, suspend, terminate, and enforce child support obligations and collect or enforce spousal support using the administrative process provided in this chapter on all cases for which the department has a responsibility under Title IV-D of the Social Security Act, including but not limited to welfare and nonwelfare cases in which the responsible parent is subject to the department’s jurisdiction, regardless of the residence of the children for whom support is sought. These powers shall include[,] but not be limited to[,] the power to:

- (1) Conduct investigations into the ability of parties to pay support and into nonpayment of support;
- (2) Administer oaths, issue subpoenas, and require production of books, accounts, documents, and evidence;
- (3) Establish, modify, suspend, terminate, or enforce a child support order and to collect or enforce a spousal support order in conjunction with a child support order;
- (4) Determine that a party has not complied with a court or administrative order and make recommendations to the court or other agency with respect to contempt or other appropriate proceedings;
- (5) Establish arrearage;
- (6) Establish a public assistance debt under section 346-37.1;
- (7) Order and enforce assignment of future income under section 576E-16, and chapter 571;
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order issued by another state or foreign jurisdiction, except as modified or limited by this chapter; and
- (9) Delegate the powers and authority described in this section to hearings officers and employees of the agency.”

SECTION 5. Chapter 576, 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 July 1, 1997.

(Approved June 21, 1997.)

Note

1. No subsection designation.

**ACT 296**

S.B. NO. 1286

A Bill for an Act Relating to Retail Tobacco Sales to Minors.

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

SECTION 1. Section 709-908, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) It shall be unlawful for a minor under eighteen years of age to purchase any tobacco product, as described under subsection (1). This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health under the supervision of law enforcement to determine the level of incidence of tobacco sales to minors.”

SECTION 2. New statutory material is underscored.

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

(Approved June 21, 1997.)

**ACT 297**

S.B. NO. 1316

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 231-8, Hawaii Revised Statutes, is amended to read as follows:

“**§231-8 Timely mailing treated as timely filing and paying.** (a) [General rule.] Any report, claim, tax return, statement, or other document required or authorized to be filed with or any payment made to the State which is:

- (1) Transmitted through the United States mail, shall be deemed filed and received by the State on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it;
- (2) Mailed but not received by the State or where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement, remittance, or other document was deposited in the United States mail.

on or before the date due for filing; and in cases of the nonreceipt of a report, tax return, statement, remittance, or other document required by law to be filed, the sender files with the State a duplicate within thirty days after written notification is given to the sender by the State of its nonreceipt of the report, tax return, statement, remittance, or other document.

(b) [Registered mail, certified mail, certificate of mailing.] If any report, claim, tax return, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States Post Office of the registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was delivered to the state officer or state agency to which addressed, and the date of registration, certification, or certificate shall be deemed the postmarked date.

(c) Any reference in this section to the United States mail shall be treated as including a reference to a designated delivery service, and any reference to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked by the designated delivery service.

As used in this section, "designated delivery service" means any delivery service designated for purposes of section 7502 of the federal Internal Revenue Code."

SECTION 2. 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, [1995,] 1996, as used in this chapter "Internal Revenue Code" means subtitle A, chapter 1 of the federal Internal Revenue Code of 1986, as amended as of December 31, [1995. Chapter 1 of the Internal Revenue Code is made operative for purposes of this chapter] 1996, 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 laws which pursuant to this chapter do not apply or are otherwise limited in application.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) [the] 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] 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) and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.7 and 235-110.8.
- (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 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 savings 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) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c).
- (12) Section 280C (with respect to certain expenses for which credits are allowable).
- (13) Section 291 (with respect to special rules relating to corporate preference items).
- (14) Section 367 (with respect to foreign corporations).
- (15) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
- (16) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
- (17) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- (18) Subchapter H (sections 581 to 597) (with respect to banking institutions)[.], except section 584 (with respect to common trust funds). For treatment, see chapter 241.
- (19) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55.
- (20) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- (21) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204.
- (22) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- (23) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, 235-7(b), and 235-55.
- (24) Section 1055 (with respect to redeemable ground rents).
- (25) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- (26) Sections 1291 to 1297 (with respect to treatment of passive foreign investment companies).
- (27) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).
- (28) Subchapter U (sections 1391 to 1397D) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E."

SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) \$1,900 in the case of:
  - (A) A joint return as provided by section 235-93, or
  - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code),
- (2) \$1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code),
- (3) \$1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household, or
- (4) \$950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual’s earned income. Section 63(f) shall not be operative in this State.

(b) Section 213 (with respect to medical, dental, etc., expenses) shall be operative, except that subsections (d)(1)(C) with respect to long-term care services, (d)(1)(D) as it applies to long-term care insurance contract premiums, (d)(7) as it applies to long-term care insurance contract premiums, and (d)(10) as it applies to eligible long-term care premiums, shall not be operative in this State.

[(b)] (c) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

(d) Section 220 (with respect to medical savings accounts) shall be operative for the purposes of this chapter, but only with respect to medical services accounts that have been approved by the secretary of the Treasury of the United States.

[(c)] (e) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

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

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

[(d)] (f) Section 468B (with respect to special rules for designated settlement funds) shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.



[(e)] (g) Section 469 (with respect to passive activities and credits limited) shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

[(f)] (h) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

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

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person’s unrelated business taxable income.

[(g)] (i) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

[(h)] (j) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

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

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

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

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

[(l)] (n) 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;
- (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.

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

[(n)] (p) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

[(o)] (q) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

[(p)] (r) Subchapter D (sections 6241 to 6245) (with respect to tax treatment of subchapter S items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter, and shall be interpreted with due regard to part VII.

[(q)] (s) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset which is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis."

SECTION 4. Section 235-93, Hawaii Revised Statutes, is amended to read as follows:

**"§235-93 Joint returns.** (a) A husband and wife, having that status for purposes of the Internal Revenue Code and entitled to make a joint federal return for the taxable year, may make a single return jointly of taxes under this chapter for the taxable year. In that case the tax shall be computed on their aggregate income as provided in section 235-52, and the liability with respect to the tax shall be joint and several. For purposes of this chapter "aggregate income" means the income of both spouses without regard to source in the State.

(b) If an individual has filed a separate return for a taxable year for which a joint return could have been made by the taxpayer and the taxpayer's spouse, an election thereafter to make a joint return for the taxable year shall be made only upon compliance with rules of the department of taxation, which may limit the election and prescribe the terms and provisions applicable in such cases as nearly as may be in conformity with the Internal Revenue Code.

(c) The filing of a joint return after the individual has filed a separate return without full payment of the amount shown as tax on the joint return may be elected; provided all other requirements for the filing of a joint return under this section and the rules of the department are complied with."

SECTION 5. Section 235-122, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An election under section 1361(b)(3), and (e), or 1362(a) of the Internal Revenue Code shall be effective for the purposes of this chapter. Evidence of a valid election for federal purposes shall be submitted to the department in such form and at such time the department may prescribe.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1996.

(Approved June 21, 1997.)

## ACT 298

S.B. NO. 1428

A Bill for an Act Relating to Film Permitting.

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

SECTION 1. Section 201-14, Hawaii Revised Statutes, is amended to read as follows:

“**[§201-14]** **Consolidated film permit processing.** (a) The department shall consult with state and county agencies in order to identify sites [which] that can be used for making visually recorded productions under [such] terms and conditions as may be determined by the state or county agency having jurisdiction over the sites.

(b) The department may accept an application from any person who proposes to make a motion picture, television show, television commercial, or other visually recorded production at one or more sites on state or county lands, whether or not set aside under section 171-11.

(c) The applicant shall identify the sites to be covered by the permit and provide [such] other information as may be required by the department.

(d) The department may approve and issue a permit to film at any of the sites identified by the appropriate state or county agency under subsection (a). If any site requested for use by the applicant is not identified under subsection (a), the department shall consult with the appropriate state or county agency having jurisdiction over the site to obtain a permit. If the matter of a permit cannot be resolved in this manner, the department shall refer the application to the appropriate state or county agency to obtain a permit.

(e) The department is authorized to make changes to, and extensions of, any approved permits so long as [such] the changes and extensions do not conflict with the policies, terms, and conditions set forth by the agency having jurisdiction over the site in question.

(f) The department may establish memoranda of agreement or adopt rules to implement the intent and purposes of this section.

(g) Nothing in this section shall be construed as waiving the authority of any county or the department of transportation of the State to require a person to obtain a permit from the department or county where the production takes place on or from a public highway.

(h) A vessel engaged in temporary use for film production purposes in accordance with a film permit issued by the department shall not be considered to be a "commercial vessel" within the meaning of section 200-9, 200-10, or 200-39; provided that:

- (1) The period of temporary use does not exceed fourteen hours per day, five days per week, excluding weekends, and for a period not to exceed thirty calendar days; and
- (2) The department may make allowances to include weekends for film production purposes due to inclement weather conditions during the weekday period."

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

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved June 21, 1997.)

**ACT 299**

S.B. NO. 1464

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-61, Hawaii Revised Statutes, is amended to read as follows:

**“[[§201E-61]] Owner-occupancy requirement.** (a) An eligible borrower shall utilize the dwelling unit purchased under this subpart as the eligible borrower’s permanent and primary residence.

(b) From time to time, the corporation may submit a verification of owner-occupancy form to the eligible borrower. Failure to respond to this verification in a timely manner may result in an immediate escalation of the interest rate or acceleration of the eligible loan.

(c) For eligible borrowers in the process of selling or transferring title to their property, the corporation may grant a waiver of subsection (a) for a period not to exceed three years and for reasons set forth in section 201E-222 on a case by case basis.”

SECTION 2. Section 201E-221, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

**“(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:**

- (1) For a period of [ten] three years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the corporation shall have the first option to purchase the real property at a price that 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 original cost and capital improvements to the purchaser at the rate of one per cent a year.
- (2) The corporation may purchase the real property either:
- (A) By conveyance free and clear of all mortgages and liens; or
  - (B) By conveyance subject to existing mortgages and liens.
- If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.
- The corporation's interest created by this subsection shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for:
- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
  - (ii) Any mortgage insured or held by a federal housing agency; and
  - (iii) Any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing. The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.
- (3) A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real property, within ten years from the date of purchase, for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C).
- (4) After the end of the [tenth] third year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property 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 real property, and any other amount expended by the corporation not counted as cost under section 201E-220 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
  - (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 real property; and provided further 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 real property at a price which shall not exceed the sum as computed under paragraphs (1) and (2); and

(D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable.

(5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time.

(b) For a period of [ten] three years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201E-2, and upon the terms that preserve the intent of sections 201E-221, 201E-222, and 201E-223, and in accordance with rules adopted by the corporation."

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 December 31, 2000.

(Approved June 21, 1997.)

**ACT 300**

S.B. NO. 1506

A Bill for an Act Relating to the Hawaii Employers' Mutual Insurance Company.

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

SECTION 1. The purpose of this Act is to:

- (1) Correct and clarify Act 261, Session Laws of Hawaii (SLH) 1996, which established the Hawaii employers' mutual insurance company (HEMIC); and
- (2) Amend the Hawaii Nonprofit Corporation Act, chapter 415B, Hawaii Revised Statutes, to permit HEMIC to be reorganized as a nonprofit corporation.

Although Act 261, SLH 1996, directed that HEMIC be established as a nonprofit corporation, section 415B-4 of the Hawaii Nonprofit Corporation Act prohibits the formation as a nonprofit corporation of any organization that is subject to any of the provisions of the insurance laws. As a consequence of this conflict in the statutes, HEMIC is organized under the Hawaii Business Corporation Act, chapter 415, Hawaii Revised Statutes. This Act permits HEMIC to be organized as a nonprofit organization under the Hawaii Nonprofit Corporation Act.

This Act also:

- (1) Exempts HEMIC from participation in the education and training fund as required under the insurance code;

- (2) Permits a separate contingent liability for HEMIC members in its high risk division; and
- (3) Establishes economic parameters with which HEMIC's directors must comply.

SECTION 2. Section 415B-4, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-4 Purposes.** A corporation may be organized under this chapter for any lawful purpose or purposes; provided that labor unions, cooperative organizations other than limited-equity housing cooperatives, and organizations subject to any of the provisions of the insurance laws of this State, other than a pure captive insurance company with a nonprofit parent company, or the Hawaii employers' mutual insurance company established by section 431:14A-103, shall not be organized under this chapter.”

SECTION 3. Section 431:14A-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“(a)** The Hawaii employers' mutual insurance company is established as [a nonprofit,] an independent corporation to provide workers' compensation insurance and related services to Hawaii employers. The company may be reorganized as a nonprofit corporation under chapter 415B.”

SECTION 4. Section 431:14A-103, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

**“(f)** The company is exempt from participation, and shall not join, contribute financially to, nor be entitled to the protection of, any plan, association, guaranty, [or] insolvency fund, or education and training fund authorized or required by this chapter.”

SECTION 5. Section 431:14A-104, Hawaii Revised Statutes, is amended to read as follows:

**“§431:14A-104' Company divisions.** (a) For purposes of providing representation on the board, the company shall consist of industry divisions and a [high-risk] high risk division. Assignments to each division shall be made by the administrator with the approval of the board. The initial company divisions shall include:

- (1) Manufacturing and producers;
- (2) Services, entertainment, and amusement;
- (3) Professions;
- (4) Construction;
- (5) Wholesale and retail sales;
- (6) Transportation and public utilities;
- (7) Finance, insurance, and real estate; and
- (8) High risk.

(b) An employer with two or more lost-time claims greater than \$10,000, and a loss ratio greater than 1.0, over the immediately preceding three years shall be placed in the [high-risk] high risk division.

(c) The administrator, with the approval of the board, shall modify the requirements for placing employers in the high risk division if the qualifications result in the high risk division being limited to only those employers with measurable adverse loss ratios, demonstrated accident frequency records, or a demonstrated

## ACT 301

attitude of noncompliance with workplace safety and health programs or claims management requirements.

(d) The company shall give notice to each employer in the high risk division not less than thirty days prior to the policy renewal date requesting a report on the employer's lost-time claims for the policy year. The report shall be used to determine the employer's qualification for placement in the high risk division.

(e) The company may apply a rating differential and charge a surcharge to any employer placed in the high risk division. The company may make multiple rate filings, consistent with sound actuarial judgment for each classification. These rate filings may be applied to risks in any division.

(f) The contingent liabilities of members provided in section 431:4-317 may be separated so that members assigned to the high risk division have a further contingent liability for deficits in the high risk division; provided that no contingent liability shall be in the aggregate for more than five times the annual premium rate of the member's policy nor for a term of more than one year."

SECTION 6. Section 431:14A-105, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) No person [who has any interest as a stockholder, employee, attorney, or contractor of a competing insurer shall be a director.] shall be a director who has a direct and substantial interest in a competing insurer as:

- (1) A stockholder (excluding the holding of less than one per cent of the outstanding shares in a publicly traded insurer);
- (2) An employee;
- (3) An attorney; or
- (4) A contracting party (excluding an independent contractor or business owner who does less than twenty-five per cent of its total annual volume of business per year with competing insurers)."

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 21, 1997.)

### Note

1. So in original.

## ACT 301

S.B. NO. 1522

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- Dispensing optician identification tags.** Each licensed dispensing optician may wear an identification tag for the purpose of identifying to the customer that the person is a licensed dispensing optician."



SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of hearing aid dealers and fitters, board of massage therapy, 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 section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 3. Section 458-1, Hawaii Revised Statutes, is amended to read as follows:

“**§458-1 Dispensing optician defined.** An individual [or firm] is deemed to be engaged in the occupation [or business] of dispensing optician when the individual [or firm] prepares and dispenses lenses, spectacles, eyeglasses, or appurtenances thereto to the intended wearer thereof on written prescription from physicians or optometrists duly licensed to practice their professions, and in accordance with the prescriptions interprets, measures, adapts, fits, and adjusts the lenses, spectacles, eyeglasses, or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eyes.”

SECTION 4. Section 458-3, Hawaii Revised Statutes, is amended to read as follows:

“**§458-3 Powers and duties; meetings.** In addition to any other powers and duties authorized by law, the [board,] director of commerce and consumer affairs, subject to chapter 91, may adopt, amend, and repeal rules for the administration of this chapter.

[The board shall meet a minimum of four times a year, at quarterly intervals. Each member shall attend at least one-half of all board meetings in a year. Any member not attending at least one-half of all board meetings in a year shall forfeit that member’s seat on the board.] The director shall appoint an advisory committee to serve as experts to the department in licensing matters.”

SECTION 5. Section 458-6.5, Hawaii Revised Statutes, is amended to read as follows:

“**§458-6.5 License [to engage in the occupation of dispensing optician]; application; [issuance.] qualifications.** (a) [Before engaging in the occupation of dispensing optician, an] An individual [must] shall be licensed as a dispensing optician [by the board.] to engage in the occupation of dispensing optician.

(b) [To apply for a license to engage in the occupation of dispensing optician, an individual must have completed one of the following:] The applicant shall provide evidence of having:

- (1) The equivalent of a high school education and two years of opticianry work experience [as an opticianry apprentice] as required by [the board's] administrative rules;
- (2) Graduation from an opticianry course accredited by the Commission on Opticianry Accreditation; or
- (3) [Previous licensure in another jurisdiction which required successful completion] A current and valid license as a dispensing optician in another state or territory of the United States and passage of the national examinations specified in subsection (c).

The applicant shall submit to the [board] director an application for a license on a form prescribed by the [board,] director, which shall include the applicant's experience and signature, and an application fee.

(c) [Before being licensed to engage in the occupation of dispensing optician, an individual must pass the National Opticianry Competency Examination, the National Contact Lens Registry Examination, and a practical examination. The board shall issue a license to an individual who passes all three of these examinations. If the applicant fails to pass any one of the examinations, the individual shall not be licensed. Any applicant who has previously passed both the National Opticianry Competency Examination and the National Contact Lens Registry Examination in another jurisdiction shall not be required to retake these examinations and shall be issued a license upon successful completion of the practical examination.] The applicant shall provide evidence of having passed the following examinations:

- (1) The National Opticianry Competency Examination;
- (2) The National Contact Lens Registry Examination; and
- (3) A nationally standardized practical examination may be required by the director as a prerequisite for dispensing optician licensure.

Any applicant who has previously passed both the National Opticianry Competency Examination and the National Contact Lens Registry Examination in a state or territory of the United States shall not be required to retake these examinations provided that the applicant's passing scores have been certified."

SECTION 6. Section 458-8, Hawaii Revised Statutes, is amended to read as follows:

**"§458-8 Expiration and renewal.** [Certificates and licenses] (a) A license issued under this chapter, unless sooner suspended or revoked, shall expire on July 1 of each even-numbered year, but may be biennially renewed by the [certificate or] license [holders] holder in good standing upon the payment of a biennial renewal fee. Failure to pay the biennial fee shall constitute a forfeiture of the license as of the date of expiration.

(b) The holder of an expired [certificate or] license may have the same restored within one year of the date of expiration upon due application therefor and payment of the delinquent fees and a penalty fee. A person whose license has been forfeited and who fails to restore the license as provided in this section shall apply as a new applicant."

SECTION 7. Section 458-9, Hawaii Revised Statutes, is amended to read as follows:

**"§458-9 Revocation or suspension of [certificates or] licenses.** In addition to any other actions authorized by law, the [board,] director, in conformity with

chapter 91, may revoke or suspend any [certificate or] license issued under this chapter for any cause authorized by law, including but not limited to fraud or dishonesty in obtaining the [certificate or] license, for dishonesty, fraud, gross negligence, or incompetency in the occupation [or business] of dispensing optician, or for violation of this chapter.”

SECTION 8. Section 458-10, Hawaii Revised Statutes, is amended to read as follows:

“**§458-10 Subpoenas,<sup>1</sup> oaths.** In all proceedings before the [board,] director, the [board and each member thereof] director shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, as are possessed by circuit courts. In case of disobedience by any person or persons of any order of the [board or a member of the board] director or any subpoena issued by [it or the member] the director or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge on application by the [board or member thereof] director shall compel obedience as in the case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein.”

SECTION 9. Section 458-11, Hawaii Revised Statutes, is amended to read as follows:

“**§458-11 Reinstatement.** The [board] director may reinstate without examination the license [or certificate] of any dispensing optician issued under this chapter which has been revoked or may modify the suspension of any such license [or certificate] which has been suspended.”

SECTION 10. Section 458-13, Hawaii Revised Statutes, is amended to read as follows:

- “**§458-13 Acts prohibited.** It shall be unlawful to do any of the following:
- (1) To engage in the [business] occupation of dispensing optician without first having been issued a [certificate of] dispensing optician license under this chapter[, or to engage in the business of dispensing optician without employing a licensed dispensing optician at each place of business];
  - (2) To advertise in any manner that would tend to mislead or deceive the public;
  - (3) To dispense, furnish, or supply the services and appliances [relating to the business of dispensing optician] to the intended wearer or user thereof, except upon a prescription issued by a licensed physician, [surgeon,] or optometrist; provided that duplications, replacements, reproductions, and repetitions, without change in the refractive value may be done without prescription by individuals [or firms] holding a license [or certificate] of dispensing optician issued under this chapter;
  - (4) To fit or duplicate, or offer, undertake, or attempt to fit or duplicate hard and soft contact lenses or artificial eyes except under the written orders and personal supervision of an ophthalmologist or optometrist or fail to provide notice as required by section 458-12.5;
  - (5) For a dispensing optician to grant, allow, credit, or pay, directly or indirectly, openly or secretly, any price differential, rebate, refund, discount, commission, credit, kickback, or other allowance, whether in the form of money or otherwise, to any oculist, optometrist, physician,

[surgeon,] or practitioner of any other profession (A) for or on account of the referring or sending by any oculist, optometrist, physician, [surgeon,] or practitioner to the dispensing optician of any person for the rendition of any of the services performed or articles or appliances furnished by a dispensing optician as described in section 458-1, or (B) for or on account of the rendition of any services or the furnishing of any articles or appliances to a person so referred or sent by any oculist, optometrist, physician, [surgeon,] or practitioner. Every scheme, agreement, undertaking, arrangement, or device shall also be deemed in violation of section 481-7. The [certificate or] license of every dispensing optician who violates this paragraph shall be revoked[.]; or

- (6) For a dispensing optician to permit any unlicensed person to take facial measurements, fit or adjust lenses or frames or duplicate frames unless the unlicensed person is acting under the direct personal supervision of a licensed dispensing optician. "Direct personal supervision" means the licensed optician is present on the premises of the optical dispensing establishment and is available for consultation by the unlicensed person."

SECTION 11. Section 458-2, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 458-6.6, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 458-6.8, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 458-7, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 458-12.5, Hawaii Revised Statutes, is repealed.

SECTION 16. All rules, guidelines, and other material adopted or developed by the board of dispensing opticians shall remain in full force and effect until amended or repealed by the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the board of dispensing opticians in those rules, guidelines, and other material is amended to refer to the director of commerce and consumer affairs as appropriate.

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. Upon the effective date of this Act the current members of the board of dispensing opticians shall be appointed by the director to the advisory committee for dispensing opticians and shall be allowed to serve out their board member term of appointment. As the member's term expires the director shall ensure the advisory committee for dispensing opticians continues to have experts that are available for the purposes of section 26-9, Hawaii Revised Statutes.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 20. This Act shall take effect upon its approval.

(Approved June 21, 1997.)

## Notes

1. Prior to amendment “;” appeared here.
2. Edited pursuant to HRS §23G-16.5.

## ACT 302

S.B. NO. 1553

A Bill for an Act Relating to Health Resources.

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

SECTION 1. The purpose of this Act is to provide for the exemption of extended care adult residential care homes and assisted living facilities from certificate of need requirements.

SECTION 2. Section 323D-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Assisted living facility” means a combination of housing, health care services, and personalized support services designed to respond to individual needs, and to promote choice, responsibility, independence, privacy, dignity, and individuality. In this context, “health care services” means the provision of services in an assisted living facility that assists the resident in achieving and maintaining the highest state of positive well-being (i.e. psychological, social, physical, and spiritual) and functional status. This may include nursing assessment and monitoring, and the delegation of nursing tasks by registered nurses pursuant to chapter 457, care management, monitoring, records management, arranging for, and/or coordinating health and social services.

“Extended care adult residential care home” means an adult residential care home providing twenty-four-hour living accommodation for a fee, for adults unrelated to the licensee. The primary caregiver shall be qualified to provide care to nursing facility level individuals who have been admitted to a medicaid waiver program, or persons who pay for care from private funds and have been certified for this type of facility. There shall be two categories of extended care adult residential care homes, which shall be licensed in accordance with rules adopted by the department of health:

- (1) Type I home shall consist of five or less unrelated persons with no more than two extended care adult residential care home residents; and
- (2) Type II home shall consist of six or more unrelated persons and one or more persons may be extended care adult residential care home residents.”

SECTION 3. Section 323D-54, Hawaii Revised Statutes, is amended to read as follows:

**“§323D-54 Exemptions from certificate of need requirements.** Nothing in this part or rules [thereunder] with respect to the requirement for certificates of need applies to:

- (1) Offices of physicians, dentists, or other practitioners of the healing arts in private practice as distinguished from organized ambulatory health care facilities, except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision [therefor] for any private office or clinic involving a total expenditure in excess of the expenditure minimum;

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- (2) Laboratories, as defined in section 321-11(12), except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision [therefor] for any laboratory involving a total expenditure in excess of the expenditure minimum;
- (3) Dispensaries and first aid stations located within business or industrial establishments and maintained solely for the use of employees; provided such facilities do not regularly provide inpatient or resident beds for patients or employees on a daily twenty-four-hour basis;
- (4) Dispensaries or infirmaries in correctional or educational facilities;
- (5) Dwelling establishments, such as hotels, motels, and rooming or boarding houses that do not regularly provide health care facilities or health care services;
- (6) Any home or institution conducted only for those who, pursuant to the teachings, faith, or belief of any group, depend for healing upon prayer or other spiritual means;
- (7) Dental clinics; [or]
- (8) Extended care adult residential care homes and assisted living facilities;  
or
- [ (8) ] (9) Other facilities or services which the agency through the statewide council chooses to exempt, by rules pursuant to section 323D-62."

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 21, 1997.)

ACT 303

S.B. NO. 1554

A Bill for an Act Relating to Public Housing.

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

SECTION 1. Section 360-4, Hawaii Revised Statutes, is amended to read as follows:

**“§360-4 Appeal.** (a) Within five days after the issuance of an order under section 360-3 hereof, an appeal may be taken to the authority. [The appeal shall be in writing and shall include new facts or evidence pertinent to the case which could not have been presented and were not available for presentation to the hearing examiner. The authority shall give written notice to the person concerned fixing the date and place of the appeal hearing. The notice shall be given at least five days before the date set for the hearing.] Notwithstanding any law to supersede chapter 91 provisions, the appeal may be heard and decided by the authority or an appeals board appointed by the authority. If the authority elects to designate an appeals board, it shall not designate any officer or employee of the authority to sit on the board and it shall establish at least one board in each county.

(b) The authority or appeals board appointed by the authority shall review the records of the hearing examiners [and the new facts and evidence as submitted in the request for an appeal]. The authority or appeals board shall have the same powers in connection with such appeals as are provided for the hearing examiners in section

360-3, and the decision of the authority or appeals board in the appeal shall be the final decision of the authority.

(c) The Hawaii housing authority shall promulgate rules and regulations covering:

- (1) The writings necessary for appeal;
- (2) The necessary written notice to the appellant fixing the date, place, and time of the appeal hearing; and
- (3) The minimum amount of time within which the appellant must be notified of said appeals hearing.”

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 June 21, 1997.)

## ACT 304

S.B. NO. 1560

A Bill for an Act Relating to Electronic Prescriptions.

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

SECTION 1. The growing technology in the computer industry has enabled prescription information to be transmitted from a practitioner's office to a pharmacy or from pharmacy to pharmacy. The legislature finds that the use of this technology will minimize errors due to illegible prescriptions and prevent alterations of prescriptions. At the same time, this Act requires that the consumer's prescription information be kept confidential and allows the consumer a choice in which pharmacy to utilize.

The purpose of this Act is to establish minimum requirements for the receipt, transmission, filling, recordkeeping, confidentiality, and security of electronic prescription information.

SECTION 2. Chapter 328, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **“PART . ELECTRONIC PRESCRIPTIONS: TRANSMISSION, FILLING, SECURITY, AND RECORDKEEPING REQUIREMENTS**

**§328-A Definitions.** As used in this part:

“Authorized representative” means a person who acts on behalf of, and at the direction of, another individual.

“Automated data processing system” means a system utilizing computer software and hardware for the purposes of recordkeeping and prescription filling and refill information.

“Common automated data processing system” means a file or database created by an automated data processing system that enables two or more authorized

users within the same company to have common access to the file, regardless of physical location.

“Computer” means a programmable electronic device, capable of multiple functions including but not limited to storage, retrieval, and processing of information.

“Controlled substances” means substances listed and scheduled in chapter 329.

“Department” means the department of health except when otherwise provided.

“Director” means the director of health except when otherwise provided.

“Downtime” means the period of time that an automated data processing system or electronic prescription transmission system is not operable.

“Electronic prescription” means a valid prescription, other than a facsimile prescription, which is electronically transmitted from a practitioner to a pharmacy.

“Facsimile prescription” means a valid prescription transmitted by a practitioner and sent by an electronic device over telephone lines so that an exact image of the prescription is sent to a pharmacy.

“Maintained on paper of permanent quality” means that the image printed on the paper shall remain legible, and that the paper itself shall not deteriorate, for a minimum period of five years.

“Out-of-state practitioner” means a physician, surgeon, osteopathic physician and surgeon, dentist, podiatrist, or veterinarian authorized to prescribe prescription drugs to patients under the applicable laws of any state of the United States except Hawaii, or a physician, surgeon, osteopathic physician and surgeon, dentist, podiatrist, or veterinarian authorized to prescribe prescription drugs to patients under the applicable laws of Hawaii, but practicing in a state other than Hawaii.

“Pharmacist” means an individual licensed under chapter 461 to practice in a pharmacy.

“Practitioner” means an individual licensed by the State or authorized by the laws of the State to prescribe prescription drugs within the scope of the person’s practice.

“Prescription” means an order or formula issued for a legitimate medical purpose by a practitioner for the compounding or dispensing of drugs.

“Prescription drug” means any drug required by federal or Hawaii statutes, regulations, or rules to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 328-16 or to Section 503(b) of the Federal Food, Drug, and Cosmetic Act.

“Printout” or “hard copy” means any form printed by a computer that is readable without the aid of any special device, containing all the criteria and information relating to a prescription record including refill history, if any, of that prescription or group of prescriptions.

“Reduced to writing” means the creation of a permanent paper document which contains all the information required for a written or oral prescription.

“Supply” means to sell, trade, distribute, exchange, barter, give, offer for sale, lease, rent, or provide.

**§328-B Facsimile transmission of prescriptions.** (a) A prescription transmitted by facsimile may be filled by a pharmacist if the following conditions are met:

- (1) The prescription is transmitted from the practitioner’s office to the pharmacy;
- (2) Facsimile prescriptions shall be in the same form as written prescriptions, as provided in section 328-16;



- (3) A prescription transmitted by facsimile shall be signed by the practitioner or, if it is not signed, the pharmacist shall orally confirm the prescription with the practitioner;
  - (4) The facsimile prescription shall include:
    - (A) The name, address, and facsimile number of the receiving pharmacy;
    - (B) The name, address, telephone number, and oral code designation of the practitioner; and
    - (C) Any other information required by federal laws or regulations and Hawaii statutes or rules;
  - (5) The receiving facsimile machine shall be physically located in a restricted area so that consumer confidentiality is ensured;
  - (6) A facsimile prescription shall be transmitted to the pharmacy of the consumer's choice. If the pharmacy of the consumer's choice is not equipped to receive a facsimile prescription, the practitioner shall provide the consumer with a nonfacsimile written prescription, an electronically transmitted prescription, or telephone an oral prescription to the pharmacy of the consumer's choice;
  - (7) Facsimile prescriptions shall be maintained on file for a period of five years from the date of original fill and shall be maintained on paper of permanent quality; and
  - (8) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the facsimile prescription.
- (b) Facsimile prescriptions received from persons other than practitioners shall not be valid prescriptions.

**§328-C Electronic transmission of prescription information.** (a) A practitioner may electronically transmit a prescription to a pharmacy if the following conditions are met:

- (1) Only the practitioner shall transmit an electronic prescription, and the prescription shall be received only by a pharmacist, with no intervening person having access to view, read, manipulate, alter, store, or delete the electronic prescription prior to its receipt at the pharmacy;
- (2) The prescription shall be transmitted to the pharmacy of the consumer's choice. If the pharmacy of the consumer's choice is not equipped with the capability to accept an electronic prescription, the practitioner shall provide the patient with a written prescription or telephone an oral prescription to the pharmacy of the consumer's choice;
- (3) The electronic prescription shall contain all of the information required by this chapter to be on a prescription. The electronic prescription shall contain, at minimum, the following:
  - (A) The name and address of the practitioner;
  - (B) The telephone number of the practitioner for oral confirmation;
  - (C) The name, strength, and quantity of the drug;
  - (D) Specific directions for the drug's use;
  - (E) The name and address of the person for whom the prescription is written;
  - (F) The number of allowable refills;
  - (G) The time and date of transmission;
  - (H) The name and address or location of the receiving pharmacy; and
  - (I) An indication whether generic substitution is prohibited;
- (4) Except as provided by this part, the electronic prescription shall be reduced to writing by the pharmacist immediately upon receipt;

- (5) Hard copies of electronic prescriptions shall be maintained for a period of five years from the date of original fill and shall be maintained on paper of permanent quality;
- (6) The electronic prescription transmission system shall provide adequate safeguards against the improper manipulation or alteration of prescription records;
- (7) The computer receiving the electronic prescription shall be physically located in a restricted area so that consumer confidentiality is ensured; and
- (8) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the electronic prescription.

(b) Electronic prescriptions received from persons other than practitioners shall not be valid prescriptions.

**§328-D Notice of electronic prescription files.** (a) Any pharmacy that establishes an electronic file for prescription records, which is shared with or accessible to other pharmacies, shall post in a conspicuous place a legible notice, in letters not less than one inch in height, that states:

“NOTICE TO CONSUMERS:

This pharmacy maintains its prescriptions on a computer database which is shared by or accessible to the following pharmacies:

(NAME OF PHARMACIES SHARING FILES)

Although you may refill your prescription at any pharmacy of your choice, this database makes it easier for a pharmacist at any of the above locations to refill your prescription. If for any reason you do not want your prescriptions to be maintained in this way, please notify the pharmacist.”

(b) Whenever a consumer or the consumer’s authorized representative has notified the pharmacist that the consumer does not want to have the consumer’s prescription records made accessible to other pharmacies through the use of electronic prescription files, the pharmacist shall ensure that the consumer’s records are not shared with or made accessible to another pharmacy. The pharmacist to whom the consumer or consumer’s authorized representative communicates the objection shall have the consumer or the consumer’s authorized representative sign a form which reads as follows:

“I, (consumer’s name), notify (name of pharmacy) that my prescription drug records shall not be made accessible to other pharmacies through a common or shared electronic file.

\_\_\_\_\_  
Signature of Consumer or Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Pharmacist

\_\_\_\_\_  
Printed Last Name of Pharmacist”

The pharmacist shall date and co-sign the form and shall deliver a copy thereof to the consumer or consumer’s authorized representative. The original shall be maintained by the pharmacy for five years from the date the form is submitted by the consumer or consumer’s authorized representative.

**§328-E Manual transfer of prescriptions.** The transfer of original prescription information for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:

- (1) The transfer shall be directly between two licensed pharmacists, and the transferring pharmacist shall immediately:
  - (A) Write the word "VOID" on the face of the invalidated prescription;
  - (B) Record on the reverse of the invalidated prescription the name and address of the pharmacy to which the prescription was transferred, the name of the pharmacist receiving the prescription information, the date of the transfer, and the name of the pharmacist transferring the information; and
  - (C) Communicate to the pharmacist receiving the transferred prescription the original number of refills authorized and the number of valid refills remaining.
- (2) In addition to recording all of the information required by this chapter to be on a prescription, the pharmacist receiving the transferred prescription information shall immediately:
  - (A) Write the word "transfer" on the face of the transferred prescription;
  - (B) Record the date of issuance of the original prescription, the original number of refills authorized on the original prescription, the date of original dispensing, the number of valid refills remaining, the date of the last refill, and the original prescription number; and
  - (C) Record the name of the transferring pharmacy, the address or location from which the prescription information was transferred, and the name of the transferring pharmacist.
- (3) Transferred prescriptions shall be maintained on paper of permanent quality for a period of five years from the date of transfer.

**§328-F Automated data processing transfer of prescription information.**

(a) Two or more pharmacies located in this State and part of the same company may transfer prescription information for dispensing purposes, utilizing a common automated data processing system.

(b) Pharmacies using a common automated data processing system are not required manually to transfer prescription refill information pursuant to section 328-E.

(c) Pharmacies utilizing a common automated data processing system shall ensure that complete and accurate records are kept of each prescription and refill dispensed by their pharmacists and that the number of allowable refills has not been exceeded.

(d) The original written or oral prescription shall be verified and documented by the pharmacist when the automated data processing system is first accessed for information regarding a refill.

(e) The procedure for utilizing a common automated data processing system for the transfer of prescription information for refill purposes shall comply with all applicable Hawaii statutes and rules and federal laws and regulations.

**§328-G Security; confidentiality.** (a) To maintain the confidentiality of consumer prescription records, the electronic prescription transmission system or automated data processing system used to accept or transfer prescriptions shall include safeguards to prevent, detect, and ensure against unauthorized access, modification, or manipulation of consumer prescription records.

(b) Any person who transmits, maintains, or receives any prescription or prescription refill, orally or in writing or electronically, shall ensure the security,

integrity, and confidentiality of the prescription and any information contained therein.

**§328-H Recordkeeping.** Prescriptions that are filled or refilled using an automated data processing system, electronic prescription transmission, or facsimile transmission shall comply with the recordkeeping requirements for written and oral prescriptions as provided in sections 328-16 and 328-17.7.

**§328-I Downtime of the computer.** (a) Every pharmacy utilizing an automated data processing system or electronic prescription transmission system shall provide an auxiliary procedure to document prescriptions that are filled or refilled during any downtime period. The auxiliary procedure must ensure that the prescriptions that are filled or refilled are authorized by the practitioner and that the number of allowable refills has not been exceeded.

(b) When the automated data processing system or electronic prescription transmission system is restored to operation, the information regarding prescriptions that have been filled or refilled during the downtime shall be recorded in the automated data processing system or electronic prescription transmission system within forty-eight hours.

**§328-J Controlled substances.** This part shall not apply to prescriptions for controlled substances, except as provided in chapter 329.

**§328-K Out-of-state practitioners.** This part shall not apply to prescriptions from out-of-state practitioners or transferred prescriptions from an out-of-state pharmacy, except as provided in section 328-17.6.

**§328-L Reduced to writing.** (a) If an automated data processing system or electronic prescription transmission system is utilized, and the system is capable of printing a copy of the prescription, the printer copy may be used to satisfy the requirement that prescriptions transmitted electronically be reduced to writing. The pharmacist shall check the electronically printed prescription to ensure all required items for a valid prescription are present and that the information is accurate. The pharmacist shall initial the printed prescription upon determining that the prescription is valid and accurate.

(b) The pharmacist shall manually reduce to writing required prescription information if an automated data processing system or electronic prescription transmission system is not capable of printing a copy of the prescription.

(c) The printer copy shall be maintained on paper of permanent quality for a period of five years from the date of original filling.

**§328-M Printout of prescriptions.** A pharmacy utilizing an automated data processing or electronic transmission system shall have the capability to produce a daily printout of all prescriptions that were filled or refilled utilizing an automated data processing system or electronic prescription transmission system, including a prescription-by-prescription and refill-by-refill audit trail. A copy of the printout shall be made available to any authorized agent of the department, within forty-eight hours after request of the printout by the agent.

**§328-N Supplying equipment prohibited.** To preclude conflict of interest, drug wholesalers and manufacturers, drug salespersons, pharmacists, pharmacies, third party insurance carriers, and all related persons and their agents shall not supply electronic equipment, including computer equipment, hardware, software, facsimile machines, and related equipment, to practitioners for the transmission of

prescriptions to pharmacies. For purposes of this section, related persons shall include but not be limited to subsidiaries, partnerships, companies, trusts, and other business entities.

**§328-O Misuse of technological devices.** Technological devices, including facsimile machines, electronic transmission systems, and automated data processing systems, shall not be used to circumvent any provision of this chapter, or any other Hawaii statute or rule, or federal law or regulation.

**§328-P Rules.** The department may adopt rules pursuant to chapter 91 necessary to carry out the purposes and enforce the provisions of this part.

**§328-Q Powers and duties.** The department shall enforce this part, and shall have all the powers and duties conferred and imposed upon it by part I.

**§328-R Criminal penalty.** Any person who wilfully violates this part shall be guilty of a misdemeanor.

**§328-S Administrative penalties.** (a) Any person who violates this part or any rule adopted by the department pursuant to this part shall be fined not more than \$10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action.

(b) In addition to any other administrative or judicial remedy provided by this part, or by rules adopted pursuant to this part, the director may impose by order the administrative penalty specified in this section. Factors to be considered in imposing the administrative penalty include the nature and history of the violation and of any prior violation, and the opportunity, difficulty, and history of corrective action. For any judicial proceeding to recover the administrative penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.

**§328-T Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of this part or any rule adopted to implement this part. The court shall have the power to grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 3. In codifying the new part added to chapter 328, Hawaii Revised Statutes, section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in that part.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, 2001.

(Approved June 21, 1997.)

A Bill for an Act Relating to Vital Statistics.

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

SECTION 1. Section 338-10, Hawaii Revised Statutes, is amended to read as follows:

**“§338-10 [Delayed] Late determination of the cause of death.** If the cause of death cannot be determined within three days, the certification of its cause may be filed after the prescribed period, but the attending physician[,] or coroner’s physician shall notify in writing the local agent of the department of health of the district in which the death occurred[,] of the reason for [the delay,] late filing, in order that a permit for the disposition of the body may be issued.

As used in this section, “late” means more than three days after the date of death.”

SECTION 2. Section 338-15, Hawaii Revised Statutes, is amended to read as follows:

**“§338-15 [Delayed] Late or altered certificates.** A person born in the State may file or amend a certificate after the time prescribed, upon submitting [such] proof as [shall be] required by [regulations of] rules adopted by the department of health. Certificates registered after the time prescribed for filing by the [regulations] rules of the department of health shall be registered subject to [such] any evidentiary requirements [as] that the department [shall by regulation prescribe] adopts by rule to substantiate the alleged facts of birth.”

SECTION 3. Section 338-16, Hawaii Revised Statutes, is amended to read as follows:

**“§338-16 Procedure concerning [delayed] late and altered birth certificates.** (a) Birth certificates registered one year or more after the date of birth, and certificates which have been altered after being filed with the department of health, shall contain the date of the [delayed] late filing and the date of the alteration and be marked distinctly [“delayed”] “late” or “altered”.

(b) A summary statement of the evidence submitted in support of the acceptance for [delayed] late filing or the alteration shall be endorsed on the certificates.

(c) Such evidence shall be kept in a special permanent file.

(d) When an applicant does not submit the minimum documentation required by the [regulations] rules for [delayed] late registration or when the state registrar finds reasons to question the validity or adequacy of the certificate or the documentary evidence, the [State] state registrar shall not register the [delayed] late certificate and shall advise the applicant of the reason for this action.

The department of health may by [regulation] rule provide for the dismissal of an application which is not actively prosecuted.

(e) As used in this section, “late” means one year or more after the date of birth.”

SECTION 4. Section 338-17, Hawaii Revised Statutes, is amended to read as follows:

“§338-17 [Delayed] **Late or altered certificate as evidence.** The probative value of a [“delayed”] “late” or “altered” certificate shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.”

SECTION 5. Section 338-18, Hawaii Revised Statutes, is amended to read as follows:

“§338-18 **Disclosure of records.** (a) To protect the integrity of vital statistics records, to [insure] ensure their proper use, and to [insure] ensure the efficient and proper administration of the vital statistics system, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital statistics records, or to copy or issue a copy of all or part of any such record, except as authorized by this part[, ] or by [such regulation as] rules adopted by the department of health [may make].

(b) The department shall not permit inspection of public health statistics records, or issue a certified copy of any such record[, ] or part thereof, unless it is satisfied that the applicant 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]

- (1) The registrant[, the];
- (2) The spouse of the registrant[.];
- (3) A parent of the registrant[, a];
- (4) A descendant of the registrant[, a];
- (5) A person having a common ancestor with the registrant[, a];
- (6) A legal guardian of the registrant[, a];
- (7) A person or agency acting on behalf of the registrant[, a];
- (8) A personal representative of the registrant’s estate[, or a];
- (9) A person whose right to inspect or obtain a certified copy of the record is established by an order of a court of competent jurisdiction[, adoptive];
- (10) 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];
- (11) A person who needs to determine the marital status of a former spouse in order to determine the payment of alimony[, a];
- (12) A person who needs to determine the death of a nonrelated co-owner of property purchased under a joint tenancy agreement[.]; and [a]
- (13) A person who needs a death certificate for the determination of payments under a credit insurance policy.

(c) The department may permit the use of data contained in public health statistical records for research purposes only, but no identifying use thereof shall be made.

(d) Index data consisting of name[, age,] and sex of the registrant [and date], type [and file number of the] of vital event, and such other data as the director may authorize [may] shall be made available to the public.

(e) The department may permit persons working on genealogy projects access to microfilm or other copies of vital records of events that occurred more than seventy-five years prior to the current year.

(f) Subject to this section, the department may direct its local agents to make a return upon filing of birth, death, and fetal death certificates with them, of certain data shown [thereon] to federal, state, territorial, county, or municipal agencies. Payment by [such] these agencies for [such] these services may be made as the department shall direct.”

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SECTION 6. Section 338-29.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§338-29.5]]~~ **[Delayed] Late registration of death, fetal death, marriage, and divorce.** (a) When a death, fetal death, marriage, or divorce occurring in this State has not been registered, a certificate may be filed in accordance with [regulations of] rules adopted by the department of health. [Such] The certificate shall be registered subject to [such] any evidentiary requirements [as] that the department [shall by regulation prescribe] adopts by rule to substantiate the alleged facts of death, fetal death, [or] marriage, or divorce.

(b) Certificates of death, fetal death, marriage, or divorce registered one year or more after the date of occurrence shall be marked [“delayed”] “late” and shall show on the face the date of the [delayed] late registration.

(c) As used in this section, “late” means one year or more after the date of the death, fetal death, marriage, or divorce.”

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 21, 1997.)

ACT 306

S.B. NO. 1588

A Bill for an Act Relating to Mental Health.

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

SECTION 1. Section 704-404, Hawaii Revised Statutes, is amended by amending subsections (2), (3), and (4) to read as follows:

“(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners in felony cases and one qualified examiner in nonfelony cases to examine and report upon the physical and mental condition of the defendant. In [each case] felony cases the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, licensed psychologist, or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. [The three] In nonfelony cases the court may appoint either a psychiatrist or a licensed psychologist. All examiners shall be appointed from a list of certified [sanity] examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted on an out-patient basis or, in the court’s discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose[, and]. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness and participate in the examination. As used in this section, the term “licensed psychologist” includes psychologists exempted from licensure by section 465-3(a)(3).

(3) In such examination any method may be employed which is accepted by the [medical profession] professions of medicine or psychology for the examination



of those alleged to be suffering from physical or mental disease, disorder, or defect; provided that each examiner shall form and render diagnoses and opinions upon the physical and mental condition of the defendant independently from the other examiners, and the examiners may, upon approval of the court, secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

- (4) The report of the examination shall include the following:
  - (a) A description of the nature of the examination;
  - (b) A diagnosis of the physical or mental condition of the defendant;
  - (c) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;
  - (d) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;
  - (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is required to establish an element of the offense charged; and
  - (f) [A] Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of [the] any other [examiners,] examiner, unless there is a showing of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report."

SECTION 2. Section 704-406, Hawaii Revised Statutes, is amended by amending subsections (3) and (4) to read as follows:

“(3) Within a reasonable time following any commitment under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report. If, following a report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and release the defendant or subject the defendant to involuntary civil commitment procedures.

(4) Within a reasonable time following any conditional release under subsection (1), the court shall appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and release the defendant or subject the defendant to involuntary civil commitment procedures.”

SECTION 3. Section 704-411, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

- “(3) When ordering a hearing pursuant to subsection (2):
- (a) In nonfelony cases, the court shall appoint [three] a qualified [examiners] examiner to examine and report upon the physical and mental condition of the defendant. [In each case the] The court [shall] may appoint [at least one] either a psychiatrist [and at least one] or a licensed psychologist. [The third member may be either a psychiatrist, licensed psychologist, or a qualified physician. One of the three shall be a

psychiatrist or licensed psychologist] The examiner may be designated by the director of health from within the department of health. The [three examiners] examiner shall be appointed from a list of certified [sanity] examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners.

- (b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case the court shall appoint a least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination [and] for a period not exceeding thirty days or such longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3)."

SECTION 4. Section 704-413, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Any person released on condition pursuant to section 704-411 shall continue to receive [psychological or psychiatric] mental health or other appropriate treatment and care deemed appropriate by the director of health until discharged from conditional release. The person shall follow all prescribed treatments and take all prescribed medications according to the instructions of the person's treating mental health professional. If any mental health professional treating any conditionally released person believes the person is either not complying with the requirements of this section, or there is other evidence that hospitalization is appropriate, the mental health professional shall report the matter to the probation officer of the conditionally released person. The probation officer may order the conditionally released person to be hospitalized for a period not to exceed seventy-two hours if [they have] the probation officer has probable cause to believe the person has violated the requirements of this subsection. No person shall be hospitalized beyond the seventy-two hour period unless a hearing has been held pursuant to subsection (3)."

SECTION 5. Section 704-414, Hawaii Revised Statutes, is amended to read as follows:

**"§704-414 Procedure upon application for discharge, conditional release, or modification of conditions of release.** Upon filing of an application pursuant to section 704-412 for discharge or conditional release, or upon the filing of an application pursuant to section 704-413 for discharge or for modification of conditions of release, the court shall appoint three qualified examiners in felony

cases and one qualified examiner in nonfelony cases to examine and report upon the physical and mental condition of the defendant. In [each case] felony cases the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be either a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The [three] examiners shall be appointed from a list of certified [sanity] examiners as determined by the department of health. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians or psychologists retained by the defendant be permitted to witness and participate in the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3)."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 21, 1997.)

## ACT 307

S.B. NO. 1599

A Bill for an Act Relating to a Commercial Marine Dealer License.

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

SECTION 1. Section 189-10, Hawaii Revised Statutes, is amended to read as follows:

**“§189-10 Commercial marine dealers [to report].** [Every] (a) The department may require a license of any commercial marine dealer to sell or offer for sale, to purchase or attempt to purchase, to exchange, or to act as an agent in the transfer of, any marine life taken within the jurisdiction of the State for commercial purposes. It is unlawful for any commercial marine dealer to sell or offer for sale, to purchase or attempt to purchase, to exchange, or to act as an agent in the transfer of, any marine life taken within the jurisdiction of the State for commercial purpose, that is obtained from any person whom the department has required to have, but does not have, a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for commercial purpose.

(b) The department may require a license of any person to export any marine life taken within the jurisdiction of the State for commercial purpose.

(c) Upon the written demand of the department, a commercial marine dealer shall render to the department [on or before the tenth day of each month on blanks to be furnished by the department,] a true and correct statement showing the name of the commercial marine dealer; year; month; day; weight; number; value of each of the species of marine life purchased, transferred, exchanged, or sold during the previous month; name and current license number of the commercial marine

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licensee from whom the marine life was obtained; and such other information as the department may require.

(d) The department may require any term or condition of the licenses issued pursuant to this section, including, but not limited to, reports, fees and exemptions. The department may adopt rules pursuant to chapter 91 for the purposes of this section.”

SECTION 2. Section 189-11, Hawaii Revised Statutes, is amended to read as follows:

**“§189-11 Receipts in duplicate.** Every commercial marine dealer shall issue receipts to the person from whom marine life is obtained and shall provide the following information in the receipt:

- (1) [the] The date of the issuance;
- (2) [the] The name of the person to whom the receipt is issued;
- (3) [the] The following information with respect to each of the varieties of marine life as the department shall require including: [the]
  - (A) The weight in pounds of each of the varieties received[, the];
  - (B) The numbers of marine life when they average a pound or more[, the]; and
  - (C) The price per pound paid; and
  - (D) With regard to aquarium fish, regardless of weight, the number and species of the fishes; and

- (4) [the] The signature of the dealer who issues the receipt.

Any dealer taking the dealer’s own marine life or handling any marine life taken by commercial marine licensees working for or with the dealer, shall make out the same receipt, giving market price for the marine life as prevails on the date of receipt. A duplicate copy of this receipt shall be kept on file at the premise where the marine life was sold by the dealer issuing the same for a period of [six months,] twelve months from the date of issuance, and the duplicate copy shall be available for inspection [at any time within six months, upon demand of the department.] upon the demand of any conservation officer authorized to enforce the laws of the State.”

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

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

(Approved June 21, 1997.)

## ACT 308

S.B. NO. 1619

A Bill for an Act Relating to Parking for Disabled Persons.

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

SECTION 1. The purpose of this Act is to:

- (1) Establish uniform penalties for the unauthorized or improper use of: public and private parking spaces reserved for the use of disabled persons; removable windshield placards; temporary removable windshield placards, and special license plates; and
- (2) Provide uniform minimum requirements for signage and markings for such parking spaces.

The legislature recognizes that penalties for such violations, and requirements for signage and markings, are inconsistent among the various state and county agencies, and private property owners, and that this inconsistency causes confusion, both to users of the parking spaces and the general parking public. There is a need and a desire for consistency for both public and private parking spaces reserved for disabled persons.

This Act provides for uniform penalties, signage, and markings throughout the State.

SECTION 2. Chapter 291, Hawaii Revised Statutes, is amended by adding to part III a new section to be appropriately designated and to read as follows:

**“§291- Disabled parking; penalties.** (a) A person using a parking space reserved for disabled persons without properly displaying a removable windshield placard, temporary removable windshield placard, or special license plate, in accordance with this part or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$150 nor more than \$300.

(b) Any disabled person who refuses or fails to present an identification card issued under this chapter or the rules adopted thereunder to an enforcement officer upon request shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$150 nor more than \$300.”

SECTION 3. Section 107-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who violates any of the rules [and regulations promulgated] adopted by the comptroller shall be fined not more than \$50 for each violation[.]; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291.”

SECTION 4. Section 261-17.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director may enforce airport rules pertaining to vehicle parking at airports by imposing fines not to exceed \$50 per violation or by removing the vehicle of the offender from the area within the airport’s jurisdiction, or both[.]; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291.”

SECTION 5. Section 291-51, Hawaii Revised Statutes, is amended as follows:

**“§291-51 Definitions.** As used in this part, the following terms have the following meanings:

“Certificate of disability” means a medical statement issued by a licensed practicing physician, which verifies that a person is disabled, limited, or impaired in the ability to walk.

“Disabled person” means a person[.] with a disability which limits or impairs the ability to walk, and who, as determined by a licensed practicing physician:

- (1) [Who cannot] Cannot walk two hundred feet without stopping to rest, due to a diagnosed arthritic, neurological, or orthopedic condition;
- (2) [Who cannot] Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
- (3) [Who are] Is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (4) [Who uses] Uses portable oxygen; or
- (5) [Who has] Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association.

"International symbol of access" means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

"Parking space reserved for disabled persons" means a public or private parking space designated for the use of a disabled person that (1) is designed and constructed in compliance with the requirements of the federal Americans with Disabilities Act of 1990, as amended, and related rules and guidelines; (2) is marked with a sign designating the parking space as reserved for disabled persons; or (3) is otherwise clearly designated for the use of disabled persons.

"Removable windshield placard" means a two-sided, hanger-style placard which includes on each side:

- (1) The international symbol of access which is white on a blue shield;
- (2) An identification number;
- (3) A date of expiration; and
- (4) The seal of the State.

"Sign designating the parking space as reserved for disabled persons" means a sign which contains:

- (1) The words, "Reserved Parking";
- (2) The international symbol of access;
- (3) Words indicating that the space is reserved for parking by disabled persons who have valid placards or special license plates; and
- (4) The maximum fine for parking illegally in the space.

"Special license plate" means a license plate that displays the international symbol of access:

- (1) In a color that contrasts to the background; and
- (2) In the same size as the letters or numbers on the plate.

"Temporary removable windshield placard" means a two-sided, hanger-style placard, which includes on each side:

- (1) The international symbol of access and is white on a red shield;
- (2) An identification number;
- (3) A date of expiration;
- (4) The seal of the State; and
- (5) The word "temporary".

SECTION 6. Section 291-51.5, Hawaii Revised Statutes, is amended to read as follows:

**"[[§291-51.5]] Special license plates.** Upon application by a [person with a disability,] disabled person, each county shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport [persons with disabilities which limit or impair their ability to walk.] that person.

The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.”

SECTION 7. Section 291-51.6, Hawaii Revised Statutes, is amended to read as follows:

“[[§291-51.6]] Temporary removable parking placards. The county shall require that the application for a temporary removable windshield placard be accompanied by [the certification of a licensed physician] a certificate of disability which [designates] verifies that the applicant meets the definition of [persons with disabilities which limit or impair the ability to walk.] a disabled person. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months. The temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.”

SECTION 8. Section 291-51.7, Hawaii Revised Statutes, is amended to read as follows:

“[[§291-51.7]] Reciprocity. The State, counties, and private property owners shall recognize removable windshield placards, temporary removable windshield placards, and special license plates which have been issued by authorities of other states and countries, for the purpose of identifying [vehicles] persons permitted to [utilize]:

- (1) Utilize parking spaces reserved for [persons with disabilities.] disabled persons; or
- (2) Exercise other parking privileges afforded by the State, counties, or private property owners for the benefit of disabled persons.”

SECTION 9. Section 291-52, Hawaii Revised Statutes, is amended to read as follows:

“§291-52 Issuance of removable windshield placard. Each county may issue one distinguishing placard to each [person with a disability] disabled person who so requests and presents a certificate of disability. The removable windshield placard shall be designed, fabricated, and sold at cost to the counties by the department of transportation. The county may charge a fee to cover its costs.”

SECTION 10. Section 291-53, Hawaii Revised Statutes, is amended to read as follows:

“§291-53 Nontransferability; penalty. The removable windshield placard, temporary removable windshield placard, or special license plate shall not be used by anyone other than the disabled person to whom it is issued unless it is being used in connection with the [transportation of a person with a disability.] transport of the disabled person. An unauthorized person using the removable windshield placard, temporary removable windshield placard, or special license plate to obtain the special parking privileges authorized under this part or otherwise afforded by the state or counties, shall be guilty of a [parking violation] traffic infraction under chapter 291D and [subject to the penalties provided by law.] fined not less than \$150 nor more than \$300. A removable windshield placard, temporary removable windshield placard, or special license plate may be revoked for any unauthorized use.”

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SECTION 11. Section 291-54, Hawaii Revised Statutes, is amended to read as follows:

“**§291-54 Display of removable and temporary removable windshield [placard.] placards.** The placard shall be displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for [persons with disabilities.] disabled persons. When there is no rearview mirror, the placard shall be displayed on the dashboard.”

SECTION 12. Section 291-56, Hawaii Revised Statutes, is amended to read as follows:

“**§291-56 Rules.** The department of transportation may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the issuance [and], renewal, revocation, and suspension of removable windshield placards, [or] temporary removable windshield placards, [reciprocity] and special license plates, reciprocity, the replacement of lost or stolen placards, [and] the design of the placard[,] and special license plates, signage and marking of parking spaces, and penalties.”

SECTION 13. Section 308-3, Hawaii Revised Statutes, is amended to read as follows:

“**§308-3 Fines and other penalties.** The board of regents may enforce its rules and regulations by imposing fines not to exceed \$25 per violation or by removing the vehicle of the offender from the area within the university’s jurisdiction, or both[.]; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291. The owner of any vehicle so towed away shall be responsible for and pay all costs incurred in the towing and storage. Any car so towed away and unclaimed thirty days thereafter shall be sold at public auction by the university. The university shall pay all costs of towing and storage and other costs connected with the sale out of the university parking revolving fund. The fund shall be reimbursed for the costs from the proceeds of the sale and the remaining balance, if any, shall be paid to the owner of the vehicle; provided that if the proceeds of the sale are not claimed by the owner of the vehicle within sixty days after notice, the proceeds shall be deposited in the university parking revolving fund.”

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved June 21, 1997.)



## ACT 309

S.B. NO. 1621

A Bill for an Act Relating to High Occupancy Vehicle Lanes.

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

SECTION 1. Section 291C-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director of transportation by [order,] rules adopted in accordance with chapter 91, and the counties by ordinance, may regulate or prohibit the use of any controlled-access roadway or highway within their respective jurisdictions by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. Persons operating motorcycles which are otherwise permitted on a controlled-access roadway or highway shall be permitted to use any high occupancy vehicle lane designated on such roadway or highway. For the purposes of this subsection, “high occupancy vehicle lane” means a designated lane of a laned roadway where the use of such designated lane is restricted to vehicles carrying at least two persons and to other vehicles [enumerated] as provided by [order or] rules adopted in accordance with chapter 91, or by county ordinance.”

SECTION 2. Section 291C-221, Hawaii Revised Statutes, is amended by amending the definition of “high occupancy vehicle lane” to read:

““High occupancy vehicle lane” means a designated lane of a laned roadway where the use of the designated lane is restricted to [high occupancy] vehicles carrying at least two persons and to other vehicles as provided by rules adopted in accordance with chapter 91, or by county ordinance.”

SECTION 3. Section 291C-222, Hawaii Revised Statutes, is amended to read as follows:

“**[[§291C-222[ ] Designation of high occupancy vehicle lane.** (a) The director of transportation by [order,] rules adopted in accordance with chapter 91, and the counties by ordinance, may designate high occupancy vehicle lanes as to roadways under their respective jurisdictions.

(b) Signs and other official traffic-control devices that designate high occupancy vehicle lanes shall be placed and maintained to advise drivers of the high occupancy vehicle requirement and the hours of usage. When the high occupancy vehicle lane also serves as a contra-flow lane, the hours of usage as a high occupancy vehicle lane shall be the time when the lane is coned for use as a high occupancy vehicle lane.

(c) No motor vehicle shall be operated upon these lanes except in conformance with the instructions on the signs and other official traffic-control devices.

(d) A motorcycle may use any high occupancy vehicle lane, regardless of the number of occupants.

(e) Any vehicle authorized by rules adopted in accordance with chapter 91 may use any high occupancy vehicle lane, regardless of the number of occupants, when the use is determined to enhance public safety and improves traffic conditions.”

SECTION 4. Act 224, Session Laws of Hawaii 1993, as amended by Act 25, Session Laws of Hawaii 1995, is amended by amending section 6 to read as follows:

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“SECTION 6. This Act shall take effect upon its approval [and shall be repealed on June 30, 1997].”

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

SECTION 6. This Act shall take effect on June 29, 1997.

(Approved June 21, 1997.)

## ACT 310

S.B. NO. 1624

A Bill for an Act Relating to the Hawaii State Public Library System.

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

SECTION 1. Section 312-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to its other duties, the board of education, through the state librarian, shall:

- (1) Provide for the establishment and ongoing operation of a literacy and lifelong learning program, including but not limited to the planning, programming, and budgeting of operating, research and development, and capital investment programs;
- (2) Coordinate and facilitate the activities of literacy service providers and literacy programs in the public, private, and volunteer sectors;
- (3) Serve as a clearinghouse for information relating to grants and other moneys available for literacy providers and programs, literacy services available in the State, the measurable results of various literacy programs, and statistics and demographics concerning those individuals receiving and in need of literacy services;
- (4) Develop public-private sector literacy partnerships with the assistance of the [governor’s council] advisory alliance for literacy and lifelong learning; and
- (5) Act as the oversight state agency in the public-private partners for literacy trust fund for the purpose of section 312-9(d).”

SECTION 2. Section 312-10, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§312-10]]~~ **Advisory [council] alliance for literacy and lifelong learning.** There is established within the office of the state librarian an advisory council to be known as the [governor’s council] advisory alliance for literacy and lifelong learning. The [council] alliance shall consist of [eighteen] seven members. All members shall be appointed by [the governor in accordance with section 26-34.] the board of education. The composition of [the council] the advisory alliance for literacy and lifelong learning shall reflect the distribution of the State’s population, with consideration being given to varied community needs and interests in literacy; provided that there shall be at least one member from each of the counties of the State. The [council] alliance shall [advise the board of education on matters relating to literacy and lifelong learning programs.] act as a statewide literacy planning alliance to maximize resources for community-level programs. The members of the

[council] alliance shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.”

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 21, 1997.)

## ACT 311

S.B. NO. 1632

A Bill for an Act Relating to Housing.

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

SECTION 1. 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, familial status, ancestry, disability, age, 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, or to steer a person seeking to engage in a real estate transaction;
- (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 person or to deny equal opportunity to use and enjoy a housing accommodation due to a disability because the person uses the services of a [certified] guide[,] dog, signal[,] dog, or service [dog;] animal; 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 a real estate transaction; provided that as used in this paragraph, the “reasonableness” of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a “reasonable restriction” may require the owner of the service[,] animal, guide[,] dog, or signal dog to comply with one or more of the following:

[(A) Provide proof that the animal is a service, guide, or signal dog;

(B) (A) Observe applicable laws including leash laws and pick-up laws;

[(C) (B) Assume responsibility for damage caused by the dog; or

(D) (C) 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;

“Service [dog] animal” 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;] animal that is trained to provide those life activities limited by the disability of the person;

“Signal dog” means any dog [individually trained and certified by a nationally recognized signal dog organization to] that is trained to alert a deaf person to intruders or sounds;

- (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);
- (10) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises. A real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- (11) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;
- (12) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
  - (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
  - (B) With respect to housing accommodations with an accessible building entrance:

- (i) The public use and common use portions of the housing accommodations are accessible to and usable by disabled persons;
  - (ii) Doors allow passage by persons in wheelchairs; and
  - (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- (13) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation."

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 21, 1997.)

## ACT 312

S.B. NO. 1714

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

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

SECTION 1. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of "dealer" to read as follows:

""Dealer" includes "auction" as defined in this section or any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. "New motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. "Used motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles. The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of an auction license issued under this chapter when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement; [or]

- (5) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for the person's own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person's use in good faith and not for the purpose of evading any provision of this chapter[.]; or
- (6) A Hawaii bank or its affiliate selling or offering for sale motor vehicles surrendered or redelivered to it under the terms of a lease, or sold by it pursuant to a purchase option contained in a 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 June 21, 1997.)

**ACT 313**

S.B. NO. 1766

A Bill for an Act Relating to Public Safety and Internal Security.

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

SECTION 1. The legislature finds that in the interest of protecting life, health, and property, and preserving the order and security of the public, there is a need to direct vehicles and pedestrians onto and through private real property during an emergency situation or traffic accident on a public road.

The purpose of this Act is to provide immunity from liability for private owners and the State and counties when rerouting of vehicular and pedestrian traffic onto private property is necessary as a result of traffic obstructions from natural disasters, hazardous material spills, and traffic accidents.

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

**“CHAPTER  
EMERGENCY USE OF PRIVATE REAL PROPERTY**

§ **-1 Definitions.** As used in this chapter:

“Chief of police” means the chief of police of the respective counties and their authorized representatives.

“County” means any county or political subdivision of the State.

“Emergency” means the imminent or actual occurrence of an event, which has the likelihood of causing extensive injury, death, property damage, or impedes the safe and necessary movement of persons or vehicles over public highways, including but not limited to the spillage of hazardous material on a public highway or public place.

“Emergency area” means the area in which an emergency occurs or is likely to occur.

“Owner” means any individual, partnership, firm, society, unincorporated association, joint venture group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, or other legal entity whether doing business for itself or in a fiduciary capacity, that owns or controls the real property.

“Public highway” means all state and county roads, alleys, streets, ways, lanes, bikeways, and bridges.

“Traffic accident” means an accident involving motorists, pedestrians, or bicyclists, or a combination, on public highway which impedes the safe and necessary movement of persons or vehicles.

**§ -2 Authority of chief of police and their authorized representatives.**

In times of an emergency or traffic accident, the chief of police may divert vehicles, pedestrians, bicyclists, or a combination thereof, onto existing private roads or pathways on private real property for the purpose of accommodating the movement of people and vehicles away from an emergency or traffic accident area.

**§ -3 Owner’s immunities.** In the event the chief of police diverts vehicles, pedestrians, bicyclists, or a combination thereof, onto an owner’s real property during an emergency or traffic accident, the owner, together with the owner’s successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person or damage to any personal property, in connection with the use of the real property for the purposes as provided in section -2.

**§ -4 Government’s immunities.** The State and counties and their respective officers and employees shall not be liable for the death of, or injury to, persons or for damage to property, as a result of the use of an owner’s real property for the diversion of vehicles, pedestrian, bicyclists, or a combination thereof, during an emergency or traffic accident, as provided in section -2.”

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

(Approved June 21, 1997.)

**ACT 314**

S.B. NO. 1881

A Bill for an Act Relating to Planning.

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

SECTION 1. The community benchmarking process has been adopted by a number of states and other jurisdictions across the country. Benchmarking can unify communities, integrate the delivery of services, and optimize the allocation of resources to achieve stated goals. Benchmarking encourages long-term perspectives in achieving measurable goals. Typically, goals encompass the economy, the health of the population, education, the environment, safety, and government efficiency.

In brief, benchmarking involves four steps:

- (1) Expressing a preferred future through a broad vision;
- (2) Setting goals to achieve that vision;
- (3) Establishing measurable indicators that show movement toward or away from those goals; and
- (4) Determining the desired progress toward those goals in terms of the indicators, or benchmarking.

The following illustrates how benchmarking can work:

- (1) Vision: A Hawaii filled with aloha;
- (2) Goal: Healthy, productive, and safe people;
- (3) Indicators: Numbers of smokers; numbers of high-skill, high-paying jobs; and the violent crime rate;

- and
- (4) Benchmarks:
    - (A) There will be a ten per cent reduction in the number of smokers in Hawaii by the year 2010;
    - (B) There will be a ten per cent increase in the number of high-skills, high-paying jobs by the year 2010; and
    - (C) There will be a reduction of five per cent in the violent crime rate by the year 2010.

Benchmarking is a process that seeks to unify communities so that people reach agreement on the benchmarks. Since each community is different, the specific benchmarks that one community adopts may be different from those of another community. Once benchmarks are agreed upon, resources can be rationally allocated to make progress toward those benchmarks. In this way, outcomes, or the results of spending, are measured rather than inputs, or how much is spent. Another benefit of benchmarking is that it can integrate planning across different sectors since the benchmarking process gives them a common language and common goals for developing the economy and improving the quality of life.

Ke Ala Hoku is a benchmarking process started in 1995 by various private organizations. Partners include the Chamber of Commerce, Aloha United Way, the Business Roundtable, Hawaii Community Foundation, Hawaii Community Services Council, and the Polynesian Voyaging Society. Ke Ala Hoku has committed to a bottom-up process rather than a top-down benchmarking process. To date, there has been progress in the development of a common language around benchmarks, in the use of benchmarking tools by organizations, and in other organizations aligning themselves to help achieve the benchmarks already established by Ke Ala Hoku.

Ke Ala Hoku has focused upon the Waianae coast to demonstrate the potential benefits of benchmarking at a community level. The Waianae coast was selected because it is a well-defined area with a cooperative spirit among private nonprofit organizations and government agencies. The Waianae Coast Coalition has taken a leadership role in the benchmarking process.

The purpose of this Act is to create the Waianae coast community benchmarking pilot project to further benchmarking efforts for developing the economy and improving the quality of life on the Waianae Coast.

SECTION 2. There is established the Waianae coast community benchmarking pilot project. Agencies, both public and private, shall collaborate to implement a vision, goals, indicators, and benchmarks. The department of business, economic development, and tourism, the department of human services, and all relevant state agencies shall collaborate with Ke Ala Hoku, the Waianae Coast Coalition, and private agencies operating on the Waianae coast in determining what kinds of data to collect to further the benchmarking effort.

SECTION 3. Ke Ala Hoku shall submit annual progress reports to the legislature no later than twenty days prior to the convening of each regular session.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, 2000.

(Approved June 21, 1997.)



## ACT 315

S.B. NO. 1683

A Bill for an Act Relating to a Hawaiian Language College.

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

SECTION 1. In 1996, in recognition of the “Year of the Hawaiian Language”, the legislature established a task force to make recommendations regarding the establishment of a Hawaiian language college at the University of Hawaii at Hilo, including an action plan for the creation of an entity similar to the tribal colleges of Native Americans. The legislature has received an extensive report from the task force highly recommending the establishment of such a college along with an action plan to accomplish the task.

The legislature finds that a Hawaiian language college at the University of Hawaii at Hilo will serve as a focal point for the State’s efforts to revitalize the Hawaiian language through teacher training, undergraduate and graduate study of Hawaiian, community outreach, research and testing, use of technology, national and international cooperation, and the development of liberal education in Hawaiian for future generations of Hawaiian speakers.

The legislature further finds that in these times of financial difficulty, there is a need for partnership among the office of Hawaiian affairs, the University of Hawaii system, the federal government, and the private sector if state and Hawaiian community goals relative to the Hawaiian language are to be achieved.

The legislature commends Governor Cayetano, the office of Hawaiian affairs, and the University of Hawaii in taking the first step toward the establishment of a Hawaiian language college by demonstrating the viability of such a partnership through the joint establishment of the masters program in Hawaiian language and literature at the University of Hawaii at Hilo and for the establishment of Nawahiokalani‘opu‘u school in cooperation with the private ‘Aha Punana Leo, Inc., as a Hawaiian immersion teacher training and curriculum testing site.

The legislature further extends its appreciation to the Hawaii congressional delegation, especially Senator Daniel Inouye, for support of federal funding for tribal colleges and for native Hawaiian education, including funding that has allowed a consortium partnership between the private ‘Aha Punana Leo, Inc., and the University of Hawaii at Hilo to develop Hawaiian language materials.

The legislature notes the appropriateness of locating this college on the island of Hawaii due to its large Hawaiian population, cultural richness, and need for environmentally sensitive growth, as well as the history of innovation and inter-agency cooperation that has distinguished the Hawaiian language program at the Hilo campus.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new subpart to part II to be appropriately designated and to read as follows:

“C. Hawaiian Language College

**§304- Creation.** There shall be a Hawaiian language college at the University of Hawaii at Hilo. The college shall provide a Hawaiian liberal education program providing education primarily through the Hawaiian language. There shall be established a revolving fund into which revenues from the sale of Hawaiian language materials shall be deposited. Moneys deposited into this fund shall be expended to support the Hawaiian language college.

**§304- Functions.** In addition to providing a quality education primarily through the medium of the Hawaiian language, the college shall:

- (1) Provide an indigenous language outreach program to involve indigenous language scholars and to maintain and develop the program's Polynesian language database;
- (2) Provide a Hawaiian medium teacher training program incorporating Nawahiokalani 'opu 'u school and other schools, as appropriate, as laboratory schools; and
- (3) Maintain a Hawaiian language support center with educational specialists in the areas of research, curriculum development, language development, archival work, and educational technology."

SECTION 3. (a) At such time as the Hawaiian language college is officially established, the Hawaiian studies department, including the master's in Hawaiian language and literature program at the University of Hawaii at Hilo, shall be transferred to it.

(b) All officers and employees whose functions are transferred by this Act will 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 the 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 the 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 4. The Hawaiian language college at the University of Hawaii at Hilo is authorized to establish five new positions which shall be hired without regard to chapters 76 and 77, Hawaii Revised Statutes.

SECTION 5. Notwithstanding any law to the contrary, general funds shall not be appropriated to fund the continuation of the Hawaiian language college at the University of Hawaii at Hilo if initial funds are deemed inadequate or become unavailable. The University of Hawaii shall continue to work with the office of Hawaiian affairs, the federal government, and 'Aha Punana Leo, Inc., to establish additional funding for the needs of the college.

SECTION 6. Nothing in this Act shall be construed to be a mandate pursuant to section 304-7.5, Hawaii Revised Statutes.

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved June 29, 1997.)

## ACT 316

H.B. NO. 108

A Bill for an Act Relating to Crime.

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

SECTION 1. The legislature finds that sex offenders who use physical violence, sex offenders who prey upon children, and repeat sex offenders present an extreme threat to the public safety. These sex offenders commit far more offenses than they are prosecuted for and victimize far more individuals than ever report the crimes. For too long, the interests of justice have been heavily weighted on concern for the offenders' rights, and there is a need to balance the scales of justice between the rights of offenders and the rights of victims.

In particular, victims of sex offenders suffer devastating and long-term consequences that too often are felt by succeeding generations. Because of the continuing stigma associated with such crimes, victims often fail to seek or receive adequate treatment and counseling and, as a result, exhibit characteristics such as continuing fear and intimidation, inadequate social skills and job preparedness, sexual anxiety, difficulty relating to others, immaturity or arrested psychological development, and repeated patterns of child or sexual abuse of others. Clearly, the cost to individuals and to society at large, while incalculable, is exorbitant.

Therefore, the legislature finds that it has a compelling interest in protecting the public from sex offenders and in protecting children from predatory sexual activity by requiring strict registration requirements of sex offenders and public notification of the presence of sex offenders in a particular community.

Furthermore, the legislature notes that section 170101 (the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. §14071) established registration requirements for certain sex offenders. Failure to comply with these requirements by September 1997, will result in a ten per cent reduction in the State's Byrne Formula Grant funding (section 506 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3756). On May 17, 1996, section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, was amended by Megan's Law (P.L. 104-145) to require release by a designated state agency of relevant information that is necessary to protect the public, concerning registered sex offenders residing in the community. In the fall of 1996, section 170101 was substantially amended by the Pam Lynchner Sexual Offender Tracking and Identification Act of 1996 (P.L. 104-236, October 3, 1996), again, with similar financial incentives for state compliance by October 1999.

The legislature is cognizant of the rising concern in the community and among law enforcement officials with crime in our society. Moreover, the legislature is painfully aware of the State's worsening economic condition and the competing demands for the limited funding available among so many critical needs. The legislature finds that immediate action is necessary to ensure that the federal funds desperately needed by law enforcement agencies are not lost. Accordingly, the legislature finds and declares that, in view of the State's current economic crisis and the ever present concern over crime, it is in the interest of the public health, safety, and welfare to adopt more stringent registration requirements for sex offenders and

to provide some measure of protection to the public by ensuring the release of relevant information concerning the presence of sex offenders in the community.

The purpose of this Act is to require strict registration requirements of sex offenders and ensure the release of relevant information concerning the presence of a sex offender necessary to protect the public.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 37 to be appropriately designated and to read as follows:

**“CHAPTER  
SEX OFFENDER REGISTRATION AND NOTIFICATION**

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

“Agency having jurisdiction” means that agency with the authority to direct the release of a person serving a sentence or term of confinement or place a person on probation, supervised release, or parole and includes the department of public safety, the Hawaii paroling authority, the office of youth services, the courts, and the department of health.

“Criminal offense against a victim who is a minor” means any criminal offense that consists of:

- (a) Kidnapping of a minor, except by a parent;
- (b) Unlawful imprisonment in the first degree of a minor, except by a parent;
- (c) Criminal sexual conduct toward a minor;
- (d) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
- (e) Use of a minor in a sexual performance;
- (f) Solicitation of a minor to practice prostitution;
- (g) Any conduct that by its nature is a sexual offense against a minor, but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b) or section 707-732(1)(b), if the perpetrator is eighteen years of age or younger; or
- (h) Any state, federal, or military law similar to paragraphs (a) through (g).

“Sex offender” means:

- (a) Any person convicted of a “sexually violent offense” or a “criminal offense against a victim who is a minor”; or
- (b) Any person who is charged with a “sexually violent offense” or a “criminal offense against a victim who is a minor” and is found unfit to proceed or who is acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704.

“Sexually violent offense” means an act committed on, before, or after July 1, 1997, that is:

- (a) An act defined in section 707-730(1)(a), 707-730(1)(b), 707-731(1)(a), 707-731(1)(b), 707-732(1)(a), 707-732(1)(e), and 707-733(1)(a);
- (b) A criminal offense that is comparable to a sexually violent offense as defined in paragraph (a) or any federal or out-of-state conviction, for any offense that under the laws of this State would be a sexually violent offense as defined in paragraph (a); or
- (c) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraph (a) or (b).

§ **-2 Registration requirements.** (1) A sex offender shall register with the attorney general and comply with the provisions of this chapter for life.

(2) Registration information for each sex offender shall consist of a recent photograph that shall be provided by the sex offender, verified fingerprints, a sample of saliva, and two samples of blood for the purpose of secretor status, blood type, and DNA analysis, if not obtained from the person previously, and a signed statement by the sex offender containing:

- (a) Name and all aliases used by the sex offender or under which the sex offender has been known and other identifying information, including date of birth, social security number, sex, race, height, weight, and hair and eye color;
- (b) The address and telephone number of the sex offender's legal address and that of any current, temporary address where the sex offender resides and how long the sex offender has resided there;
- (c) The address and telephone number where the sex offender is staying for a period of more than ten days, if other than the stated residence;
- (d) The future address and telephone number where the sex offender is planning to reside, if other than the stated residence;
- (e) Names of employers and date and current locations of employment;
- (f) Vehicle registration information of all vehicles currently owned or operated by the sex offender; and
- (g) A summary of the criminal offenses against victims who were minors and sexually violent offenses for which the sex offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704.

§ **-3 Access to registration information.** (1) Registration information shall be disclosed as follows:

- (a) The information shall be disclosed to law enforcement agencies for law enforcement purposes;
- (b) The information shall be disclosed to government agencies conducting confidential background checks;
- (c) The attorney general and any county police department shall release relevant information that is necessary to protect the public concerning a specific person required to register under this chapter; provided that the identity of a victim of an offense that requires registration under this chapter shall not be released;
- (2) For purposes of this section, "relevant information that is necessary to protect the public" means:
  - (a) Name and all aliases used by the sex offender or under which the sex offender has been known;
  - (b) The street name and zip code where the sex offender resides and how long the sex offender has resided there;
  - (c) The street name and zip code where the sex offender is staying for more than ten days, if other than the stated residence;
  - (d) The future address and telephone number, if known, where the sex offender is planning to reside, if other than the stated residence;
  - (e) The street name and zip code of the sex offender's current locations of employment;
  - (f) Vehicle registration information of all vehicles currently owned or operated by the sex offender;
  - (g) A brief summary of the criminal offenses against victims who were minors and the sexually violent offenses for which the sex offender has

been convicted or found unfit to proceed or acquitted pursuant to chapter 704; and

(h) A recent photograph of the sex offender.

(3) Relevant information that is necessary to protect the public shall be collected for purposes of making it available to the general public, and a sex offender shall have a diminished expectation of privacy in the information.

(4) The release of relevant information that is necessary to protect the public shall be accomplished by public access to a file containing the relevant information on each registered sex offender, a copy of which shall be provided for inspection upon request at the Hawaii criminal justice data center and at one or more designated police stations in each county, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays excluding holidays. The chief of police and the attorney general shall provide the relevant information on sex offenders upon payment of reasonable fees. Relevant information on each registered sex offender may also be released from an electronic data base maintained by the respective law enforcement agencies that is accessible to users through an interactive computer-based system.

**§ -4 Duties upon discharge, parole, or release of sex offender.** (1) Each person, or that person's designee, in charge of a jail, prison, hospital, school, or other institution to which a sex offender has been committed pursuant to a conviction, or an acquittal or finding of unfitness to proceed pursuant to chapter 704, for a sexually violent offense or a criminal offense against a victim who is a minor, and each judge, or that judge's designee, who releases a sex offender on probation or who discharges a sex offender upon payment of a fine, prior to the discharge, parole, or release of the sex offender, and each agency having jurisdiction, shall:

- (a) Explain to the sex offender the duty to register and the consequences of failing to register under this chapter;
- (b) Obtain from the sex offender all of the registration information required by this chapter;
- (c) Inform the sex offender that if the sex offender changes residence address, the sex offender shall notify the attorney general of the new address in writing within three working days;
- (d) Inform the sex offender that, if the sex offender changes residence to another state, the sex offender shall register the new address with the attorney general and also with a designated law enforcement agency in the new state, if the new state has a registration requirement, not later than ten days after establishing residence in the new state;
- (e) Obtain and verify fingerprints, samples of saliva and blood, a photograph of the sex offender, if these have not already been obtained or verified in connection with the offense that triggers the registration. Blood shall be withdrawn pursuant to this paragraph only by a person authorized to withdraw blood under section 286-152. The agency having jurisdiction 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 and consistent with the requirements of chapter 846. For the purposes of this paragraph, the person may be remanded to any available clinic or hospital, intake service center, community correctional center, state or county health department facility, or police department crime laboratory.
- (f) Require the sex offender to sign a statement indicating that the duty to register has been explained to the sex offender;
- (g) Give one copy of the signed statement and one copy of the registration information to the sex offender.

(h) The agency having jurisdiction over the sex offender shall also note any additional physical identifying factors of the sex offender.

(2) No sex offender required to register under this chapter shall be discharged, released from any confinement, or placed on parole or probation unless the requirements of subsection (1) have been satisfied and all registration information required under section -2 has been obtained.

(3) The agency having jurisdiction over the sex offender shall obtain documentation of any treatment the sex offender received for mental abnormality or personality disorder and shall include the documentation, if any, and any additional identifying factors of the sex offender with the registration information. Notwithstanding any law to the contrary, the agency having jurisdiction shall transmit a copy of the signed statement and one copy of the registration information to the attorney general within three working days.

(4) Following receipt of the information from the agency having jurisdiction over the sex offender, the attorney general immediately shall enter the information into a statewide record system, unless the information has been previously entered into a statewide record system, and notify the county police department or appropriate law enforcement agency having jurisdiction where the sex offender expects to reside. The attorney general immediately shall transmit the conviction data and verified fingerprints to the Federal Bureau of Investigation, unless the items have been previously transmitted to the Federal Bureau of Investigation.

(5) Each sex offender, within three working days after release from incarceration, release from commitment, release on furlough, placement on parole, or placement on probation, or within three working days after arrival in a county in which the sex offender resides or expects to be present for a period exceeding thirty days, shall register in person with the county chief of police having jurisdiction of the area in which the sex offender resides or is present. The chief of police shall transmit any sex offender registration information required by this chapter to the attorney general, by entering the information into a statewide record system, if the information has not previously been entered into the system, and also shall provide the attorney general with a photograph of the sex offender, taken at the time the sex offender registers with the chief of police. The sex offender shall report in person every five years to the county chief of police of the county where the sex offender's residence is located for purposes of having a new photograph taken.

**§ -5 Periodic verification of registration information.** Unless the sex offender is incarcerated or has registered with a designated law enforcement agency after establishing residence in another state, on the first day of every ninety-day period following the sex offender's initial registration date:

- (a) The attorney general shall mail a nonforwardable verification form to the last reported address of the sex offender;
- (b) The sex offender shall sign the verification form and state that the sex offender still resides at the address last reported to the attorney general and that no other registration information has changed or shall provide the new information;
- (c) The sex offender shall mail the signed and completed verification form to the attorney general within ten days after receipt of the form; and
- (d) If the sex offender fails to mail the verification form to the attorney general within ten days after receipt of the form, the sex offender shall be in violation of this chapter, unless the sex offender proves that the sex offender has not changed the residence address.

This section shall become effective on July 1, 1998.

**§ -6 Requirement to register a change of address; verification by the attorney general.** (1) A sex offender required to register under this chapter, who changes address after an initial registration with the attorney general, shall notify the attorney general of the new residence address in writing within three days of changing residence. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person resides at a different address for not less than ten days. If the new residence is in another state that has a registration requirement, the person shall register the new address with a designated law enforcement agency in the state to which the person moves, not later than ten days after the person establishes residence in that state.

(2) If the attorney general receives notice from the Federal Bureau of Investigation that a sex offender required to be registered under this chapter or under any federal law has entered the State, the attorney general shall notify the Federal Bureau of Investigation of the offender's new residence.

(3) If the attorney general cannot verify the address of or locate a sex offender required to be registered under this chapter or under federal law, the attorney general immediately shall notify the Federal Bureau of Investigation.

**§ -7 Notification by the attorney general of changes in address.** Immediately, and in no event, not later than ten days after receiving notice of a change of address, the attorney general shall report the change of address by a sex offender required to register under this chapter to the county police department where the sex offender is residing and to the Federal Bureau of Investigation. If the person changes residence to another state, the attorney general also shall notify the law enforcement agency with which the person must register in the new state, if the new state has a registration requirement.

**§ -8 Good faith immunity.** Law enforcement agencies, employees of law enforcement agencies, and state and county officials shall be immune from liability for good faith conduct under this chapter.

**§ -9 Penalty.** (1) For a first offense:

- (a) Any person required to register under this chapter who recklessly fails to comply with any of the requirements of this chapter shall be guilty of a misdemeanor; and
- (b) Any person required to register under this chapter who intentionally or knowingly fails to comply with any requirements of this chapter shall be guilty of a class C felony.

(2) For any second or subsequent offense, any person required to register under this chapter who recklessly, intentionally, or knowingly fails to comply with any of the requirements of this chapter shall be guilty of a class C felony.”

SECTION 3. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§353- DNA testing of committed persons convicted of sex crimes against minors.** (a) Prior to the discharge or parole of any committed person who has been convicted of an offense involving a minor, including attempts, under section 707-730, 707-731, 707-732, 707-733, 707-741, 707-750, or 707-751, the committed person shall provide a sample of saliva and two samples of blood for the purpose of secretor status, blood type, and DNA analysis unless the person has previously provided such samples under section 706-603. Blood shall be withdrawn only by a person authorized to withdraw blood under section 286-152. The department shall arrange for the sample to be collected and analyzed. The director shall



establish a chain-of-custody procedure that includes a tracking form documenting the handling and storage of the specimen from collection to final disposition of the samples. 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.

(b) For the purposes of this section, the committed person may be remanded to any available clinic or hospital, intake service center, community correctional center, state or county health department facility, or police department crime laboratory.”

SECTION 4. Section 707-743, Hawaii Revised Statutes, is repealed.

SECTION 5. 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 1997-1998 and the sum of \$300,000 or so much thereof as may be necessary for fiscal year 1998-1999 for ongoing operational costs of the sex offender registration and notification program required under this Act, including the hiring of necessary staff. The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 6. 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 that 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 apply to any acts committed prior to, on, or after its effective date.

SECTION 8. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 1997.

(Approved June 30, 1997.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 317

H.B. NO. 107

A Bill for an Act Relating to Juveniles.

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

SECTION 1. The legislature finds that the crime rate in Hawaii among juveniles is steadily increasing, despite concerted efforts by state and county law enforcement personnel to prevent juvenile crime. Of particular concern are significantly higher rates of burglary and other property crime, as more juveniles turn to theft to obtain money to buy illegal drugs. In addition, the violent crime rate for juveniles has steadily risen during the past decade.

The legislature further finds that the juvenile justice system in Hawaii and other states was originally designed to shield children from publicity, out of concern for the welfare of the child. This insistence on confidentiality, according to the United States Supreme Court, was “designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with

juvenile affairs serves as a rehabilitative and protective agency of the state.” Smith v. Daily Mail Publishing Co., 443 U.S. 97, 105 (1979).

While continuing to support the rehabilitative approach to juvenile justice, the legislature also recognizes that public safety and waning public confidence in the juvenile justice system necessitate the development of a legislative policy which balances these concerns with the principles of protection and rehabilitation. Therefore, the purpose of this Act is to eliminate the confidentiality of certain records and proceedings of juvenile law violators adjudicated for serious, repeat, or violent offenses in order to maintain public safety, to restore public confidence in the juvenile justice system, and to send a message to certain juvenile law violators that their actions will be treated seriously.

SECTION 2. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§571- Juvenile law violators; proceedings and records not confidential.** (a) As used in this section:

“Legal record” means 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 and adjudication data, other than social records, filed in proceedings before the court.

“Social record” means those social and clinical studies, reports, or examinations prepared in any case pursuant to this chapter.

(b) Notwithstanding any other law to the contrary, in any proceeding in which a minor age fourteen years of age or older has been adjudicated by the court under section 571-11(1) for an act that, if committed by an adult would:

- (1) Be murder in the first degree or second degree or attempted murder in the first degree;
- (2) Result in serious bodily injury to a victim;
- (3) Be a class A felony; or
- (4) Be a felony and the minor has more than one prior adjudication for acts which would constitute felonies if committed by an adult;

all legal records related to the above stated proceeding shall be open for public inspection, unless the administrative judge of the family court or the judge’s designee finds in writing that there are significant and compelling circumstances peculiar to the case of such a nature that public inspection would be inconsistent with or defeat the express purpose of this section. All social records shall be kept confidential except as provided in section 571-84.

(c) Notwithstanding any other law to the contrary, in any case in which a minor age sixteen years of age or older comes within section 571-11(1) is taken into custody for an act that, if committed by an adult would:

- (1) Be murder in the first degree or second degree or attempted murder in the first degree;
- (2) Result in serious bodily injury to a victim;
- (3) Be a class A felony and the minor has one or more prior adjudications for an act which would constitute a felony if committed by an adult; and
- (4) Be a class B or C felony and the minor has more than one prior adjudication for acts which would constitute felonies if committed by an adult;

all legal proceedings related to the above stated case shall be open to the public unless the administrative judge of the family court or the judge’s designee finds in writing that there are significant and compelling circumstances peculiar to the case of such a nature that an open proceeding would be inconsistent with or defeat the express purpose of this section.”

SECTION 3. Section 571-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [The] Except as provided in section 571-\_\_\_\_\_, the general public shall be excluded and only such persons admitted whose presence is requested by the parent or guardian or as the judge or district family judge finds to have a direct interest in the case, from the standpoint of the best interests of the child involved, or in the work of the court; provided that the victim of the alleged violation and all other witnesses who are less than eighteen years of age, shall be entitled to have parents, guardians, or one other adult and may have an attorney present while testifying at or otherwise attending a hearing initiated pursuant to section 571-11(1) or 571-11(2). Prior to the start of a hearing, the parents, guardian, or legal custodian, and, when appropriate, the child victim or witness shall be notified of the right to be represented by counsel and the right to remain silent.”

SECTION 4. Section 571-84, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The court shall maintain records of all cases brought before it. [In] Except as provided in section 571-\_\_\_\_\_, 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, and 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.”

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 upon its approval.

(Approved June 30, 1997.)

## ACT 318

H.B. NO. 106

A Bill for an Act Relating to Youthful Offenders.

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

SECTION 1. Section 352-10, Hawaii Revised Statutes, is amended to read as follows:

**“§352-10 Circuit court disposition of offenders under eighteen years.**

The circuit court may commit all offenders under eighteen years of age, duly convicted before the court, to the Hawaii youth correctional facilities in all cases where the court deems the sentence to be more suitable than the punishment otherwise authorized by law. In such a case, when the term of confinement ordered by the court extends beyond the offender’s eighteenth birthday, the offender shall, upon reaching the age of eighteen, be committed to the custody of the department of public safety for completion of the sentence. Persons [so] committed to the Hawaii youth correctional facilities under this section may be furloughed or paroled by the director[.], unless the commitment order issued by the court requires prior approval by the court or unless the offender is subject to a mandatory term of imprisonment which term has not yet expired.”

SECTION 2. Section 571-22, Hawaii Revised Statutes, is amended to read as follows:

**“§571-22 Waiver of jurisdiction; transfer to other courts.** (a) The court may waive jurisdiction and order a minor or adult held for criminal proceedings after full investigation and hearing where the person during the person’s minority, but on or after the person’s sixteenth birthday, is alleged to have committed an act [which] that would constitute a felony if committed by an adult, and the court finds [there] that:

- (1) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill[.];
- (2) The person is not treatable in any available institution or facility within the State designed for the care and treatment of children[.]; or [that the]
- (3) The safety of the community requires that the person [continue under] be subject to judicial restraint for a period extending beyond the person’s minority.

(b) The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, incident to a hearing, the court finds that:

- (1) The person during the person’s minority, but on or after the person’s fourteenth birthday, is alleged to have committed an act that would constitute a felony if committed by an adult and either:
  - (A) The act resulted in serious bodily injury to a victim;
  - (B) The act would constitute a class A felony if committed by an adult; or
  - (C) The person has more than one prior adjudication for acts which would constitute felonies if committed by an adult;

and

- (2) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill.

[(b)] (c) The factors to be considered in deciding whether jurisdiction should be waived under [this section] subsection (a) or (b) are as follows:

- (1) The seriousness of the alleged offense[.];
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or wilful manner[.];
- (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted[.];
- (4) The desirability of trial and disposition of the entire offense in one court when the minor’s associates in the alleged offense are adults who will be charged with a crime[.];

- (5) The sophistication and maturity of the minor as determined by consideration of the minor's home, environmental situation, emotional attitude, and pattern of living[.];
- (6) The record and previous history of the minor, including previous contacts with the family court, other law enforcement agencies, courts in other jurisdictions, prior periods of probation to [this] the family court, or prior commitments to juvenile institutions[.];
- (7) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the minor (if the minor is found to have committed the alleged offense) by the use of procedures, services, and facilities currently available to the family court[.]; and
- (8) All other relevant matters.

[(c) If, incident to a hearing at which the person's prior court record under section 571-11(1) is established, the court determines that a minor of at least the age of sixteen has been charged with an act which would constitute murder in the first degree or attempted murder in the first degree, murder in the second degree or attempted murder in the second degree, or a class A felony if committed by an adult and that the person is not committable to an institution for the mentally defective or retarded or the mentally ill, the court shall waive jurisdiction and order the minor held for criminal proceedings, if such minor has been previously determined by a court to be a law violator by:

- (1) Committing any act involving force or violence or the threat of force or violence and which is prohibited by law as being murder in the first degree, attempted murder in the first degree, murder in the second degree, attempted murder in the second degree, or a class A felony; or
- (2) Committing two or more acts within the two years preceding the date of the offense for which the person is presently charged which are each prohibited by law as being a felony.]

(d) The court may waive jurisdiction and order a minor or adult held for criminal proceedings if, incident to a hearing, the court finds that:

- (1) The person during the person's minority is alleged to have committed an act that would constitute murder in the first degree or second degree or attempted murder in the first degree or second degree if committed by an adult; and
- (2) There is no evidence the person is committable to an institution for the mentally defective or retarded or the mentally ill.

[(d)] (e) Transfer of a minor for criminal proceedings terminates the jurisdiction of the court over the minor with respect to any subsequent acts [which] that would otherwise be within the court's jurisdiction under section 571-11(1) and thereby confers jurisdiction over the minor to a court of competent criminal jurisdiction.

[(e)] (f) If criminal proceedings instituted under [subsections] subsection (a) [and], (b), or (d) [of this section] result in an acquittal or other discharge of the minor involved, no petition shall [thereafter] be filed thereafter in any family court based on the same facts as were alleged in the criminal proceeding.

[(f)] (g) A minor shall not be subject to criminal prosecution based on the facts giving rise to a petition filed under this chapter, except as otherwise provided in this chapter.

[(g)] (h) Where the petition has been filed in a circuit other than the minor's residence, the judge [may], in the judge's discretion, may transfer the case to the family court of the circuit of the minor's residence.

[(h)] (i) When a petition is filed bringing a minor before the court under section 571-11(1) and (2), and the minor resides outside of the circuit, but within the State, the court [may], after a finding as to the allegations in the petition, may certify

the case for disposition to the family court having jurisdiction where the minor resides. Thereupon, [such] the court shall accept the case and may dispose of the case as if the petition was originally filed in that court. Whenever a case is so certified, the certifying court shall forward to the receiving court certified copies of all pertinent legal and social records.”

SECTION 3. 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, and 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 [the] these 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 the information, unless and until otherwise ordered by the judge.

(d) Any photograph or fingerprint taken of any [child] minor may be used or circulated only as permitted by [the 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 and use only by persons whose official duties are concerned with [the provisions of] this chapter, except as provided in subsections (d) [and], (f), and (j) or as otherwise ordered by the court.

(f) Any police records concerning traffic accidents in which a [child or] minor coming within section 571-11(1) is involved, after the termination of any proceeding under section 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] traffic 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] the 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,] 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] minor 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 4. Section 706-667, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Defined. A young adult defendant is a person convicted of a crime who, at the time of sentencing, is [sixteen years of age or older but] less than twenty-two years of age[,] and who has not been previously convicted of a felony as an adult or adjudicated as a juvenile for an offense [committed at age sixteen or older which] that would have [been] constituted a felony had the young adult defendant been an adult."

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 upon its approval.

(Approved June 30, 1997.)

## ACT 319

S.B. NO. 1277

A Bill for an Act Relating to Dangerous Drugs.

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

SECTION 1. Section 712-1240, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Manufacture” means to produce, prepare, compound, convert, or process a dangerous drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical conversion or synthesis.”

SECTION 2. Section 712-1241, Hawaii Revised Statutes, is amended to read as follows:

**“§712-1241 Promoting a dangerous drug in the first degree.** (1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
  - (i) One ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
  - (ii) One and one-half ounce or more, containing one or more of any of the other dangerous drugs; or
- (b) Distributes:
  - (i) Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or
  - (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:
    - (A) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
    - (B) Three-eighths ounce or more, containing any other dangerous drug; [or]
- (c) Distributes any dangerous drug in any amount to a minor[.]; or
- (d) Manufactures a dangerous drug in any amount; provided that this subsection shall not apply to any person registered under section 329-32.

(2) Promoting a dangerous drug in the first degree is a class A felony.

(3) Notwithstanding any law to the contrary, if the commission of the offense of promoting a dangerous drug in the first degree under this section involved the possession [or], distribution, or manufacture of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of imprisonment of twenty years with a mandatory minimum term of imprisonment, the length of which shall be not less than one year and not greater than ten years, at the discretion of the sentencing court[.] for a conviction under subsection (1)(a), (1)(b), or (1)(c) and not less than ten years for a conviction under subsection (1)(d). The person convicted shall not be eligible for parole during the mandatory term of imprisonment.”

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 30, 1997.)



## ACT 320

H.B. NO. 112

A Bill for an Act Relating to Crime.

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

SECTION 1. The legislature finds that there is a compelling state interest in protecting our citizens by ensuring that the State has the ability to prosecute those crimes wherein the witness is unable to attend court. There are often cases in which witnesses may be physically incapable of coming to court or attendance at court will cause physical hardship. In cases involving abuse, violence, or sexual assault where the witness is also the victim, the witness may have reasonable fears in facing the accused and may literally be unable to articulate testimony in the presence of the accused. Other situations may include instances where the witness cannot be compelled to return for trial despite reasonable efforts to obtain their presence.

The legislature further finds that the inability to prosecute cases in which the witness is unable to attend court significantly impacts the crime rate in Hawaii. In 1994, the Honolulu Police Department Survey of Victim Complaints estimated that there were 134 violent crimes and 5,402 property crimes committed against visitors to Hawaii. As a popular tourist destination, large numbers of visitors, including a significant number of foreign visitors visit Hawaii each year. Unfortunately, because visitors carry large amounts of cash or valuable property and are unfamiliar with their surroundings, some criminals target visitors. The criminals who victimize visitors do so in part because they know that crimes against visitors are less likely to result in a trial. Many visitors are not willing or able to take the time and effort to return for a trial. For example, a witness from Japan may feel stigmatized at being identified as a crime victim or may not be able to ask for additional time off from work to return for a trial because the witnesses absence will have negative repercussions on the witnesses workplace or job status. In addition, foreign visitors are unfamiliar with the American legal system and are very apprehensive about testifying. Also, the procedures the State must follow to subpoena foreign visitors and secure their appearance at trial are considerably more complicated than the process required for U.S. residents. These factors all contribute to make it extremely difficult, and in many cases impossible, to prosecute crimes against visitors.

The legislature further finds that the inability to prosecute crimes against visitors endangers the public safety because criminal offenders do not restrict their activities to visitors alone. Allowing offenders to remain free to commit other crimes against state residents not only compromises public safety, but also decreases the quality of life for residents of the State by reducing confidence in public safety when crimes are committed without fear of punishment. As a state which ranks second in the nation in larceny-theft rate, Hawaii's apparent inability to address the rising crime rate against tourists may lead career criminals to commit more violent crimes against both visitors and residents alike.

In addition, the quality of life for Hawaii's residents is diminished when crimes against visitors negatively affect tourism, because tourism is a significant economic factor to the State's economy and job market. The legislature is painfully aware that growing public perception that Hawaii is an unsafe tourist destination may damage our fragile tourism-based economy unless we are able to prosecute crimes against visitors.

Despite a current rule of evidence which specifies conditions which must be met before videoconferencing can be used, the legislature believes that two-way videoconferencing testimony does not violate the right to confront and will not constitute hearsay as defined in the Hawaii Rules of Evidence, therefore no specific rule of evidence is needed. Through the use of two-way video conference testimony,

as provided for in this Act, foreign nonresident crime victims and resident witnesses can appear in court proceedings to give their testimony. The legislature believes that as long as the witness is subject to prosecution for perjury, a defendant's constitutional right to confront witnesses under either the state or federal constitution is not violated because a live, simultaneous, real-time viewing of all parties to the video conference will be provided, i.e., the jury and the defendant will all be able to see the witness and observe the nuances of behavior and the demeanor of the witness. Additionally, a defendant will have the ability to conduct a full cross-examination of a witness on the witness' testimony.

The legislature believes that given the current advancements in videoconferencing technology, it is possible for a victim to testify in a trial through a live, simultaneous, real-time video and audio transmission. Therefore, the legislature finds that the technology of videoconferencing, as provided for in this Act, constitutes the virtual equivalent of face to face confrontation as required by the state and federal constitutions and is not hearsay as defined in the Hawaii Rules of Evidence. Because of the availability of this technology, it is in the fundamental interests of justice that this technology be utilized to prosecute persons who commit crimes against visitors and that the criminal justice system should utilize all technological advances in an effort to fairly, effectively, and efficiently administer justice.

The purpose of this Act is to allow the use of two-way video conference testimony of victims and witnesses in criminal trials.

SECTION 2. Chapter 801D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§801D- Televised testimony.** Victims and witnesses shall have the right to testify at trial by televised two-way closed circuit video to be viewed by the court, the accused, and the trier of fact.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved June 30, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 321**

H.B. NO. 623

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 to read as follows:

**“§709-906 Abuse of family and household members; penalty.** (1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member[,] or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member [may], upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section, “family or household member” means spouses or former spouses, parents, children, and persons jointly residing or formerly residing in the same dwelling unit.

(2) Any police officer [may], with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member[,] and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, 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, regardless of whether [or not such] the 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;
- (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 may order the person to leave the premises for a cooling off period of twenty-four hours; 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 paragraph (b) and the incident occurs after 12:00 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;
- (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]
- (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 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; and
- (f) The police officer may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

(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 and the person shall be sentenced as follows:

- (a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and
- (b) For a second offense and any other subsequent offense [which] that occurs within one year of the previous offense, the person shall be termed a “repeat offender” and serve a minimum jail sentence of thirty days.

(6) Whenever a court sentences a person pursuant to [[subsection[]] (5), it also shall [also] require that the offender undergo any available domestic violence treatment and counseling programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under [[subsection[]] (5)(a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court ordered counseling.

(7) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting [such] the arrest.

(8) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith[,] or may file a criminal complaint through the prosecuting attorney of the applicable county.

(9) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may [then] dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

(10) This section shall not operate as a bar against prosecution under any other section of this Code in lieu of prosecution for abuse of a family or household member.

(11) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

(12) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.

[(13) Upon dismissal of such person and discharge of the proceeding against the person under this section, such person, if the offense is the only offense against the other family or household member for a period of not less than five years, may apply for an order to expunge from all official records all recordation relating to the person's arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against the person were discharged and that no other similar offenses were charged against the person for a period of not less than five years, it shall enter such order.

(14)] (13) If a person is ordered by the court to undergo any treatment or counseling, that person shall provide adequate proof of compliance with the court's order. 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."

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 June 30, 1997.)

## ACT 322

H.B. NO. 1510

A Bill for an Act Relating to Domestic Abuse Protective Orders.

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

SECTION 1. Section 586-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A petition for relief shall be in writing and upon forms provided by the court [and shall]; allege that a [recent] past act or acts of abuse may have occurred, [or] that the threats of abuse make it probable that acts of abuse may be imminent, or that extreme psychological abuse or malicious property damage is imminent; and [shall] be accompanied by an affidavit made under oath or a statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.”

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 30, 1997.)

## ACT 323

S.B. NO. 293

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Section 709-906, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) Any police officer, 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;
- (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 the person to leave the premises for a cooling off period of twenty-four hours[;], during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; 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 paragraph (b) and the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises and to initiate no further contact shall commence immediately and be in full

**ACT 324**

- 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;
- (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
  - (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 the cooling off period, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and
  - (f) The police officer may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this 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 June 30, 1997.)

**ACT 324**

H.B. NO. 1984

A Bill for an Act Relating to Drug Abuse.

*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 \$453,750 or so much thereof as may be necessary for fiscal year 1997-1998 to treat, in a family-like setting, teens who are dependent on drugs.

SECTION 2. The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved June 30, 1997.)

## ACT 325

H.B. NO. 1539

A Bill for an Act Relating to Youth Correctional Facilities.

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

SECTION 1. Section 352-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All persons committed to the Hawaii youth correctional facilities shall be committed for the period of their minority or as otherwise ordered by the court. Such persons may be placed on furlough or parole if deemed appropriate. The power to discharge a committed person is reserved to the director provided that the director shall give a thirty-day notice of such intended discharge to the appropriate court and to the prosecutor’s office of the appropriate county. Prior court approval for furlough, parole, or discharge of all minors, committed by the family court for the period of their minority or otherwise, shall be obtained when such is specifically required in the commitment order. In any case, no person nineteen years or older shall be incarcerated in a youth correctional facility.”

SECTION 2. Section 352-25, Hawaii Revised Statutes, is amended to read as follows:

“**§352-25 Furlough, parole, discharge.** The director, for good reasons shown to the director’s satisfaction, may furlough or parole any person committed to the director’s custody. The director shall give the court and the prosecutor’s office of the appropriate county a thirty-day notice prior to discharging a committed person. [Court] Prior court approval shall be obtained when such is specifically required [in accordance with section 352-29(a)(3).] in the commitment order.

No furlough, parole, or discharge shall be granted unless it appears to the director that there is a reasonable probability that the person will not violate the law and that the person’s release is not incompatible with the welfare and safety of society.

The form of furlough or parole may include return to the person’s own home, transfer to another youth correctional facility, a group home or foster home placement, or other appropriate alternative. Nonresidential programs may be made available to selected persons on furlough such that they return to the facility during nontreatment hours.”

SECTION 3. Section 352-28, Hawaii Revised Statutes, is amended to read as follows:

“**§352-28 Transfer to correctional facility.** Any person after the person’s sixteenth birthday, who has been committed to the care of the director and disrupts the order and the discipline of any state-operated youth correctional facility or injures the staff or other person committed to the facility or for other good cause, may be transferred by the director to an adult correctional facility, with the prior approval of the family court, for the balance of the term provided for by the court. If such person demonstrates sufficient improvement or progress, or for other good reason, the family court may order the person’s return to a youth correctional facility.”

SECTION 4. Section 352-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The authority of the director to supervise the conduct of a person who has been committed to the director’s care, unless such authority shall be sooner terminated pursuant to this chapter or chapter 571, shall cease:

- (1) At the time of sentencing for any subsequent offense for which the committed person has been waived pursuant to section 571-22 and has been convicted by a court of competent criminal jurisdiction; or
- (2) At the expiration date of the order of commitment issued unless the director has, prior to such expiration date, sought and obtained from the court an extension of such order; or
- (3) Whenever the director, prior to the termination otherwise of such order, determines that the purposes of such order have been achieved in the case of a person under age eighteen; provided that if the commitment order reserves the prior approval of the family court for any discharge before termination, the director shall obtain approval of the court for a discharge; or
- (4) Whenever the director, prior to the termination otherwise of such order, determines that the purposes of such order have been achieved in the case of a person committed to a term extending beyond the person’s eighteenth birthday and obtains court approval prior to discharge.”

SECTION 5. There is established a two-year pilot program to provide a secure residential facility for short-term commitments of youth offenders on the island of Kauai to be administered by the office of youth services. The facility shall have a capacity of no more than ten bed spaces and provide services in the following areas: substance abuse, anger management, problem solving, gang mentality, job seeking skills, community service, and victim awareness. The administration of the facility and provision of appropriate services shall be procured pursuant to section 352-3, Hawaii Revised Statutes.

All short-term commitments through the pilot program shall be subject to the exclusive jurisdiction of the director of youth services for the purposes of furlough and parole.

The office of youth services shall submit a report on the cost-effectiveness and operation of the facility to the legislature prior to the convening of the 1999 regular session.

SECTION 6. 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 1997-1998 and the same sum or so much thereof as may be necessary for fiscal year 1998-1999 for the operation of the pilot program.

SECTION 7. The sums appropriated shall be expended by the office of youth services for the purposes of this Act.

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 30, 1997.)



## ACT 326

S.B. NO. 1943

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. 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; design and issuance by counties.** (a) Beginning January 1, 1998, 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 county directors of finance, by the affirmative vote of the majority, may authorize the issuance of special number plates to any organization or institution in the State that meets the minimum standards and qualifications established under rules adopted in accordance with subsection (b).

(b) The director of finance of the city and county of Honolulu, in consultation with the directors of finance of the counties of Kauai, Maui, and Hawaii, shall adopt rules in accordance with chapter 91 to:

- (1) Establish application procedures and eligibility standards for organizations or institutions seeking special number plates under this section;
- (2) Establish special design parameters and restrictions for decals or graphic representations affixable to special number plates; and
- (3) Set reasonable charges and fees for the recovery of administrative costs incurred as the result of the issuance of special number plates under this section.”

SECTION 2. Section 249-9, Hawaii Revised Statutes, is amended to read as follows:

**“§249-9 Number plates; purchase.** (a) The number plates hereinabove referred to shall be used upon all vehicles for which a tax has been paid pursuant to sections 249-1 to 249-13. All such plates shall [bear]:

- (1) Bear the word “Hawaii”[, shall have] along the upper portion of the plate and the words “Aloha State” along the lower portion of the plate;
- (2) Have a distinct contrast between the color of the plate and the numerals and letters thereon[.]; and [shall be]
- (3) Be of such shape, size, and color, and with such arrangements of letters and numbers as may, subject to sections 249-1 to 249-13, be determined by the directors of finance of each county through majority consent.

The numerals on all such plates shall be not less than three inches in height and the strokes thereof not less than three-eighths inch in width, except in the case of motorcycles, in which case the numerals shall not be less than one inch in height and the strokes thereof not less than one-eighth inch in width.

The director of finance of the city and county of Honolulu shall contract annually on behalf of the counties for the purchase of all number plates, tags, or emblems required. The council of each county shall appropriate and cause to be paid over to the party with whom the director of finance of the city and county of Honolulu shall contract, or to the director of finance of the city and county of Honolulu as the director may direct, such sum or sums as the director of finance of the city and county of Honolulu shall determine to be the county’s proportionate share of the expense of such contract and the charges connected therewith. The contract shall be made by the director of finance of the city and county of Honolulu

as agent of the several counties, and the proportionate liability of each county shall be stated in the contract. Notwithstanding any other provision of the law, the contract shall constitute a valid obligation of each county for its proportionate share.

(b) The number plates for members of the Congress of the United States from the State shall designate their office and be of the type and color authorized for motor vehicles in the State; provided that the number on the plates of the United States senator and the United States representative shall be assigned in terms of seniority of service with the senator or representative having the greater length of service having the number "1" and consecutively thereafter for the others. The director of finance of the city and county of Honolulu shall, in the director's procurement of the number plates on behalf of the counties, contract for the number plates of the members of Congress and all expenses connected therewith shall be paid by the respective members of Congress.

(c) Notwithstanding any other provision of the law, any antique motor vehicle shall be issued a special number plate for a fee of \$10 which plate shall be permanent and valid for use on such vehicles so long as the vehicle is in existence in lieu of the uniform state number plates. In addition to the payment of any other fee required by law, applicable to antique motor vehicles, the owner of any such vehicle shall pay the fee for the issuance of the special<sup>1</sup> number<sup>2</sup> plate. The registration numerals and special number plates assigned to antique motor vehicles shall be labeled "Horseless Carriage" and "Permanent" and shall run in a separate numerical series, commencing with Horseless Carriage No. 1."

SECTION 3. Section 249-9.2, Hawaii Revised Statutes, is amended to read as follows:

**"§249-9.2 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:

- (1) 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;
  - (2) Certification that the applicant is a veteran; [or]
  - (3) Specific proof that the applicant was providing military service to the United States, on Oahu, or off-shore at a distance of not more than three miles at the time of the December 7, 1941, attack on Pearl Harbor. Certification from the Hawaii state chairperson of the Pearl Harbor Survivors Association shall constitute sufficient proof[.];
  - [[ (4) ] Specific proof that the applicant was confined as a prisoner of war while providing military service to the United States[.]; or
  - (5) Certification from the United States Department of Veterans Affairs or the state office of veterans' services that the applicant is a combat veteran or a veteran of the Vietnam conflict or the Korean conflict or World War II.
- (b) The design of the plates for [purple]:
- (1) Purple heart recipients shall include the words "COMBAT WOUNDED"[, the design of the plates for veterans];
  - (2) Veterans shall include the word "VETERAN"[, the design of the plates for the];
  - (3) Pearl Harbor survivors shall include the words "PEARL HARBOR SURVIVOR"[, and the design of the plates for former];
  - (4) Former prisoners of war shall include the words "FORMER PRISONER OF WAR"[.];

- (5) Combat veterans shall include the words "COMBAT VETERAN";
- (6) Veterans of the Vietnam conflict shall include the words "VIETNAM VETERAN";
- (7) Veterans of the Korean conflict shall include the words "KOREA VETERAN"; and
- (8) Veterans of World War II shall include the words "WORLD WAR II 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]. Special number plates for military service shall be assigned to only one noncommercial passenger motor vehicle or one noncommercial motorcycle or motor scooter registered in the name of the qualified applicant and shall be limited to only one category of special number plates for military service; provided that, if the qualified applicant is the registered owner of a noncommercial passenger motor vehicle and a noncommercial motorcycle or motor scooter, a second special number plate for military service of the same or different category may be assigned to the qualified applicant's motorcycle or motor scooter. Prior to the transfer of the ownership of the qualified person's vehicle to another party, the special<sup>1</sup> number<sup>2</sup> plates shall be surrendered to the director of finance as a condition to the issuance of replacement<sup>1</sup> special number<sup>3</sup> plates, provided that the director of finance shall allow the survivor of the qualified person, upon request, to retain the front special<sup>1</sup> number<sup>2</sup> 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 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>4</sup>

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

(Approved June 30, 1997.)

#### Notes

- 1. Prior to amendment "license" appeared here.
- 2. "Number" should be underscored.
- 3. "Special number" should be underscored.
- 4. Edited pursuant to HRS §23G-16.5.

## ACT 327

S.B. NO. 257

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

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

SECTION 1. Act 339, Session Laws of Hawaii 1990, as amended by Act 98, Session Laws of Hawaii 1993, and Act 275, Session Laws of Hawaii 1994, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect on July 1, 1990, and shall be repealed as of June 30, [1997;] 1999; provided that section 88-11, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of

this Act; and provided further that the repeal and reenactment shall not affect entitlement to benefits accruing to any retirant, pensioner, or beneficiary pursuant to this Act prior to July 1, [1997.] 1999.”

SECTION 2. Section 88-107, Hawaii Revised Statutes, is amended to read as follows:

“**§88-107 Interest.** The board of trustees shall annually allocate the interest and other earnings of the system to the funds of the system, as follows:

- (1) The annuity savings fund shall be credited with the amount of regular interest credited to members’ accounts;
- (2) The expense fund shall be credited with such sums as provided in section 88-116; and
- (3) The remaining investment earnings, if any, shall be credited to the pension accumulation fund.

[The amounts to be contributed to the pension accumulation fund by the State and counties shall be reduced by any investment earnings in excess of the investment yield rate applied in actuarial valuations, except as otherwise provided. Any additional amount required to meet the investment yield rate for the preceding year until fiscal year 2000 shall be paid by the State and counties, and shall be credited to the pension accumulation fund.]

Beginning with actual investment earnings in fiscal year 1995 in excess of the investment yield rate, to address outstanding unfunded pension obligations, ten per cent of such excess earnings shall be deposited in the pension accumulation fund; remaining excess earnings shall be applied to the amounts to be contributed under section 88-123. [In each succeeding fiscal year, another ten per cent, cumulatively up to one hundred per cent, of any such excess earnings shall be similarly allocated and deposited in the pension accumulation fund.

Following each five-year actuarial review as provided in section 88-105, the legislature shall evaluate the allocation and distribution of investment earnings in excess of the investment yield rate, and make such adjustments as appropriate. In the absence of affirmation by resolution, investment earnings in excess of the investment yield rate shall be applied to the contributions under section 88-123.] In fiscal year 1996, twenty per cent of the actual investment earnings in excess of the investment yield rate shall be deposited in the pension accumulation fund; remaining excess earnings shall be applied to the amount contributed under section 88-123. Beginning in fiscal year 1997, one hundred per cent of the investment earnings shall be deposited in the pension accumulation fund.”

SECTION 3. Section 88-122, Hawaii Revised Statutes, is amended to read as follows:

“**§88-122 Determination of employer normal cost and accrued liability contributions.** (a) Based on regular interest and such mortality and other tables as are adopted by the board of trustees, the actuary engaged by the board, on the basis of successive annual actuarial valuations, shall determine the employer’s normal cost and accrued liability contributions for each fiscal year beginning July 1 separately for the following two groups of employees:

- (1) Police officers, firefighters, and corrections officers; and
- (2) All other employees.

(b) The actuarial valuations made for years ending June 30, 1994, to June 30, 2000, shall be based on an eight per cent investment yield rate, assumed salary increases of four per cent, and tables and factors adopted by the board or legislature

for actuarial valuations of the system, subject to recommendations made by the actuary appointed under section 88-30.

(c) With respect to each of the two groups of employees in subsection (a), the normal cost for each year after [June 30, 1976,] June 30, 1994, shall be the percentage of the aggregate annual compensation of employees as of March 31 of the [preceding] valuation year [which, if contributed over each employee's prospective period of service and added to the employee's prospective contributions, will be sufficient to provide for the payment of all future benefits after subtracting the sum of the unfunded accrued liability as of the beginning of the year and the assets of the pension accumulation fund as of the end of the preceding year.] as determined by the actuary using the entry age normal cost funding method. On each June 30 the board shall determine the allocation of the assets of the pension accumulation fund between the two groups of employees in subsection (a); provided that the assets of the pension accumulation fund as of June 30, 1976, shall be allocated between the two groups in the same proportion as the aggregate annual compensation of each group as of March 31, 1976.

(d) [The total unfunded accrued liability as of July 1, 1987, shall be fixed at \$470,000,000, and shall be allocated as follows: \$61,000,000 to police officers, firefighters, and corrections officers, and \$409,000,000 to all other employees. With respect to each of the two groups of employees in subsection (a), the accrued liability contribution for each year after June 30, 1988, shall be the level annual payment required to liquidate such unfunded accrued liability over the period of twenty-eight years beginning July 1, 1988.] Commencing with the 1995 fiscal year and each subsequent fiscal year, the actuary shall determine the total unfunded accrued liability using the entry age normal cost funding method separately for each of the two groups of employees in subsection (a). The accrued liability contribution for each of the two groups of employees shall be the annual payment required to liquidate the unfunded accrued liability over a period of twenty-one years beginning July 1, 1995. Any increase or decrease in the total unfunded accrued liability resulting from legislative changes in the benefit provisions of the employees' retirement system shall be liquidated over a period of time to be determined by the actuary."

SECTION 4. Section 88-123, Hawaii Revised Statutes, is amended to read as follows:

**“§88-123 Amount of annual contributions by the State and counties.** The contribution payable in each year to the pension accumulation fund by the State and by each county, respectively, shall be determined by allocating the sum of the normal cost and the accrued liability contribution for (1) police officers, firefighters, and corrections officers, the latter after the actual transfer of all county jails pursuant to executive order of the governor, and (2) all other employees in the same proportion as the aggregate annual compensation of each group employed by the State and by each county, respectively, as of March 31 of the valuation year [preceding the appropriation of said contribution].”

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 30, 1997.)

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 1997.

**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
HRD	Department of Human Resources Development
HTH	Department of Health
LBR	Department of Labor and Industrial Relations
LNR	Department of Land and Natural Resources
LTG	Office of the Lieutenant Governor
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 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, 1997, and ending June 30, 1999. 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, or as provided by general law.

**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
<b>A. ECONOMIC DEVELOPMENT</b>							
1.	BED102	COMMERCE AND INDUSTRY					
	OPERATING		BED	35.00*		35.00*	
			BED	5,149,897A		5,599,897A	
			BED	150,000B		150,000B	
			BED	6,450,000W		6,450,000W	
2.	BED113	STATE TOURISM OFFICE					
	OPERATING		BED	7.00*		7.00*	
			BED	28,181,974A		26,181,974A	
	INVESTMENT CAPITAL		BED	39,189,300B		42,182,000B	
			BED	3,760,000C		830,000C	
3.	BED143	HIGH TECHNOLOGY DEVELOPMENT CORPORATION					
				1.50*		1.50*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
	OPERATING		BED	1,583,514A		1,411,514A	
				1.50*		1.50*	
	INVESTMENT CAPITAL		BED	1,682,641B		1,748,241B	
			BED	700,000C			C
			BED		N	2,800,000N	
4.	BED107 - FOREIGN TRADE			22.00*		22.00*	
	OPERATING		BED	1,911,298B		1,921,298B	
5.	AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE			12.00*		12.00*	
	OPERATING		AGR	947,941B		947,941B	
			AGR	59,400T		59,400T	
			AGR	4,500,000W		4,500,000W	
6.	AGR122 - PLANT PEST AND DISEASE CONTROL			98.00*		98.00*	
	OPERATING		AGR	3,928,017A		3,866,323A	
			AGR	290,010N		290,010N	
			AGR	328,600T		328,600T	
7.	AGR131 - ANIMAL QUARANTINE			58.00*		58.00*	
	OPERATING		AGR	2,268,723A		2,268,723A	
			AGR	254,857U		254,857U	
8.	AGR132 - ANIMAL DISEASE CONTROL			21.50*		21.50*	
	OPERATING		AGR	974,244A		974,244A	
			AGR	15,000T		15,000T	
	INVESTMENT CAPITAL		AGS	800,000C			C
9.	LNR172 - FORESTRY - PRODUCTS DEVELOPMENT			20.00*		20.00*	
	OPERATING		LNR	953,015A		703,015A	
			LNR	200,000B		200,000B	
				2.00*		2.00*	
			LNR	374,505N		374,505N	
10.	AGR151 - QUALITY AND PRICE ASSURANCE			33.00*		33.00*	
	OPERATING		AGR	1,329,965A		1,329,965A	
			AGR	19,424N		19,424N	
			AGR	135,000T		135,000T	
			AGR	256,622W		256,622W	
11.	AGR171 - AGRICULTURAL DEVELOPMENT & MARKETING			20.00*		20.00*	
	OPERATING		AGR	1,315,449A		1,315,449A	
			AGR	82,500N		82,500N	
			AGR	2,000T		2,000T	
12.	AGR141 - AGRICULTURAL RESOURCE MANAGEMENT			9.00*		9.00*	
	OPERATING		AGR	287,820A		287,820A	
				2.00*		2.00*	
			AGR	384,907B		283,907B	
				10.00*		10.00*	
			AGR	862,713W		810,713W	



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		INVESTMENT CAPITAL	AGR	1,380,000C		550,000C	
			AGR	550,000N			N
13.	AGR161	- AGRIBUSINESS DEVELOPMENT & RESEARCH					
	OPERATING			1.00*		1.00*	
			AGR	988,476A		1,027,492A	
			AGR	308,591W		308,591W	
14.	AGR192	- GENERAL ADMINISTRATION FOR AGRICULTURE					
	OPERATING			30.00*		30.00*	
	INVESTMENT CAPITAL		AGR	1,297,898A		1,297,898A	
			AGS	700,000C			C
15.	AGR102	- FINANCIAL ASSISTANCE FOR AQUACULTURE					
	OPERATING		AGR	500,000W		500,000W	
16.	LNR153	- COMMERCIAL FISHERIES AND AQUACULTURE					
	OPERATING			20.00*		20.00*	
			LNR	1,263,936A		1,263,936A	
			LNR	100,000B		100,000B	
			LNR	268,210N		268,210N	
17.	BED120	- ENERGY DEVELOPMENT AND MANAGEMENT					
	OPERATING			7.00*		7.00*	
			BED	1,738,259A		1,738,259A	
			BED	1,457,875B		1,457,875B	
			BED	3,031,326N		3,031,326N	
			BED	101,709W		101,709W	
	INVESTMENT CAPITAL		BED	879,000C		503,000C	
18.	LNR141	- WATER AND LAND DEVELOPMENT					
	OPERATING			3.00*		3.00*	
			LNR	328,240A		284,681A	
			LNR	110,000W		110,000W	
	INVESTMENT CAPITAL		LNR	9,042,000C		15,200,000C	
19.	BED130	- ECON PLANNING & RESEARCH FOR ECON DEVELOPMENT					
	OPERATING			19.00*		19.00*	
			BED	1,072,472A		1,072,472A	
20.	BED142	- GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT					
	OPERATING			49.00*		49.00*	
			BED	3,427,830A		3,427,830A	
			BED	3,745,298B		3,745,298B	
				4.00*		4.00*	
			BED	972,000N		972,000N	
<b>B. EMPLOYMENT</b>							
1.	LBR111	- WORKFORCE DEVELOPMENT					
	OPERATING			4.30*		4.30*	
			LBR	395,473A		395,473A	
			LBR	9,689,414B		9,689,414B	
				119.20*		119.20*	
			LBR	28,687,591N		28,687,591N	
			LBR	1,195,371U		1,195,371U	
2.	LBR123	- APPRENTICESHIP & OTHER TRAINING PROGRAMS					
	OPERATING						

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
3.	LBR131	- EMPLOYMENT AND TRAINING PROGRAMS OPERATING					
4.	LBR135	- COMMISSION ON EMPLOYMENT & HUMAN RESOURCES OPERATING	LBR	199,355A	5.00*	199,355A	5.00*
5.	LBR143	- OCCUPATIONAL SAFETY & HEALTH OPERATING	LBR	1,674,215A	44.00*	1,674,215A	44.00*
			LBR	500,000B		500,000B	
			LBR	26.00*		26.00*	
			LBR	1,598,057N		1,598,057N	
6.	LBR152	- WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES OPERATING	LBR	1,031,179A	28.35*	1,031,179A	28.35*
7.	LBR153	- CIVIL RIGHTS COMMISSION OPERATING	LBR	962,648A	23.50*	962,648A	23.50*
			LBR	409,600N	2.00*	409,600N	2.00*
8.	LBR161	- PUBLIC AND PRIVATE EMPLOYMENT OPERATING	LBR	507,114A	2.00*	507,114A	2.00*
9.	LBR171	- UNEMPLOYMENT COMPENSATION OPERATING	LBR	166,510,310B	231.90*	166,510,310B	231.90*
			LBR	12,395,923N		12,395,923N	
10.	LBR183	- DISABILITY COMPENSATION OPERATING	LBR	4,699,306A	122.00*	4,309,364A	122.00*
			LBR	20,694,213B		20,675,713B	
11.	HMS802	- VOCATIONAL REHABILITATION OPERATING	HMS	3,653,306A	25.95*	3,653,306A	25.95*
			HMS	89.55*		89.55*	
			HMS	8,114,891N		8,114,891N	
			HMS	1,050,000W		1,050,000W	
		INVESTMENT CAPITAL	AGS	99,000N			N
12.	LBR901	- DLIR-DATA GATHERING, RESEARCH AND ANALYSIS OPERATING	LBR	604,241A	8.88*	604,241A	8.88*
			LBR	2,014,988N	29.12*	2,014,988N	29.12*
13.	LBR902	- GENERAL ADMINISTRATION OPERATING	LBR	1,236,701A	29.12*	1,236,701A	29.12*
			LBR	2,331,328N	34.52*	2,295,368N	34.52*
14.	LBR903	- OFFICE OF COMMUNITY SERVICES			5.00*		5.00*

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
	OPERATING		LBR	5,356,372A		5,356,372A	
			LBR	300,000B		300,000B	
				3.00*		3.00*	
			LBR	5,785,137N		5,785,137N	
15.	LBR812 - LABOR & INDUSTRIAL RELATIONS APPEALS BOARD						
	OPERATING		LBR	12.00*		12.00*	
				609,889A		609,889A	
<b>C. TRANSPORTATION FACILITIES</b>							
1.	TRN102 - HONOLULU INTERNATIONAL AIRPORT						
	OPERATING		TRN	659.75*		659.75*	
	INVESTMENT CAPITAL		TRN	69,943,856B		75,174,227B	
			TRN	73,462,000B		200,246,000B	
				N		23,750,000N	
2.	TRN104 - GENERAL AVIATION						
	OPERATING		TRN	3.00*		3.00*	
				860,229B		868,475B	
3.	TRN111 - HILO INTERNATIONAL AIRPORT						
	OPERATING		TRN	81.00*		81.00*	
	INVESTMENT CAPITAL		TRN	8,263,653B		7,676,967B	
			TRN	6,726,000B		12,422,000B	
4.	TRN114 - KE-AHOLE AIRPORT						
	OPERATING		TRN	99.00*		99.00*	
	INVESTMENT CAPITAL		TRN	8,245,171B		8,228,479B	
			TRN	28,066,000B		61,866,000B	
			TRN	4,000,000N		5,000,000N	
5.	TRN116 - WAIMEA-KOHALA AIRPORT						
	OPERATING		TRN	2.00*		2.00*	
	INVESTMENT CAPITAL		TRN	165,260B		158,148B	
				100,000B		B	
6.	TRN118 - UPOLU AIRPORT						
	OPERATING		TRN	7,473B		7,473B	
7.	TRN131 - KAHULUI AIRPORT						
	OPERATING		TRN	174.00*		174.00*	
	INVESTMENT CAPITAL		TRN	14,623,404B		13,827,566B	
				12,330,000B		6,650,000B	
8.	TRN133 - HANA AIRPORT						
	OPERATING		TRN	2.00*		2.00*	
	INVESTMENT CAPITAL		TRN	146,912B		117,412B	
				250,000B		B	
9.	TRN135 - KAPALUA AIRPORT						
	OPERATING		TRN	5.00*		5.00*	
				882,965B		774,950B	
10.	TRN141 - MOLOKAI AIRPORT						
	OPERATING		TRN	15.00*		15.00*	
	INVESTMENT CAPITAL		TRN	1,384,757B		1,217,461B	
				1,300,000B		B	
11.	TRN143 - KALAUPAPA AIRPORT						

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		OPERATING	TRN		1.00* 53,924B		1.00* 53,924B
12.	TRN151	LANAI AIRPORT					
		OPERATING	TRN		10.00* 1,036,182B		10.00* 1,038,906B
		INVESTMENT CAPITAL	TRN				660,000B
13.	TRN161	LIHUE AIRPORT					
		OPERATING	TRN		111.00* 9,152,722B		111.00* 9,669,760B
		INVESTMENT CAPITAL	TRN		10,550,000B		28,112,000B
			TRN		6,900,000N		9,000,000N
14.	TRN163	PORT ALLEN AIRPORT					
		OPERATING	TRN		1,860B		1,860B
15.	TRN195	AIRPORTS ADMINISTRATION					
		OPERATING	TRN		116.00* 149,623,628B		116.00* 152,121,696B
		INVESTMENT CAPITAL	TRN		21,485,000B		16,925,000B
			TRN		565,000N		525,000N
16.	TRN301	HONOLULU HARBOR					
		OPERATING	TRN		124.00* 13,452,311B		124.00* 13,476,756B
		INVESTMENT CAPITAL	TRN		10,000,000B		B
			TRN		E		7,000,000E
17.	TRN303	BARBERS POINT HARBOR					
		OPERATING	TRN		4.00* 473,905B		4.00* 455,432B
		INVESTMENT CAPITAL	TRN		1,300,000B		B
			TRN		12,000,000E		E
18.	TRN305	KEWALO BASIN					
		OPERATING	TRN		2.00* 760,578B		2.00* 811,578B
		INVESTMENT CAPITAL	TRN		1,400,000B		B
19.	TRN311	HILO HARBOR					
		OPERATING	TRN		11.00* 1,319,774B		11.00* 1,329,359B
		INVESTMENT CAPITAL	TRN		250,000B		B
20.	TRN313	KAWAIHAE HARBOR					
		OPERATING	TRN		5.00* 603,373B		5.00* 541,356B
21.	TRN331	KAHULUI HARBOR					
		OPERATING	TRN		16.00* 1,690,718B		16.00* 1,692,079B
		INVESTMENT CAPITAL	TRN		1,000,000B		B
			TRN		4,000,000E		5,000,000E
22.	TRN341	KAUNAKAKAI HARBOR					
		OPERATING	TRN		1.00* 244,818B		1.00* 244,818B
23.	TRN361	NAWILIWILI HARBOR					

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		OPERATING	TRN		14.00*		14.00*
					1,275,516B		1,233,732B
24.	TRN363	PORT ALLEN HARBOR					
		OPERATING	TRN		1.00*		1.00*
					232,759B		222,759B
25.	TRN351	KAUMALAPAU HARBOR					
		OPERATING	TRN		1.00*		1.00*
		INVESTMENT CAPITAL	TRN		214,930B		196,788B
					50,000B		1,000,000B
26.	TRN395	HARBORS ADMINISTRATION					
		OPERATING	TRN		56.00*		56.00*
		INVESTMENT CAPITAL	TRN		34,086,086B		34,172,663B
					2,625,000B		1,525,000B
27.	TRN501	OAHU HIGHWAYS					
		OPERATING	TRN		275.00*		275.00*
		INVESTMENT CAPITAL	TRN		34,790,585B		35,047,072B
			TRN		500,000C		1,500,000C
			TRN		36,832,000E		14,915,000E
			TRN		28,280,000N		27,000,000N
			TRN		800,000R		R
28.	TRN511	HAWAII HIGHWAYS					
		OPERATING	TRN		128.00*		128.00*
		INVESTMENT CAPITAL	TRN		16,659,553B		16,271,524B
			TRN		13,500,000B		B
			TRN		1,925,000E		11,935,000E
			TRN		2,200,000N		32,040,000N
29.	TRN531	MAUI HIGHWAYS					
		OPERATING	TRN		79.00*		79.00*
		INVESTMENT CAPITAL	TRN		9,766,170B		11,051,712B
			TRN		65,000,000B		B
			TRN		8,330,000E		7,820,000E
			TRN		13,850,000N		25,080,000N
30.	TRN541	MOLOKAI HIGHWAYS					
		OPERATING	TRN		12.00*		12.00*
		INVESTMENT CAPITAL	TRN		2,841,414B		3,723,057B
			TRN		505,000E		3,225,000E
			TRN		15,000N		485,000N
31.	TRN551	LANAI HIGHWAYS					
		OPERATING	TRN		5.00*		5.00*
					564,876B		581,500B
32.	TRN561	KAUAI HIGHWAYS					
		OPERATING	TRN		51.00*		51.00*
		INVESTMENT CAPITAL	TRN		8,864,653B		8,349,200B
			TRN		7,210,000B		B
			TRN		6,580,000E		3,685,000E
			TRN		12,175,000N		13,420,000N
33.	TRN595	HIGHWAYS ADMINISTRATION					
		OPERATING	TRN		72.00*		72.00*
			TRN		57,740,602B		60,806,816B
					1,200,000N		1,600,000N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		INVESTMENT CAPITAL	TRN	6,000,000B		6,000,000B	
			TRN	13,625,000E		12,415,000E	
			TRN	9,385,000N		8,945,000N	
34.	TRN597	HIGHWAY SAFETY					
		OPERATING	TRN	37.00*		37.00*	
			TRN	5,266,679B		5,276,868B	
				4.00*		4.00*	
			TRN	306,735N		306,735N	
35.	TRN995	GENERAL ADMINISTRATION					
		OPERATING	TRN	87.00*		87.00*	
				9,388,035B		8,991,187B	
<b>D. ENVIRONMENTAL PROTECTION</b>							
1.	HTH840	ENVIRONMENTAL MANAGEMENT					
		OPERATING	HTH	56.00*		56.00*	
			HTH	2,453,071A		2,453,071A	
			HTH	48.00*		48.00*	
			HTH	6,196,502B		6,096,502B	
			HTH	24.00*		24.00*	
			HTH	3,112,716N		3,112,716N	
			HTH	34.00*		34.00*	
		INVESTMENT CAPITAL	HTH	46,527,330W		46,527,330W	
			HTH	6,510,000C		3,115,000C	
			HTH	29,434,000N		12,460,000N	
2.	AGR846	PESTICIDES					
		OPERATING	AGR	21.00*		21.00*	
			AGR	739,790A		739,790A	
			AGR	350,000N		350,000N	
			AGR	250,000W		250,000W	
3.	LNR401	AQUATIC RESOURCES					
		OPERATING	LNR	27.00*		27.00*	
			LNR	2,243,631A		2,174,481A	
			LNR	1.00*		1.00*	
			LNR	1,081,717N		1,081,717N	
4.	LNR402	FORESTS AND WILDLIFE RESOURCES					
		OPERATING	LNR	54.50*		54.50*	
			LNR	2,551,525A		2,326,525A	
			LNR	4.50*		4.50*	
		INVESTMENT CAPITAL	LNR	860,485N		860,485N	
			LNR	65,000C		975,000C	
			LNR	N		2,565,000N	
5.	LNR404	WATER RESOURCES					
		OPERATING	LNR	19.00*		19.00*	
			LNR	1,443,509A		1,443,509A	
			LNR	620,852B		110,704B	
		INVESTMENT CAPITAL	LNR	1,265,000C		C	
6.	LNR405	CONSERVATION & RESOURCES ENFORCEMENT					
		OPERATING	LNR	98.50*		98.50*	
			LNR	4,529,478A		4,869,826A	
			LNR	18.00*		18.00*	
			LNR	1,292,752B		1,558,442B	
			LNR	2.50*		2.50*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			LNR	627,865N		627,865N	
				1.00*		1.00*	
		INVESTMENT CAPITAL	LNR	11,660W		11,660W	
			LNR	90,000N		850,000N	
7.		LNR407 - NATURAL AREA RESERVES & MANAGEMENT					
		OPERATING		27.00*		27.00*	
			LNR	1,234,481A		1,234,481A	
			LNR	1,500,000B		1,500,000B	
8.		HTH850 - POLICY DVLPMENT,COORD & ANLYS FOR NAT P ENVR					
		OPERATING		5.00*		5.00*	
			HTH	228,946A		228,946A	
9.		LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT					
		OPERATING		34.00*		34.00*	
		INVESTMENT CAPITAL	LNR	1,598,248A		1,598,248A	
			LNR	1,560,000C		1,560,000C	
10.		HTH849 - ENVIRONMENTAL HEALTH ADMINISTRATION					
		OPERATING		16.50*		16.50*	
			HTH	778,698A		778,698A	
				21.50*		21.50*	
			HTH	2,538,146N		2,538,146N	
				9.00*		9.00*	
			HTH	1,253,182W		1,253,182W	
<b>E. HEALTH</b>							
1.		HTH101 - TUBERCULOSIS/HANSEN'S DISEASE CONTROL					
		OPERATING		36.00*		36.00*	
			HTH	2,174,346A		2,174,346A	
				3.00*		3.00*	
		INVESTMENT CAPITAL	HTH	1,795,669N		1,795,669N	
			AGS	140,000C			C
2.		HTH111 - HANSEN'S DISEASE INSTITUTIONAL SERVICES					
		OPERATING		69.00*		69.00*	
			HTH	3,875,458A		3,923,488A	
		INVESTMENT CAPITAL	AGS	365,000C			C
3.		HTH121 - STD/AIDS PREVENTION SERVICES					
		OPERATING		13.00*		13.00*	
			HTH	5,286,337A		5,286,337A	
				4.50*		4.50*	
			HTH	3,382,140N		3,382,140N	
4.		HTH131 - EPIDEMIOLOGY SERVICES					
		OPERATING		19.00*		19.00*	
			HTH	1,208,691A		1,208,691A	
				21.00*		21.00*	
			HTH	4,200,000N		4,200,000N	
5.		HTH141 - DENTAL DISEASES					
		OPERATING		25.60*		25.60*	
			HTH	1,256,293A		1,281,293A	
6.		HTH151 - PREVENTIVE HEALTH SERVICES					
		OPERATING		3.00*		3.00*	
			HTH	411,658A		411,658A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			HTH	1,936,559N		1,936,559N	
7.	HTH160	NUTRITION					
	OPERATING		HTH	3.00*		3.00*	
			HTH	139,214A		139,214A	
			HTH	2.00*		2.00*	
			HTH	240,247N		240,247N	
8.	HTH180	HEALTH PROMOTION & ED, INJURY PREV & CONTROL					
	OPERATING		HTH	20.80*		20.80*	
			HTH	868,341A		868,341A	
			HTH	3.00*		3.00*	
			HTH	989,711N		989,711N	
9.	HTH165	WOMAN, INFANTS & CHILDREN'S SERVICES					
	OPERATING		HTH	116.50*		116.50*	
			HTH	33,477,385N		33,677,385N	
10.	HTH195	HPDP ADMINISTRATION					
	OPERATING						
11.	HTH501	DEVELOPMENTAL DISABILITIES					
	OPERATING		HTH	313.75*		313.75*	
	INVESTMENT CAPITAL		AGS	25,505,580A		25,505,580A	
			HTH	1,318,000C		4,583,000C	
			HTH	700,000C			C
12.	HTH530	CHILDREN WITH SPECIAL HEALTH NEEDS					
	OPERATING		HTH	71.00*		71.00*	
			HTH	4,256,256A		4,256,256A	
			HTH	3.00*		3.00*	
			HTH	600,000B		600,000B	
			HTH	28.00*		28.00*	
			HTH	4,489,269N		5,493,226N	
13.	HTH540	SCHOOL HEALTH SERVICES					
	OPERATING		HTH	67.00*		67.00*	
			HTH	3,075,763A		3,075,763A	
			HTH	2.00*		2.00*	
			HTH	706,116N		706,116N	
14.	HTH550	MATERNAL & CHILD HEALTH SERVICES					
	OPERATING		HTH	20.00*		20.00*	
			HTH	11,658,199A		11,658,199A	
			HTH	25.00*		25.00*	
			HTH	3,243,976N		3,243,976N	
15.	HTH570	COMMUNITY HEALTH NURSING					
	OPERATING		HTH	436.50*		439.50*	
			HTH	12,045,027A		12,091,535A	
			HTH	1.00*		1.00*	
			HTH	29,675N		29,675N	
16.	HTH730	EMERGENCY MEDICAL SERVICES					
	OPERATING		HTH	12.00*		12.00*	
			HTH	31,535,906A		31,216,199A	
			HTH	295,786N		295,786N	
17.	HTH595	HEALTH RESOURCES ADMINISTRATION					
				38.00*		38.00*	



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		OPERATING	HTH	4,480,130A		4,457,726A	
				2.00*		2.00*	
			HTH	834,362N		825,362N	
			HTH	29,598U		29,598U	
		INVESTMENT CAPITAL	HTH	896,000C		3,000,000C	
18.		HTH795 - HEALTH RESOURCES ADMINISTRATION OPERATING					
19.		HTH210 - COMMUNITY HOSPITALS OPERATING					
			HTH	8,000,000A			A
				2,972.25*		2,972.25*	
			HTH	212,431,089B		219,552,744B	
		INVESTMENT CAPITAL	HTH	2,165,000C			C
20.		HTH295 - COMMUNITY HOSPITALS ADMINISTRATION OPERATING					
21.		SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES OPERATING					
22.		HTH420 - ADULT MENTAL HEALTH					
				243.10*		243.10*	
		OPERATING	HTH	17,658,905A		17,494,053A	
			HTH	864,146B		864,146B	
			HTH	1,026,514N		1,026,514N	
		INVESTMENT CAPITAL	AGS	250,000C			C
23.		HTH430 - HAWAII STATE HOSPITAL					
		OPERATING	HTH	620.50*		620.50*	
		INVESTMENT CAPITAL	AGS	31,067,340A		30,811,193A	
				314,000C		1,061,000C	
24.		HTH440 - ALCOHOL & DRUG ABUSE					
				7.00*		7.00*	
		OPERATING	HTH	6,271,580A		5,817,830A	
				2.00*		2.00*	
			HTH	5,675,507N		5,675,507N	
25.		HTH460 - CHILD & ADOLESCENT MENTAL HEALTH					
				148.00*		148.00*	
		OPERATING	HTH	45,277,752A		44,892,499A	
			HTH	1,902,292B		1,902,292B	
			HTH	4,598,644N		4,598,644N	
		INVESTMENT CAPITAL	AGS	3,886,000C			C
			HTH	500,000C			C
26.		HTH495 - BEHAVIORAL HEALTH SERVICES ADMINISTRATION					
				75.00*		75.00*	
		OPERATING	HTH	6,750,359A		6,757,032A	
				4.00*		4.00*	
			HTH	644,783N		644,783N	
			HTH	1,771,150U		1,771,150U	
27.		HTH610 - ENVIRONMENTAL HEALTH SERVICES					
				150.00*		150.00*	
		OPERATING	HTH	5,143,669A		5,143,669A	
				4.00*		4.00*	
			HTH	300,000B		300,000B	
				7.00*		7.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			HTH	515,230N		515,230N	
				2.00*		2.00*	
		INVESTMENT CAPITAL	HTH	61,942U		61,942U	
			AGS	7,449,000C			C
28.	HTH710	STATE LABORATORY SERVICES					
		OPERATING	HTH	90.00*		90.00*	
				4,595,105A		4,458,505A	
29.	HTH720	MED FACILITIES - STDS, INSPECTION, LICENSING					
		OPERATING	HTH	16.90*		16.90*	
				920,349A		920,349A	
				20.70*		20.70*	
			HTH	1,535,310N		1,535,310N	
30.	HTH906	COMPREHENSIVE HEALTH PLANNING					
		OPERATING	HTH	8.00*		8.00*	
				414,726A		414,726A	
31.	HTH760	HEALTH STATUS MONITORING					
		OPERATING	HTH	29.00*		29.00*	
			HTH	1,644,651A		1,334,651A	
				397,214N		397,214N	
32.	HTH904	EXECUTIVE OFFICE ON AGING					
		OPERATING	HTH	3.55*		3.55*	
				4,975,354A		4,923,946A	
				7.35*		7.35*	
		INVESTMENT CAPITAL	HTH	5,696,416N		5,696,416N	
			HTH	2,250,000C			C
33.	HTH905	POLICY DEV & ADVOCACY FOR DEV DISABILITIES					
		OPERATING	HTH	1.50*		1.50*	
				79,736A		79,736A	
				6.50*		6.50*	
			HTH	433,728N		433,728N	
34.	HTH907	GENERAL ADMINISTRATION					
		OPERATING	HTH	122.00*		122.00*	
			HTH	5,813,204A		5,813,204A	
				207,843N		207,843N	
		INVESTMENT CAPITAL	AGS	2,259,000C			C
			HTH	250,000C			C
			HTH	100,000R			R
<b>F. SOCIAL SERVICES</b>							
1.	HMS301	CHILD WELFARE SERVICES					
		OPERATING	HMS	192.47*		192.47*	
			HMS	17,254,003A		17,229,003A	
			HMS	100,000B		100,000B	
				172.53*		172.53*	
			HMS	10,975,642N		11,019,744N	
2.	HMS302	CHILD DAY CARE SERVICES					
		OPERATING	HMS	27.00*		27.00*	
				5,548,216A		5,548,216A	
				1.00*		1.00*	
			HMS	9,736,544N		9,736,544N	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
3.	HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS						
	OPERATING		HMS	11,986,770A		11,986,770A	
			HMS	7,738,775N		7,738,775N	
4.	HMS601 - ADULT COMMUNITY CARE SERVICES BRANCH			80.50*		80.50*	
	OPERATING		HMS	7,217,567A		7,200,475A	
			HMS	4,931,441N		4,914,348N	
			HMS	241,636U		241,636U	
5.	HMS501 - YOUTH SERVICES ADMINISTRATION			22.00*		22.00*	
	OPERATING		HMS	1,170,658A		1,170,658A	
			HMS	1,535,505N		1,535,505N	
	INVESTMENT CAPITAL		AGS	8,000,000C			C
6.	HMS502 - YOUTH SERVICES PROGRAM						
	OPERATING		HMS	3,540,706A		3,457,106A	
			HMS	725,342N		725,342N	
	INVESTMENT CAPITAL		HMS	2,000,000C			C
7.	HMS503 - YOUTH RESIDENTIAL PROGRAMS			75.50*		75.50*	
	OPERATING		HMS	4,404,779A		4,204,779A	
			HMS	1,502,204N		1,502,204N	
8.	DEF112 - SERVICES TO VETERANS			25.00*		25.00*	
	OPERATING		DEF	1,172,968A		1,202,968A	
	INVESTMENT CAPITAL		DEF	800,000C			C
9.	HMS304 - FOSTER CARE LICENSING						
	OPERATING						
10.	HMS201 - TEMP ASSISTANCE TO NEEDY FAMILIES						
	OPERATING		HMS	44,009,296A		50,701,617A	
			HMS	85,910,687N		85,910,687N	
11.	HMS202 - PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED						
	OPERATING		HMS	29,474,516A		22,861,096A	
12.	HMS204 - GENERAL ASSISTANCE PAYMENTS						
	OPERATING		HMS	27,047,944A		26,261,632A	
13.	HMS206 - FEDERAL ASSISTANCE PAYMENTS						
	OPERATING		HMS	1,491,331N		1,491,331N	
14.	HMS203 - TEMP ASSISTANCE TO OTHER NEEDY FAMILIES						
	OPERATING		HMS	42,573,741A		38,297,029A	
15.	HMS220 - RENTAL HOUSING SERVICES						
	OPERATING		HMS	1,007,337A		1,007,337A	
				202.00*		202.00*	
			HMS	21,913,167N		21,027,422N	
				23.00*		23.00*	
	INVESTMENT CAPITAL		HMS	3,809,386W		3,809,386W	
			HMS	2,045,000C		1,575,000C	
16.	HMS807 - TEACHER HOUSING						
	OPERATING		HMS	268,155W		268,155W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		INVESTMENT CAPITAL	HMS	1,776,000C			C
17.		HMS229 - HOUSING ASSISTANCE ADMINISTRATION					
		OPERATING	HMS	37.00*		37.00*	
				11,051,248N		11,051,248N	
				7.00*		7.00*	
		INVESTMENT CAPITAL	HMS	356,138W		356,138W	
			HMS	4,754,000N		4,808,000N	
18.		BUF225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP					
		OPERATING	BUF	16.00*		16.00*	
			BUF	3,233,735B		3,233,735B	
			BUF	103,741N		104,648N	
		INVESTMENT CAPITAL	BUF	1,250,000C			C
19.		BUF223 - BROADENED HOMESITE OWNERSHIP					
		OPERATING	BUF	242,939B		242,939B	
20.		BUF227 - HOUSING FINANCE					
		OPERATING	BUF	7.00*		7.00*	
			BUF	1,113,573B		1,113,573B	
			BUF	8,253,229N		3,000,000N	
21.		BUF229 - HOUSING FINANCE & DEVELOPMENT ADMINISTRATION					
		OPERATING	BUF	17.00*		17.00*	
				2,418,196B		2,460,305B	
22.		HMS222 - RENTAL ASSISTANCE SERVICES					
		OPERATING	HMS	5.25*		5.25*	
			HMS	2,124,869A		2,124,869A	
			HMS	10.75*		10.75*	
			HMS	15,875,851N		15,875,851N	
23.		HMS224 - HOMELESS SERVICES					
		OPERATING	HMS	4.00*		4.00*	
			HMS	4,167,070A		4,167,070A	
			HMS	904,000N		904,000N	
24.		BUF231 - RENTAL HOUSING TRUST FUND PROGRAM					
		OPERATING	BUF	5,852,825T		6,652,927T	
25.		HMS230 - HEALTH CARE PAYMENTS					
		OPERATING	HMS	142,235,120A		142,243,221A	
			HMS	147,645,121N		147,653,223N	
			HMS	6,000,000U		6,000,000U	
26.		HMS603 - HOME AND COMMUNITY BASED CARE SERVICES					
		OPERATING	HMS	8,926,016A		10,304,258A	
			HMS	20,032,921N		21,411,163N	
			HMS	11,830,331U		14,024,792U	
27.		HMS245 - QUEST HEALTH CARE PAYMENTS					
		OPERATING	HMS	166,963,798A		181,589,638A	
			HMS	169,005,837N		183,631,677N	
28.		HMS236 - ELIG DETER. & EMPLOYMT RELATED SVCS					
		OPERATING	HMS	333.78*		333.78*	
				10,732,879A		10,732,879A	
				261.22*		261.22*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			HMS	12,468,335N		12,468,335N	
29.	HMS238	- DISABILITY DETERMINATION					
	OPERATING		HMS	45.00* 3,866,611N		45.00* 3,858,037N	
30.	ATG500	- CHILD SUPPORT ENFORCEMENT SERVICES					
	OPERATING		ATG	43.18* 1,396,334A		43.18* 1,395,112A	
			ATG	97.68* 12,438,663N		97.68* 12,436,288N	
			ATG	7.14* 2,424,620T		7.14* 2,424,620T	
31.	HMS237	- FOOD STAMP EMPLOYMENT & TRAINING					
	OPERATING		HMS	2.00* 460,640A		2.00* 460,640A	
			HMS	814,412N		814,412N	
32.	HMS702	- FOOD STAMP EMPLOYMENT & TRAINING					
	OPERATING						
33.	HHL602	- PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS					
	OPERATING		HHL	38.00* 1,493,016A		38.00* 1,493,016A	
			HHL	80.00* 5,254,340B		80.00* 5,254,340B	
	INVESTMENT CAPITAL		HHL	100,000,000E		E	
34.	HMS602	- EXECUTIVE OFFICE ON AGING					
	OPERATING						
35.	HTH520	- PLAN, PROG DEV & COORD OF SVS FOR HANDCPPD					
	OPERATING		HTH	5.00* 603,283A		5.00* 603,283A	
36.	HMS902	- GENERAL SUPPORT FOR HEALTH CARE PAYMENTS					
	OPERATING		HMS	26.00* 3,865,865A		26.00* 3,865,865A	
			HMS	26.76* 5,325,932N		26.76* 5,325,932N	
37.	HMS903	- GEN SPPT FOR BEN, EMPLOYMT & SPPT SVCS					
	OPERATING		HMS	53.30* 9,668,774A		53.30* 8,299,231A	
			HMS	45.70* 14,514,162N		45.70* 13,601,133N	
38.	HMS904	- GENERAL ADMINISTRATION (DSSH)					
	OPERATING		HMS	174.81* 6,670,042A		174.81* 6,580,794A	
			HMS	16.19* 933,231N		16.19* 933,231N	
39.	HMS901	- GENERAL SUPPORT FOR SOCIAL SERVICES					
	OPERATING		HMS	13.97* 1,155,746A		13.97* 1,147,265A	
			HMS	10.03* 1,225,956N		10.03* 1,222,374N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
<b>G. FORMAL EDUCATION</b>							
1. EDN100 - SCHOOL-BASED BUDGETING							
	OPERATING		EDN	14,115.00*		14,131.50*	
			EDN	570,433,883A		569,003,887A	
			EDN	4,505,770B		4,505,770B	
			EDN	81,058,146N		81,775,027N	
			EDN	2,960,072T		2,960,072T	
			EDN	882,939U		882,939U	
			EDN	2,000,000W		2,000,000W	
	INVESTMENT CAPITAL		AGS	161,064,000B		128,372,000B	
			AGS	13,493,000C		3,057,000C	
			EDN	250,000B		250,000B	
2. EDN200 - INSTRUCTIONAL SUPPORT							
	OPERATING		EDN	532.00*		528.00*	
			EDN	32,337,397A		32,370,589A	
			EDN	5,676,196N		5,726,196N	
			EDN	1,050,000U		1,050,000U	
			EDN	540,000W		540,000W	
3. EDN300 - STATE AND DISTRICT ADMINISTRATION							
	OPERATING		EDN	444.50*		440.00*	
			EDN	22,068,492A		21,970,914A	
			EDN	628,128N		628,128N	
4. EDN400 - SCHOOL SUPPORT							
	OPERATING		EDN	1,480.60*		1,503.60*	
			EDN	71,461,371A		71,767,080A	
			EDN	720.50*		720.50*	
			EDN	18,629,337B		18,744,596B	
			EDN	3.00*		3.00*	
			EDN	29,224,125N		29,889,722N	
5. EDN500 - SCHOOL COMMUNITY SERVICE							
	OPERATING		EDN	38.50*		38.50*	
			EDN	13,861,396A		13,861,396A	
			EDN	653,642B		653,642B	
			EDN	1,156,206N		1,156,206N	
			EDN	200,000W		200,000W	
6. AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS							
	OPERATING		AGS	238.00*		238.00*	
			AGS	34,872,247A		34,804,282A	
	INVESTMENT CAPITAL		AGS	24,031,000C		17,500,000C	
7. AGS808 - STUDENT TRANSPORTATION							
	OPERATING		AGS	10.00*		10.00*	
			AGS	19,683,345A		19,648,345A	
8. EDN407 - PUBLIC LIBRARIES							
	OPERATING		EDN	512.05*		512.05*	
			EDN	18,425,278A		18,411,971A	
			EDN	3,125,000B		3,125,000B	
			EDN	662,002N		662,002N	
	INVESTMENT CAPITAL		AGS	8,161,000C		21,883,000C	
9. UOH100 - UNIVERSITY OF HAWAII, MANOA							
	OPERATING		UOH	3,488.09*		3,479.09*	
			UOH	166,533,340A		165,742,768A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
					77.25*		77.25*
			UOH	59,109,441B			59,079,441B
					78.06*		78.06*
			UOH	5,411,667N			5,411,667N
					182.25*		191.25*
		INVESTMENT CAPITAL	UOH	58,287,383W			58,449,610W
			AGS	1,450,000B			B
			AGS	38,301,000C			18,908,000C
			AGS	1,528,000R			R
			UOH	500,000B			B
			UOH	6,752,000C			C
			UOH	500,000W			W
10.		UOH210 - UNIVERSITY OF HAWAII, HILO					
		OPERATING			313.00*		313.00*
			UOH	15,509,771A			15,509,771A
					14.00*		14.00*
			UOH	6,840,557B			6,840,557B
			UOH	394,543N			394,543N
					11.50*		11.50*
		INVESTMENT CAPITAL	UOH	3,629,938W			3,624,938W
			AGS	1,657,000C			19,024,000C
			UOH				12,002,000N
11.		UOH300 - HONOLULU COMMUNITY COLLEGE					
		OPERATING					
12.		UOH310 - KAPIOLANI COMMUNITY COLLEGE					
		OPERATING					
13.		UOH320 - LEEWARD COMMUNITY COLLEGE					
		OPERATING					
14.		UOH330 - WINDWARD COMMUNITY COLLEGE					
		OPERATING					
15.		UOH400 - HAWAII COMMUNITY COLLEGE					
		OPERATING					
16.		UOH500 - MAUI COMMUNITY COLLEGE					
		OPERATING					
17.		UOH600 - KAUAI COMMUNITY COLLEGE					
		OPERATING					
18.		UOH700 - UNIVERSITY OF HAWAII AT WEST OAHU					
		OPERATING			46.50*		46.50*
			UOH	2,157,057A			2,157,057A
			UOH	849,815B			849,815B
			UOH	50,000W			50,000W
		INVESTMENT CAPITAL	UOH	333,000C			C
19.		UOH800 - UH - COMMUNITY COLLEGES					
		OPERATING			1,479.25*		1,479.25*
			UOH	63,655,889A			63,255,889A
					50.50*		50.50*
			UOH	31,533,340B			31,533,340B
					15.60*		15.60*
			UOH	3,540,927N			3,540,927N
					29.00*		29.00*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		INVESTMENT CAPITAL	UOH	7,803,408W		7,853,408W	
			AGS	22,135,000C		30,593,000C	
			UOH	4,992,000C			C
20.	UOH900	UOH, SYSTEM WIDE SUPPORT					
	OPERATING		UOH	315.00*		315.00*	
				24,649,657A		23,751,885A	
				4.00*		4.00*	
			UOH	206,333B		206,333B	
				4.00*		4.00*	
			UOH	457,667N		457,667N	
				100.00*		100.00*	
	INVESTMENT CAPITAL		UOH	42,365,606W		42,415,606W	
			AGS	19,983,000C		11,906,000C	
			UOH	22,308,000C		6,512,000C	
			UOH	500,000W			W
21.	UOH906	COMMUNITY COLLEGE SYSTEMWIDE SUPPORT					
	OPERATING						
<b>H. CULTURE AND RECREATION</b>							
1.	UOH881	AQUARIA					
	OPERATING		UOH	13.00*		13.00*	
				499,051A		499,051A	
				7.00*		7.00*	
			UOH	1,718,689B		1,718,689B	
2.	CCA701	HAWAII PUBLIC BROADCASTING					
	OPERATING		CCA	35.00*		35.00*	
				1,560,929A		1,360,929A	
				1.00*		1.00*	
			CCA	4,106,591W		4,106,591W	
3.	AGS881	PERFORMING & VISUAL ARTS EVENTS					
	OPERATING		AGS	11.00*		11.00*	
				1,962,193A		1,962,193A	
				5.00*		5.00*	
			AGS	4,062,197B		4,062,197B	
			AGS	682,405N		682,405N	
			AGS	15,000R		15,000R	
4.	LNR802	HISTORIC PRESERVATION					
	OPERATING		LNR	13.00*		13.00*	
				544,854A		544,854A	
			LNR	58,624B		58,624B	
			LNR	424,312N		424,312N	
5.	LNR804	FOREST RECREATION					
	OPERATING		LNR	38.00*		38.00*	
				1,301,718A		1,301,718A	
				3.00*		3.00*	
			LNR	495,506N		495,506N	
			LNR	500,000W		500,000W	
6.	LNR805	RECREATIONAL FISHERIES					
	OPERATING		LNR	7.00*		7.00*	
				162,935A		162,935A	
			LNR	37,000B		37,000B	



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			LNR	408,889N		408,889N	
7.	LNR806	- PARK DEVELOPMENT AND OPERATION					
	OPERATING		LNR	115.00*		115.00*	
			LNR	5,486,803A		5,250,301A	
			LNR	134,662B		181,164B	
	INVESTMENT CAPITAL		LNR	6,920,000C		5,985,000C	
			LNR	100,000N		N	
8.	LNR801	- OCEAN-BASED RECREATION					
	OPERATING		LNR	88.00*		88.00*	
			LNR	9,882,135B		9,882,135B	
			LNR	700,000N		700,000N	
	INVESTMENT CAPITAL		LNR	260,000C		700,000C	
			LNR	783,000D		1,925,000D	
			LNR	225,000N		N	
9.	AGS889	- SPECTATOR EVENTS & SHOWS - ALOHA STADIUM					
	OPERATING		AGS	39.50*		39.50*	
				4,952,083B		4,952,083B	
10.	LNR807	- PARK INTERPRETATION					
	OPERATING		LNR	9.00*		9.00*	
			LNR	531,064B		531,064B	
	INVESTMENT CAPITAL		LNR	685,000B		550,000B	
11.	LNR809	- PARKS ADMINISTRATION					
	OPERATING		LNR	10.00*		10.00*	
			LNR	497,618A		497,618A	
			LNR	285,201N		285,201N	
	INVESTMENT CAPITAL		LNR	185,000C		C	
<b>I. PUBLIC SAFETY</b>							
1.	PSD402	- HALAWA CORRECTIONAL FACILITY					
	OPERATING		PSD	403.00*		419.50*	
			PSD	15,183,369A		15,968,315A	
	INVESTMENT CAPITAL		AGS	814,242W		814,242W	
				529,000C		C	
2.	PSD403	- KULANI CORRECTIONAL FACILITY					
	OPERATING		PSD	79.00*		79.00*	
			PSD	3,216,880A		3,216,880A	
	INVESTMENT CAPITAL		AGS	3,634,000C		C	
3.	PSD404	- WAIAWA CORRECTIONAL FACILITY					
	OPERATING		PSD	99.25*		99.25*	
			PSD	3,760,715A		3,837,992A	
			PSD	179,392W		179,392W	
	INVESTMENT CAPITAL		AGS	2,088,000C		C	
			AGS	1,859,000N		N	
4.	PSD405	- HAWAII COMMUNITY CORRECTIONAL CENTER					
	OPERATING		PSD	166.00*		166.00*	
			PSD	5,957,501A		5,957,501A	
	INVESTMENT CAPITAL		AGS	589,000C		C	
5.	PSD406	- MAUI COMMUNITY CORRECTIONAL CENTER					
	OPERATING		PSD	179.00*		179.00*	
			PSD	5,640,233A		5,640,233A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			PSD	87,000S		87,000S	
6.		PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER					
	OPERATING		PSD	446.00*		446.00*	
			PSD	18,253,809A		18,778,200A	
	INVESTMENT CAPITAL		AGS	615,069W		615,069W	C
				4,366,000C			
7.		PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER					
	OPERATING		PSD	68.00*		68.00*	
				2,665,549A		2,431,144A	
8.		PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER					
	OPERATING		PSD	113.00*		127.25*	
			PSD	4,537,558A		5,109,478A	
	INVESTMENT CAPITAL		AGS	2,104,000C			C
9.		PSD410 - INTAKE SERVICE CENTERS					
	OPERATING		PSD	42.00*		42.00*	
				1,877,768A		1,877,768A	
10.		PSD420 - CORRECTION PROGRAM SERVICES					
	OPERATING		PSD	189.50*		191.75*	
				14,786,498A		15,560,886A	
11.		PSD421 - HEALTH CARE					
	OPERATING		PSD	138.93*		143.68*	
				8,559,462A		8,986,855A	
12.		PSD501 - PROTECTIVE SERVICES					
	OPERATING		PSD	95.50*		95.50*	
			PSD	4,161,071A		4,161,071A	
			PSD	29,890N		29,890N	
			PSD	13.00*		13.00*	
			PSD	1,318,908U		1,318,908U	
13.		PSD502 - NARCOTICS ENFORCEMENT					
	OPERATING		PSD	12.00*		12.00*	
			PSD	496,207A		496,207A	
			PSD	3.00*		3.00*	
			PSD	211,090W		230,633W	
14.		PSD503 - SHERIFF					
	OPERATING		PSD	146.00*		146.00*	
				4,527,635A		4,422,840A	
15.		PSD611 - ADULT PAROLE DETERMINATIONS					
	OPERATING		PSD	2.00*		2.00*	
				198,223A		198,223A	
16.		PSD612 - ADULT PAROLE SUPERVISION & COUNSELING					
	OPERATING		PSD	44.00*		44.00*	
				1,643,699A		1,643,699A	
17.		PSD613 - CRIMINAL INJURIES COMPENSATION					
	OPERATING		PSD	6.00*		6.00*	
				245,521A		245,521A	
18.		PSD900 - GENERAL ADMINISTRATION					
				141.10*		141.10*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
	OPERATING		PSD	18,145,178A		23,145,178A	
			PSD	25,065T		25,065T	
				9.00*		9.00*	
			PSD	9,488,898W		9,488,898W	
			PSD	742,980X		742,980X	
	INVESTMENT CAPITAL		AGS	500,000C			C
19.	ATG231 - STATE CRIMINAL JUSTICE INFO & IDENTIFICATION						
				36.00*		36.00*	
	OPERATING		ATG	1,611,678A		1,611,678A	
			ATG	2,000,000N		2,000,000N	
				1.00*		1.00*	
			ATG	627,522W		627,522W	
20.	LNR810 - PREVENTION OF NATURAL DISASTERS						
				4.00*		4.00*	
	OPERATING		LNR	190,174A		233,733A	
			LNR	40,000N		40,000N	
	INVESTMENT CAPITAL		LNR	2,570,000C		10,350,000C	
			LNR	200,000N			N
21.	DEF110 - AMELIORATION OF PHYSICAL DISASTERS						
				117.55*		117.55*	
	OPERATING		DEF	6,926,170A		6,630,771A	
				32.45*		32.45*	
			DEF	6,042,969N		6,042,969N	
	INVESTMENT CAPITAL		AGS	1,210,000C		530,000C	
			AGS	125,000N		130,000N	
<b>J. INDIVIDUAL RIGHTS</b>							
1.	CCA102 - CABLE TELEVISION						
				4.00*		4.00*	
	OPERATING		CCA	722,220X		722,220X	
2.	CCA103 - CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC						
				20.00*		20.00*	
	OPERATING		CCA	2,433,599U		2,433,599U	
3.	CCA104 - FINANCIAL INSTITUTION SERVICES						
				19.00*		19.00*	
	OPERATING		CCA	865,452A		865,452A	
				7.00*		7.00*	
			CCA	578,681W		578,681W	
4.	CCA105 - PROFESSIONAL, VOCATIONAL & PERSONAL SVCS						
				59.00*		59.00*	
	OPERATING		CCA	4,066,098B		4,066,098B	
				1.00*		1.00*	
			CCA	1,806,653T		1,806,653T	
5.	BUF901 - TRANSPORTATION, COMMUNICATIONS, & UTILITIES						
				44.00*		44.00*	
	OPERATING		BUF	5,784,146B		5,784,146B	
6.	CCA106 - INSURANCE REGULATORY SERVICES						
				26.00*		26.00*	
	OPERATING		CCA	1,008,387A		1,008,387A	
			CCA	1,630,006B		1,630,006B	
			CCA	135,518T		135,518T	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			CCA	19.00*		19.00*	
				3,574,692W		3,574,692W	
7.	CCA110	OFFC OF CONSUMER PROT - UNFAIR/DECEP PRAC		14.00*		14.00*	
	OPERATING		CCA	580,328A		580,328A	
			CCA	10,681T		10,681T	
8.	AGR812	MEASUREMENT STANDARDS		21.00*		21.00*	
	OPERATING		AGR	801,395A		801,395A	
9.	CCA111	BUSINESS REGISTRATION		73.00*		73.00*	
	OPERATING		CCA	4,513,921B		4,513,921B	
10.	CCA112	REGULATED INDUSTRIES COMPLAINTS OFFICE		15.00*		15.00*	
	OPERATING		CCA	5,746,299B		5,746,299B	
11.	CCA191	GENERAL SUPPORT-PROTECTION OF THE CONSUMER		13.00*		13.00*	
	OPERATING		CCA	1,555,359A		1,555,359A	
			CCA	6.00*		6.00*	
			CCA	1,826,529B		1,820,129B	
12.	BUF151	LEGAL ASSISTANCE IN CRIMINAL ACTIONS		82.00*		82.00*	
	OPERATING		BUF	6,603,771A		6,703,186A	
13.	LNR111	CONVEYANCES AND RECORDINGS		48.00*		48.00*	
	OPERATING		LNR	1,755,656A		1,755,656A	
			LNR	4.00*		4.00*	
				143,768U		143,768U	
14.	LTG888	COMMISSION ON THE STATUS OF WOMEN		1.00*		1.00*	
	OPERATING		LTG	100,788A		100,788A	
<b>K. GOVERNMENT-WIDE SUPPORT</b>							
1.	GOV100	OFFICE OF THE GOVERNOR		38.00*		38.00*	
	OPERATING		GOV	3,519,514A		3,519,514A	
	INVESTMENT CAPITAL		AGS	1,000C		1,000C	
2.	LTG100	OFFICE OF THE LIEUTENANT GOVERNOR		6.00*		6.00*	
	OPERATING		LTG	621,855A		641,220A	
3.	GOV102	GOV - OTH POLICY DEVELOPMENT & COORDINATION		4.00*		4.00*	
	OPERATING		GOV	276,260A		276,260A	
4.	BED103	STATEWIDE LAND USE MANAGEMENT		7.00*		7.00*	
	OPERATING		BED	432,077A		432,077A	
5.	BED104	HAWAII COMMUNITY DEVELOPMENT AUTHORITY					

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
	OPERATING		BED	2.00*		2.00*	
			BED	123,228A		123,228A	
	INVESTMENT CAPITAL		AGS	3,300,000B		3,300,000B	
			BED	C		28,375,000C	
			BED	34,459,000C		17,800,000C	
			BED	2,000,000D		D	
			BED	20,500,000E		E	
6.	BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING			55.00*		55.00*	
	OPERATING		BUF	212,195,369A		238,836,112A	
	INVESTMENT CAPITAL		BUF	228,987,000C		168,522,000C	
7.	LTG101 - CAMPAIGN SPENDING COMMISSION			4.00*		4.00*	
	OPERATING		LTG	198,812A		205,312A	
			LTG	200,000T		4,000,000T	
8.	LTG102 - OFFICE OF ELECTIONS			4.00*		4.00*	
	OPERATING		LTG	2,494,052A		2,327,346A	
9.	TAX102 - INCOME ASSESSMENT AND AUDIT			111.00*		111.00*	
	OPERATING		TAX	4,120,045A		4,120,045A	
10.	TAX103 - TAX COLLECTIONS ENFORCEMENT			93.00*		93.00*	
	OPERATING		TAX	2,937,133A		2,937,133A	
11.	TAX105 - TAX SERVICES & PROCESSING			99.00*		99.00*	
	OPERATING		TAX	5,078,232A		5,076,065A	
12.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION			40.00*		40.00*	
	OPERATING		TAX	4,486,524A		4,385,350A	
13.	AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE			7.00*		7.00*	
	OPERATING		AGS	1,552,343A		1,572,843A	
14.	AGS102 - EXPENDITURE EXAMINATION			17.00*		17.00*	
	OPERATING		AGS	892,868A		892,868A	
15.	AGS103 - RECORDING AND REPORTING			12.00*		12.00*	
	OPERATING		AGS	495,771A		495,771A	
16.	AGS104 - INTERNAL POST AUDIT			13.00*		13.00*	
	OPERATING		AGS	1,061,739A		1,061,739A	
17.	BUF115 - FINANCIAL ADMINISTRATION			20.00*		20.00*	
	OPERATING		BUF	398,253,895A		413,845,265A	
			BUF	5,525U		5,525U	
18.	ATG100 - LEGAL SERVICES						

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
	OPERATING		ATG	206.76*		206.76*	
				17,494,637A		17,602,039A	
				4.00*		4.00*	
			ATG	280,229B		282,520B	
				12.00*		12.00*	
			ATG	7,065,603N		6,561,818N	
			ATG	3,318,000T		3,318,000T	
				40.24*		40.24*	
			ATG	5,147,592U		5,224,388U	
				2.00*		2.00*	
			ATG	3,000,000W		3,000,000W	
19.	AGS131 - INFORMATION PROCESSING SERVICES			165.00*		165.00*	
	OPERATING		AGS	10,394,880A		10,159,132A	
				33.00*		33.00*	
			AGS	1,623,771U		1,811,271U	
20.	BUF131 - ELECTRONIC DATA PROCESSING SERVICES						
	OPERATING						
21.	AGS161 - COMMUNICATION			8.00*		8.00*	
	OPERATING		AGS	2,948,683A		2,948,683A	
				1,250,000U		1,250,000U	
	INVESTMENT CAPITAL		AGS	1,745,000C		730,000C	
22.	BUF161 - COMMUNICATION						
	OPERATING						
23.	HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION AND EFF.			124.00*		124.00*	
	OPERATING		HRD	14,817,440A		14,773,587A	
				4,708,381U		4,708,381U	
			HRD	415,694W		415,694W	
24.	HRD191 - SUPPORTING SERVICES-HUMAN RESOURCES DEVELOPMENT			13.00*		13.00*	
	OPERATING		HRD	1,282,825A		993,853A	
25.	BUF141 - RETIREMENT						
	OPERATING		BUF	276,074,023A		220,706,253A	
				52.00*		52.00*	
			BUF	7,195,887X		5,725,387X	
26.	BUF142 - HEALTH & LIFE INSURANCE BENEFITS			15.00*		15.00*	
	OPERATING		BUF	616,416A		621,416A	
			BUF	371,598,000T		371,598,000T	
27.	LNR101 - PUBLIC LANDS MANAGEMENT			42.00*		42.00*	
	OPERATING		LNR	1,403,390A		1,403,390A	
				8.00*		8.00*	
			LNR	3,422,698B		1,486,788B	
			LNR	120,000N		72,634N	
	INVESTMENT CAPITAL		LNR	450,000B		1,000,000B	
			LNR	14,000,000C			C
28.	AGS203 - RISK MANAGEMENT						

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		OPERATING	AGS	4.00*		4.00*	
			AGS	5,499,905A		5,499,905A	
				7,825,000W		7,825,000W	
29.	AGS211	- LAND SURVEY					
		OPERATING	AGS	18.00*		18.00*	
				726,535A		726,535A	
30.	AGS223	- OFFICE LEASING					
		OPERATING	AGS	4.00*		4.00*	
			AGS	17,348,141A		16,470,003A	
				5,500,000U		5,500,000U	
31.	AGS221	- CONSTRUCTION					
		OPERATING	AGS	19.00*		19.00*	
			AGS	1,080,716A		1,060,716A	
			AGS	4,000,000W		4,000,000W	
		INVESTMENT CAPITAL	5GS	6,666,000C		6,760,000C	
			AGS	13,606,000C		23,370,000C	
32.	AGS231	- CUSTODIAL SERVICES					
		OPERATING	AGS	141.50*		158.50*	
			AGS	9,595,270A		11,068,662A	
				430,501U		430,501U	
33.	AGS232	- GROUNDS MAINTENANCE					
		OPERATING	AGS	27.50*		28.50*	
				827,885A		877,331A	
34.	AGS233	- BUILDING REPAIRS AND ALTERATIONS					
		OPERATING	AGS	27.00*		27.00*	
			AGS	2,493,346A		2,493,346A	
		INVESTMENT CAPITAL	AGS	2,272,000C			C
35.	AGS240	- STATE PROCUREMENT					
		OPERATING	AGS	19.00*		19.00*	
				836,410A		836,410A	
36.	AGS244	- SURPLUS PROPERTY MANAGEMENT					
		OPERATING	AGS	5.00*		5.00*	
				267,212W		267,212W	
37.	AGS251	- MOTOR POOL					
		OPERATING	AGS	13.50*		13.50*	
				1,404,048W		1,404,048W	
38.	AGS252	- PARKING CONTROL					
		OPERATING	AGS	22.50*		22.50*	
				2,811,889W		2,768,001W	
39.	AGS111	- RECORDS MANAGEMENT					
		OPERATING	AGS	20.00*		20.00*	
				665,253A		644,753A	
40.	AGS901	- GENRL ADM SVCS - ACCOUNTING & GENERAL SVCS					
		OPERATING	AGS	45.00*		45.00*	
			AGS	1,977,338A		1,977,338A	
			AGS	1.00*		1.00*	
			AGS	45,859U		45,859U	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			AGS	11,257,500W		11,257,500W	
41.	SUB201 - CITY AND COUNTY OF HONOLULU						
	OPERATING		SUB	250,000A			A
	INVESTMENT CAPITAL		CCH	437,000C			C
42.	SUB301 - COUNTY OF HAWAII						
	OPERATING						
	INVESTMENT CAPITAL		COH	4,500,000C			C
43.	SUB401 - COUNTY OF MAUI						
	OPERATING		SUB	250,000A		250,000A	
	INVESTMENT CAPITAL		COM	4,350,000C			C
44.	SUB501 - COUNTY OF KAUAI						
	OPERATING		SUB	1,000,000A			A
	INVESTMENT CAPITAL		COK	4,000,000C			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 \$500,000 for fiscal year 1997-1998 and the sum of \$1,000,000 for fiscal year 1998-1999 shall be expended by the Hawaii strategic development corporation for financial participation in private financial investments; provided further that these investments shall be consistent with section 211F-7(c), Hawaii Revised Statutes; provided further that no investments shall be made unless matched on at least a 1:1 state to private ratio; and provided further that a report detailing the expenditure and return on investment of such funds shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 5. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$25,000 for fiscal year 1997-1998 shall be used to develop a mandatory seafood hazard analysis and critical point plan.

SECTION 6. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$25,000 for fiscal year 1997-1998 shall be used to co-sponsor a series of workshops focused on helping small- and medium-sized Hawaii-based businesses become more directly involved in Pacific islands economic trade and development, which should feature Hawaii business people already operating in the Pacific islands; provided further that the department of business, economic development, and tourism shall submit to the legislature a detailed report of all expenditures no later than twenty days prior to the convening of 1998 regular session.

SECTION 7. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$26,050,000 for fiscal year 1997-1998 and the sum of \$24,050,000 for fiscal year 1998-1999 shall be expended by the Hawaii



visitors and convention bureau for tourism marketing of Hawaii which includes advertising, promotion, public relations, market research, and other marketing related activities; provided further that of the general fund appropriation to the Hawaii visitors and convention bureau from state tourism office (BED 113):

- (1) The amount expended for salaries, benefits, related taxes, and office rent for the Hawaii visitors and convention bureau shall not exceed \$3,640,000 for fiscal year 1997-1998 and shall not exceed \$3,785,600 for fiscal year 1998-1999;
- (2) The sum of \$1,838,174 for fiscal year 1997-1998 and the sum of \$1,930,083 for fiscal year 1998-1999 shall be used for pro bowl advertising, marketing, and promotion by the Hawaii visitors and convention bureau;
- (3) The sum of \$1,220,000 for fiscal year 1997-1998 and the sum of \$1,200,000 for fiscal year 1998-1999 shall be used for sports promotion activities as follows:

	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
Senior Skins	\$ 200,000	\$ 200,000
Lincoln Mercury Kapalua International	\$ 200,000	\$ 200,000
Kaanapali Classic	\$ 200,000	\$ 200,000
PGA Grand Slam of Golf	\$ 200,000	\$ 200,000
Hawaii Winter League Baseball	\$ 400,000	\$ 400,000
Royal Hawaiian Rowing Challenge	\$ 20,000	\$ - 0 -

provided further that the following conditions shall apply to the above events:

- (a) No funds shall be made available for the above events unless matched on a 1:2 state to private ratio;
- (b) Any unexpended and unencumbered funds shall be lapsed to the state general fund; and
- (c) Each of the above sports activities shall promote, market, or advertise Hawaii as a visitor destination;
- (4) The sum of \$75,000 for fiscal year 1997-1998 and the sum of \$75,000 for fiscal year 1998-1999 shall be expended for the Hawaii international film festival; and provided further that no funds shall be made available unless matched on a 1:2 state to private ratio;
- (5) A minimum of \$3,500,000 shall be expended in fiscal year 1997-1998 and a minimum of \$3,500,000 shall be expended in fiscal year 1998-1999 for island chapter marketing;
- (6) The sum of \$100,000 for fiscal year 1997-1998 and the sum of \$100,000 for fiscal year 1998-1999 shall be expended for Poipu beach resort destination;
- (7) The sum of \$50,000 for fiscal year 1997-1998 and the sum of \$50,000 for fiscal year 1998-1999 shall be expended for the King Kamehameha celebration commission; and

provided further that these ratios represent the minimum level of private funds required to match state funds; and provided further that a report detailing the expenditure of funds shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 8. Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$50,000 for fiscal year 1997-1998 shall be spent for the visitor industry education council to:

- (1) Develop and direct a statewide program to expand school and community awareness and use of the visitor industry education council tourism education videos and career materials;
- (2) Produce a new tourism career ladder brochure covering the multitude of career opportunities, including new opportunities provided by the convention center, for use by schools, employers, and the general public;
- (3) Plan and direct workshops, promotions, and events for the general public, workers in the visitor industry, Hawaii's educators, and Hawaii's youth, to expand the general awareness of the importance of the visitor industry;
- (4) Administer and expand the statewide teacher and counselor visitor industry internship program for Hawaii's educators; and

provided further that no funds shall be made available unless matched on a 1:3 state to private ratio.

SECTION 9. Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$216,000 for fiscal year 1997-1998 and the sum of \$216,000 for fiscal year 1998-1999 shall be used for olympic related events in Hawaii; and provided further that no funds shall be made available unless matched on a 2:1 private to state ratio; and provided further that a report shall be submitted to the legislature of all expenditures no later than twenty days prior to the convening of the 1998 regular session.

SECTION 10. Provided that of the general fund appropriation for high technology development corporation (BED 143), the sum of \$90,000 for fiscal year 1997-1998 shall be used for the operation of a library at the Maui research and technology center through a contract with the Maui economic development board; and provided further that a report shall be submitted to the legislature of all expenditures no later than twenty days prior to the convening of the 1998 regular session.

SECTION 11. Provided that of the general fund appropriation for plant pest and disease control (AGR 122), the sum of \$61,694 for fiscal year 1997-1998 shall be expended on the eradication of the banana bunchy top virus in Kona; provided further that the department of agriculture shall submit a report which shall include, but not be limited to, the progress of eradication of banana bunchy top virus in Kona, and justification for continued funding for this purpose in future years; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 12. Provided that of the general fund appropriation for agribusines development and research (AGR 161), the sum of \$743,000 for fiscal year 1997-1998 and the sum of \$743,000 for fiscal year 1998-1999 shall be expended as follows:

	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
Ornamental nursery research	\$ 25,000	\$ 25,000
Taro research	\$ 10,000	- 0 -
Yellow sugarcane aphid research	\$ 40,000	- 0 -
Coffee research	\$ 25,000	\$ 25,000
Macadamia research	\$ 30,000	\$ 30,000
State farm fair	\$ 50,000	\$ 50,000
Plant alien pest program	\$ 50,000	\$ 50,000
Vegetable crop research	\$ 50,000	\$ 50,000
Fruit fly post harvest treatment and research	\$ 95,000	\$ 95,000
Pineapple research	\$ 198,000	\$ 208,000
Ginger/taro research	- 0 -	\$ 40,000
Cut flower research	\$ 75,000	\$ 75,000
Livestock research	\$ 40,000	\$ 40,000
Tropical fruit research	\$ 30,000	\$ 30,000
Contingency emergency research for diversified agriculture	\$ 25,000	\$ 25,000

provided further that:

- (1) The department of agriculture shall submit an itemized 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 the research projects with justification for recommended funding in future years; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions;
- (2) The department of agriculture shall support efforts to seek and obtain grants and other funds for agricultural research and development;
- (3) The chairperson of the board of agriculture shall expedite all projects under this section, especially emergency actions; and
- (4) The sums appropriated shall be expended by the department of agriculture for the purposes of this Act; provided that:
  - (a) The department of agriculture may require that any funds made available under this Act be matched by private funds; and
  - (b) The department of agriculture is authorized to transfer funds between projects under this section or to other projects or commodities as deemed necessary by the department of agriculture.

SECTION 13. Provided that of the general fund appropriation for agribusiness development and research (AGR 161), the sum of \$60,000 for fiscal year 1997-1998 and the sum of \$199,016 for fiscal year 1998-1999 shall be expended on the agribusiness development corporation for personal services; provided further that no funds shall be expended on other current expenditures.

#### EMPLOYMENT

SECTION 14. Provided that of the general fund appropriation for occupational safety and health (LBR 143), the sum of \$64,369 for fiscal year 1997-1998

and the sum of \$64,369 for fiscal year 1998-1999 shall be used for the purpose of retaining 2.0 elevator inspectors.

SECTION 15. Provided that of the general fund appropriation for disability compensation (LBR 183), the sum of \$769,937 for fiscal year 1997-1998 and the sum of \$346,087 for fiscal year 1998-1999 shall be used only for the purposes required for the re-engineering of the disability compensation information system; provided further that any unexpended funds shall be lapsed to the general fund; and provided further that the department of labor and industrial relations shall submit a progress and expenditure report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 16. Provided that of the general fund appropriation for office of community services (LBR 903), the sum of \$50,000 for fiscal year 1997-1998 and the sum of \$50,000 for fiscal year 1998-1999 shall be expended for the development of bilingual citizenship classes to conduct bilingual outreach and community education programs on the benefit and responsibility of becoming U. S. citizens and to educate and prepare eligible legal immigrants for the naturalization examination.

### TRANSPORTATION

SECTION 17. Provided that of the special fund appropriation for Honolulu international airport (TRN 102), the sum of \$200,000 for fiscal year 1997-1998 shall be used to contract services to evaluate and help resolve the homeless population at the airport; provided further that the department of transportation shall prepare a report on the status and possible solutions to the homeless population; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 18. Provided that of the special fund appropriation for Honolulu international airport (TRN 102), the sum of \$159,935 for fiscal year 1997-1998 and the sum of \$204,180 for fiscal year 1998-1999 shall be used to create a visitor information program assistant job training pilot program at the airport; and provided further that the funds shall be used to employ 12.0 temporary half time visitor information assistant trainee positions, 2.0 temporary full time visitor information program assistant supervisor positions, and related expenses.

SECTION 19. Provided that of the special fund appropriation for Honolulu international airport (TRN 102), the sum of \$175,100 for fiscal year 1997-1998 and the sum of \$192,720 for fiscal year 1998-1999 shall be used to create an airport maintenance and beautification workcrew program; provided further that the department of transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 7.0 temporary full time groundskeeper positions and related expenses.

SECTION 20. Provided that of the special fund appropriation for Hilo international airport (TRN 111), the sum of \$19,337 for fiscal year 1997-1998 and the sum of \$24,482 for fiscal year 1998-1999 shall be used to create a visitor information program assistant job training pilot program at the airport; and provided further that the funds shall be used to employ 2.0 temporary half time visitor information assistant trainee positions and related expenses.

SECTION 21. Provided that of the special fund appropriation for Hilo international airport (TRN 111), the sum of \$145,240 for fiscal year 1997-1998 and the sum of \$192,720 for fiscal year 1998-1999 shall be used to create an airport maintenance and beautification workcrew program; provided further that the department of transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 7.0 temporary full time groundskeeper positions and related expenses.

SECTION 22. Provided that of the special fund appropriation for Keahole airport (TRN 114), the sum of \$19,337 for fiscal year 1997-1998 and the sum of \$24,482 for fiscal year 1998-1999 shall be used to create a visitor information program assistant job training pilot program at the airport; and provided further that the funds shall be used to employ 2.0 temporary half time visitor information assistant trainee positions and related expenses.

SECTION 23. Provided that of the special fund appropriation for Kahului airport (TRN 131), the sum of \$19,337 for fiscal year 1997-1998 and the sum of \$24,482 for fiscal year 1998-1999 shall be used to create a visitor information program assistant job training pilot program at the airport; and provided further that the funds shall be used to employ 2.0 temporary half time visitor information assistant trainee positions and related expenses.

SECTION 24. Provided that of the special fund appropriation for Kahului airport (TRN 131), the sum of \$145,240 for fiscal year 1997-1998 and the sum of \$192,720 for fiscal year 1998-1999 shall be used to create an airport maintenance and beautification workcrew program; provided further that the department of transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 7.0 temporary full time groundskeeper positions and related expenses.

SECTION 25. Provided that of the special fund appropriation for Molokai airport (TRN 141), the sum of \$41,307 for fiscal year 1997-1998 and the sum of \$53,126 for fiscal year 1998-1999 shall be used to create a visitor information program assistant job training pilot program at the airport; and provided further that the funds shall be used to employ 2.0 temporary half time visitor information assistant trainee positions, 1.0 temporary full time visitor information program assistant supervisor position, and related expenses.

SECTION 26. Provided that of the special fund appropriation for Lihue airport (TRN 161), the sum of \$19,337 for fiscal year 1997-1998 and the sum of \$24,482 for fiscal year 1998-1999 shall be used to create a visitor information program assistant job training pilot program at the airport; and provided further that the funds shall be used to employ 2.0 temporary half time visitor information assistant trainee positions and related expenses.

SECTION 27. Provided that of the special fund appropriation for Lihue airport (TRN 161), the sum of \$145,240 for fiscal year 1997-1998 and the sum of \$192,720 for fiscal year 1998-1999 shall be used to create an airport maintenance and beautification workcrew program; provided further that the department of

transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 7.0 temporary full time groundskeeper positions and related expenses.

SECTION 28. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$1,000,000 for fiscal year 1997-1998 shall be used for marketing and promotional activities for airport activities on the islands of Hawaii, Maui, Molokai, Lanai, and Kauai; provided further that each island shall receive appropriate amounts; provided further that the marketing and promotional activities for the facilities shall meet the approval of the federal aviation administration; and provided further that the department of transportation shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 29. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$115,991,598 for fiscal year 1997-1998 and the sum of \$118,513,456 for fiscal year 1998-1999 shall be used for the following purposes:

<u>Purpose</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
Interest and principal on general obligation bonds	\$ 475,490	\$ 459,066
Interest and principal on revenue bonds	\$115,516,108	\$118,054,390;

and provided further that any funds not expended for this purpose shall be lapsed to the airport revenue fund.

SECTION 30. Provided that of the special fund appropriations for the airports division (TRN 102 - TRN 161), the following sums specified for special repair and maintenance projects for fiscal biennium 1997-1999, shall be used for special repair and maintenance purposes only:

<u>Program I.D.</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
TRN 102	\$ 1,980,000	\$ 6,765,000
TRN 111	\$ 990,000	\$ 390,000
TRN 114	\$ 404,000	\$ 214,000
TRN 131	\$ 797,000	\$ 150,000
TRN 133	\$ - 0 -	\$ 20,000
TRN 135	\$ 55,000	- 0 -
TRN 141	\$ 405,000	\$ 227,000
TRN 161	\$ 380,000	\$ 895,000;

provided further that any unexpended funds shall be lapsed to airport revenue fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 31. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$20,102,658 for fiscal year 1997-1998 and the

sum of \$20,567,869 for fiscal year 1998-1999 shall be used for the following purposes:

<u>Purpose</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
Interest and principal on general obligation bonds	\$ 675,658	\$ 576,869
Interest and principal on revenue bonds	\$ 19,427,000	\$ 19,991,000;

and provided further that any funds not expended for this purpose shall be lapsed to the harbor special fund.

SECTION 32. Provided that in the planned improvement and development of Honolulu harbor, the department of transportation (TRN 301) is requested to recognize the accrued rights and interests of existing long-time lessees and permittees in the project area and, except for cause, to take no action to displace them until such time as the legislature has had the opportunity to consider possible solutions to their concerns. No later than twenty days prior to the convening of the 1998 regular session, the department shall report to the legislature with a list of all such lessees and permittees, their facility and space requirements, and recommendations on how they may be accommodated.

SECTION 33. Provided that of the special fund appropriations for the harbors division (TRN 301 - TRN 363), the following sums specified for special repair and maintenance projects for fiscal biennium 1997-1999, shall be used for special repair and maintenance purposes only:

<u>Program I.D.</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
TRN 301	\$ 3,681,000	\$ 3,663,000
TRN 303	\$ 149,000	\$ 154,000
TRN 305	\$ 220,000	\$ 271,000
TRN 311	\$ 601,000	\$ 628,000
TRN 313	\$ 250,000	\$ 220,000
TRN 331	\$ 689,000	\$ 680,000
TRN 341	\$ 161,000	\$ 161,000
TRN 361	\$ 417,000	\$ 409,000
TRN 363	\$ 177,000	\$ 167,000
TRN 351	\$ 122,000	\$ 122,000;

provided further that any unexpended funds shall be lapsed to harbor special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 34. Provided that of the special fund appropriation for Oahu highways (TRN 501), the sum of \$147,807 for fiscal year 1997-1998 and the sum of \$193,578 for fiscal year 1998-1999 shall be used to create a highway maintenance and beautification workcrew program; provided further that the department of transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 7.0 temporary full time general laborer positions and related expenses.

SECTION 35. Provided that of the special fund appropriation for Hawaii highways (TRN 511), the sum of \$295,614 for fiscal year 1997-1998 and the sum of \$387,156 for fiscal year 1998-1999 shall be used to create a highway maintenance and beautification workcrew program; provided further that the department of transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 14.0 temporary full time general laborer positions and related expenses.

SECTION 36. Provided that of the special fund appropriation for Maui highways (TRN 531), the sum of \$147,807 for fiscal year 1997-1998 and the sum of \$193,578 for fiscal year 1998-1999 shall be used to create a highway maintenance and beautification workcrew program; provided further that the department of transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 7.0 temporary full time general laborer positions and related expenses.

SECTION 37. Provided that of the special fund appropriation for Molokai highways (TRN 541), the sum of \$295,614 for fiscal year 1997-1998 and the sum of \$387,156 for fiscal year 1998-1999 shall be used to create a highway maintenance and beautification workcrew program; provided further that the department of transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 14.0 temporary full time general laborer positions and related expenses.

SECTION 38. Provided that of the special fund appropriation for Kauai highways (TRN 561), the sum of \$147,807 for fiscal year 1997-1998 and the sum of \$193,578 for fiscal year 1998-1999 shall be used to create a highway maintenance and beautification workcrew program; provided further that the department of transportation shall employ temporary personnel who shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, and who are unemployed; provided further that the unemployed shall be identified by the department of labor and industrial relations; and provided further that the funds shall be used to employ 7.0 temporary full time general laborer positions and related expenses.

SECTION 39. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$44,513,244 for fiscal year 1997-1998 and the sum of \$46,553,728 for fiscal year 1998-1999 shall be used for the following purposes:

<u>Purpose</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
Interest and principal on general obligation bonds	\$ 33,160,094	\$ 31,103,585
Interest and principal on revenue bonds	\$ 11,353,150	\$ 15,450,143;

and provided further that any funds not expended for this purpose shall be lapsed to the state highway fund.



SECTION 40. Provided that of the special fund appropriations for the highways division (TRN 501 - TRN 595), the following sums specified for special repair and maintenance projects for fiscal biennium 1997-1999, shall be used for special repair and maintenance purposes only:

<u>Program I.D.</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
TRN 501	\$ 13,024,593	\$ 12,711,125
TRN 511	\$ 9,106,227	\$ 8,318,149
TRN 531	\$ 5,151,050	\$ 6,105,984
TRN 541	\$ 1,907,281	\$ 2,655,067
TRN 551	\$ 292,889	\$ 286,491
TRN 561	\$ 5,333,858	\$ 4,923,184
TRN 595	\$ 184,102	- 0 - ;

provided further that any unexpended funds shall be lapsed to state highway fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

#### ENVIRONMENTAL PROTECTION

SECTION 41. Provided that of the special fund appropriation for clean air for environmental management (HTH 840), the sum of \$48,000 in fiscal year 1997-1998 and the sum of \$48,000 in fiscal year 1998-1999 shall be expended for contracting a compliance coordinator whose primary duties shall be to communicate data regarding compliance with emission standards at the Campbell industrial park and to facilitate communication between government agencies, industrial groups, and neighboring communities.

SECTION 42. Provided that of the revolving fund appropriation for the environmental response revolving fund for environmental management (HTH 840), the sum of \$50,000 in fiscal year 1997-1998 and the sum of \$50,000 in fiscal year 1998-1999 shall be expended on providing technical assistance, information, and partial funding for testing of lead and copper as relating to water catchment systems.

SECTION 43. Provided that of the environmental management special fund for environmental management (HTH 840), the sum of \$100,000 for fiscal year 1997-1998 shall be expended to review, revise, and update the state integrated solid waste management plan.

SECTION 44. Provided that of the general fund appropriation for conservation and resources enforcement (LNR 405), 2.0 positions in fiscal year 1997-1998 and 2.0 positions in fiscal year 1998-1999 shall be located on the island of Kauai to provide marine enforcement.

#### HEALTH

SECTION 45. Provided that preventive health services (HTH 151), shall provide financial assistance, within the limits of available funds in the financial assistance fund, for the medical care and treatment of persons suffering from hemophilia who meet the standards of eligibility established by the department of health; and provided further that the department of health may contract with a private, nonprofit organization to carry out this function.

SECTION 46. Provided that of the general fund appropriation for preventive health services (HTH 151), the sum of \$120,000 for fiscal year 1997-1998 and the sum of \$120,000 for fiscal year 1998-1999 shall be expended to provide for a grant-in-aid for home hemodialysis treatment services on the islands of Molokai and Lanai.

SECTION 47. Provided that of the general fund appropriation for developmental disabilities (HTH 501), the sum of \$1,953,084 for fiscal year 1997-1998 and the sum of \$1,953,084 for fiscal year 1998-1999 may be used for purchases of services as provided in chapter 42D, Hawaii Revised Statutes, or matching funds for Title XIX Medicaid community-based programs or both.

SECTION 48. Provided that of the general fund appropriation for developmental disabilities (HTH 501), any amounts not used for developmental disabilities due to deinstitutionalization and savings for fiscal year 1997-1998 and fiscal year 1998-1999 may be used for purchases of services, matching funds for Title XIX Medicaid community-based programs, or to establish small community ICF/MR's.

SECTION 49. Provided that of the general fund appropriation for health resources administration (HTH 530), the sum of \$146,268 for fiscal year 1997-1998 and the sum of \$146,248 for fiscal year 1998-1999 shall be expended for a grant-in-aid to the Waikiki health center for youth services.

SECTION 50. Provided that of the general fund appropriation for health resources administration (HTH 595), the sum of \$184,000 for fiscal year 1997-1998 and the sum of \$160,749 for fiscal year 1998-1999 shall be expended for urgent care services at Hamakua health center.

SECTION 51. Provided that of the general fund appropriation for health resources administration (HTH 595), the sum of \$416,087 for fiscal year 1997-1998 and the sum of \$416,934 for fiscal year 1998-1999 shall be expended for a grant-in-aid to the Waikiki health center for care-a-van Kauai, Maui, Hawaii, and Oahu.

SECTION 52. Provided that the legislative auditor shall perform a fiscal and management audit of Hawaii health systems corporation (HTH 210); provided further that this report shall include, but not be limited to, an analysis of accounting procedures, procurement practices, and personnel and fiscal accountability; and provided further that the office of the auditor shall provide this report to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 53. Provided that the Hawaii health systems corporation (HTH 210) shall conduct a study, within current appropriations, concerning any proposed reduction or reallocation of services or personnel to increase revenue; and provided further that this study shall include, but not be limited to, an analysis of mandated and/or unprofitable services and the effect of these services being reallocated or reduced; and provided further that the corporation shall submit this study to the legislature twenty days prior to the convening of the 1998 regular session.

SECTION 54. Provided that the Hawaii health systems corporation's (HTH 210) operating and capital improvements budgets shall not be subject to review or approval by the governor or any state agency, except where state general funds or capital improvements moneys are requested. If general funds or capital improvements moneys are requested, then the corporation shall include with its request, the

proposed budget for which the funds or moneys are to be included. The corporation shall submit its budget annually to the legislature for review and approval at least twenty days prior to the convening of the regular legislative session, as provided in Section 323F-24, HRS; and provided further that, when requesting general fund appropriations, the corporation shall comply fully with the budget review and approval process set forth in Chapter 323F, HRS; and provided further that, when requesting general fund appropriations, the Hawaii health systems corporation shall comply with Chapter 323F, HRS in the manner set forth in Section 37-68, HRS.

SECTION 55. Provided that of the general fund appropriation for adult mental health (HTH 420), the sum of \$1,125,654 for fiscal year 1997-1998 and the sum of \$880,712 for fiscal year 1998-1999 shall be expended on three new psycho-social rehabilitation projects in the clubhouse model.

SECTION 56. Provided that of the general fund appropriation for adult mental health (HTH 420), the sum of \$120,000 for fiscal year 1997-1998 and the sum of \$120,000 for fiscal year 1998-1999 shall be expended to provide for continuation of the life skills program otherwise known as the clubhouse project at the Diamond Head community mental health center.

SECTION 57. Provided that the legislative auditor shall conduct a study on the privatization of the child and adolescent mental health program (HTH 460); provided further that this study shall include, but not be limited to, an analysis of current operating procedures, current program effectiveness, cost benefits of privatization, and the effectiveness of privatization; and provided further that the office of the auditor shall provide this study to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 58. Provided that of the general fund appropriation for executive office on aging (HTH 904), the sum of \$24,000 for fiscal year 1997-1998 and the sum of \$24,000 for fiscal year 1998-1999 shall be expended on a purchases of services for Helping Hands Hawaii.

SECTION 59. Provided that of the general fund appropriation for executive office on aging (HTH 904), the sum of \$247,731 for fiscal year 1997-1998 and the sum of \$208,323 for fiscal year 1998-1999 shall be expended on a purchases of services to the city and county of Honolulu to fund in-home elderly services.

SECTION 60. Provided that of the general fund appropriation for executive office on aging (HTH 904), the sum of \$12,000 for fiscal year 1997-1998 shall be expended on a grant-in-aid for Kapahulu Center Inc.

SECTION 61. Provided that the department of health shall allocate sufficient resources to provide comprehensive diagnostic and therapeutic care to children with autism statewide within current appropriations or within the limits of available funds within the designated programs.

## SOCIAL SERVICES

SECTION 62. Provided that of the general fund appropriation for youth services programs (HMS 502), the sum of \$83,600 for fiscal year 1997-1998 shall be expended on a grant-in-aid for Kokua Kalihi Valley to provide delinquency prevention services.

**SECTION 63.** Provided that of the general fund appropriation for services to veterans (DEF 112), the sum of \$35,000 for fiscal year 1997-1998 and the sum of \$65,000 for fiscal year 1998-1999 shall be expended in the form of grants and assistance for the World War II (WWII) Filipino Veterans Burial Grant Program (VGBP).

**SECTION 64.** Provided that within current appropriations the department of human resources development, the department of accounting and general services, the department of land and natural resources, and the department of transportation shall consider recipients of temporary assistance to needy families (HMS 201), recipients of payments to assist the aged, blind, and disabled (HMS 202), recipients of general assistance payments (HMS 204), and recipients of temporary assistance to other needy families (HMS 203), for employment; and provided further that the department of human services shall provide a report, listing all recipients who are employed by the State, to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

**SECTION 65.** Provided that of the general fund appropriation for payments to assist the aged, blind, and disabled (HMS 202), the sum of \$29,474,516 for fiscal year 1997-1998 and the sum of \$22,861,096 for fiscal year 1998-1999 shall be used for payments to qualified recipients of this program; provided further that no other general funds shall be used for payments to recipients; and provided further that any unexpended funds shall be lapsed to the general fund.

**SECTION 66.** Provided that of the general fund appropriation for general assistance payments (HMS 204), the sum of \$27,047,944 for fiscal year 1997-1998 and the sum of \$26,261,632 for fiscal year 1998-1999 shall be used for payments to qualified recipients of this program; provided further that no other general funds shall be used for payments to recipients; and provided further that any unexpended funds shall be lapsed to the general fund.

**SECTION 67.** Provided that of the general fund appropriation for home and community based care services (HMS 603), the sum of \$594,216 for fiscal year 1997-1998 and the sum of \$622,739 for fiscal year 1998-1999 shall be expended for program of all-inclusive care for the elderly (PACE); and provided further that the department of human services shall submit a report detailing all expenditures of the program to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

**SECTION 68.** Provided that the legislative auditor shall perform a fiscal and management audit of the program of all-inclusive care for the elderly (PACE), in home and community based care services (HMS 603); provided further that this report shall include, but not be limited to, an analysis of personnel and fiscal accountability, accounting and reporting procedures, and disbursement and procurement practices; and provided further that the office of the auditor shall provide this report to the legislature no later than twenty days prior to the convening of the 1998 regular session.

**SECTION 69.** Provided that the auditor is requested to conduct a management and financial audit of the department of human services, with particular emphasis on the department's planning, management, staffing and spending for (1) welfare, family support, and any and all associated training and work programs, (2) health care insurance and payments, and (3) eligibility activities for any entitlement and optional programs; provided further that the auditor shall examine any other

programs of the department that exhibit weaknesses in planning, management, or implementation; provided further that the auditor shall conduct the audit in light of not only the newly designed federal changes in welfare programs but also in light of what the department should have been doing to maximize cost-effectiveness before the new federal guidelines were adopted; provided further that the programs to be audited, at a minimum, include HMS 201, 203, 230, 236, 237, 302, and 903; provided further that the auditor shall audit all other programs of the department to the extent possible; and provided further that the auditor shall submit findings and recommendations to the nineteenth legislature twenty days prior to the convening of the 1998 regular session.

## EDUCATION

SECTION 70. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$3,486,851 for fiscal year 1997-1998 and the sum of \$3,555,893 for fiscal year 1998-1999 shall be used to fund unemployment compensation claims for former state department of education employees.

SECTION 71. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$6,255,761 for fiscal year 1997-1998 and the sum of \$5,396,547 for fiscal year 1998-1999 shall be used to fund workers' compensation costs of state department of education employees; provided further that internal savings from EDN 200, EDN 300, EDN 400, EDN 500 or a combination thereof, shall be used to fund all workers' compensation claims that in total exceed the appropriated sums for workers' compensation costs; and provided further that workers' compensation costs for public libraries shall be funded by public libraries (EDN 407).

SECTION 72. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$25,000 for fiscal year 1997-1998 and the sum of \$25,000 for fiscal year 1998-1999 shall be expended for transportation costs for Molokai student athletes.

SECTION 73. Provided that, except as otherwise provided by general law, the department of education is authorized to transfer operating funds between and within appropriations for the purpose of maximizing the utilization of school and department resources; provided further that the department shall prepare a report which shall include, but not be limited to, the following information:

- (1) Sources and destinations of funds transferred; and
- (2) Purposes of the fund transfer;

provided further that the department of education, under the provisions of this section, shall not transfer allocated resources out of school-based budgeting (EDN 100), and 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 1998 and 1999 regular sessions.

SECTION 74. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$15,000 for fiscal year 1997-1998 shall be expended for the Hawaii young scholars program.

SECTION 75. Provided that the department of education shall prepare and submit a report concerning implementation of the Felix vs. Cayetano consent decree which shall include, but not be limited to, the following information:

- (1) The nature of the working relationship and interagency coordination between the department of education and the department of health pertaining to the provision of services to eligible elementary and secondary students and their families;
  - (2) Services provided by the department of education including, but not limited to, population identification, diagnostic and assessment services, development of treatment plans, treatment, and follow-up evaluations;
  - (3) Personnel used to provide these services including, but not limited to, information pertaining to qualifications, training, staffing requirements, and current staffing levels;
  - (4) Sites and facilities used to provide these services; and
  - (5) Resources required to provide these services by cost element;
- and 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 1998 and 1999 regular sessions.

SECTION 76. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$296,322 for fiscal year 1997-1998 and the sum of \$355,524 for fiscal year 1998-1999 shall be used to fund 13.0 temporary registrar positions; and provided further that these registrar positions shall be allocated to those intermediate schools with 0.5 registrar position or with no registrar position allocated so that each intermediate school will be staffed with one full-time registrar position.

SECTION 77. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$678,000 for fiscal year 1997-1998 and the sum of \$813,600 for fiscal year 1998-1999 shall be used to fund 25.0 temporary athletic health care specialist positions; provided further that these athletic health care specialist positions shall be allocated to those high schools currently staffed with 0.5 athletic health care specialist position so that each high school will be staffed with one full-time temporary athletic health care specialist; provided further that the department of education shall require as a minimum qualification that athletic health care specialists possess certification by the national athletic trainers association, board of certification; provided further that any incumbent athletic health care specialist previously hired with other acceptable qualifications shall be exempted from such certification; and provided further that with the allocation of one athletic health care specialist for each high school, the department of education shall assume liability for claims against schools arising out of sports related injuries occurring at school sanctioned sports activities.

SECTION 78. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$30,000 for fiscal year 1997-1998 and the sum of \$30,000 for fiscal year 1998-1999 shall be used to establish a community-based youth leadership demonstration project in the Hilo, Hamakua, and Kohala communities; provided further that the project shall incorporate the efforts of students, the schools, relevant state and county agencies, and community organizations through the establishment of a steering committee at each participating school; provided further that each steering committee shall allocate the funds distributed to the respective school; provided further that the department of education, the department of land and natural resources, the office of youth services, the county department of parks and recreation, the county police and fire departments, and community organizations of the region shall also be invited to participate on steering committees; and provided further that the department of education shall provide an annual

report to the legislature on the progress and operation of the project for the legislature to determine future appropriations for budgetary purposes.

SECTION 79. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$2,500,000 for fiscal year 1997-1998 and the sum of \$2,500,000 for fiscal year 1998-1999 shall be used for the purchase of instructional materials for regular instruction; provided further that such funds shall be allocated to each school on a basis of enrollment; and provided further that the department of education shall submit a report to the legislature detailing the amount allocated to each school no later than twenty days prior to the convening of the 1998 and 1999 regular session.

SECTION 80. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$20,000 for fiscal year 1997-1998 shall be used to fund equipment, supplies, and other expenses for a parent-community networking center at Kapaa intermediate school.

SECTION 81. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$76,000 for fiscal year 1997-1998 shall be used to fund the continuation of the integrated reading program at Kawanakoa intermediate school.

SECTION 82. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$25,000 for fiscal year 1997-1998 shall be used for the expansion of the Hawaiian language immersion program of the department of education to encompass grades kindergarten through twelve in all Hawaii public schools.

SECTION 83. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$25,000 for fiscal year 1997-1998 shall be used for the establishment of a conference of secondary school students, grades seven to twelve, which will enable students in secondary schools to identify, discuss, and arrive at recommended solutions to major youth problems, with emphasis on school problems that require the attention of joint action by the students, the department of education, and the legislature.

SECTION 84. Provided that of the general fund appropriation for instructional support (EDN 200) and state and district administration (EDN 300), the sum of \$184,314 and 8.5 clerical positions for fiscal year 1998-1999, shall be transferred to school based budgeting (EDN 100) to be used to support new schools statewide.

SECTION 85. Provided that, notwithstanding any appropriation or position ceiling, the governor may transfer positions and funds from the department of human resources development to the department of education (EDN 300 - state and district administration) for the purpose of resuming case management of workers' compensation claims filed by department of education employees; and provided further that the department of education shall submit reports to the legislature which detail all such transfers for each fiscal year.

SECTION 86. Provided that of the general fund appropriation for school support (EDN 400), the sum of \$8,395 for fiscal year 1997-1998 and the sum of \$10,074 for fiscal year 1998-1999 shall be used for 0.5 permanent custodian position for Kaumana elementary school, Hilo, Hawaii.

SECTION 87. The governor is authorized to transfer savings as may be available from appropriations in Part II of this Act to supplement the appropriation for school community service (EDN 500) for the Afterschool A+ Program; provided that the Governor shall submit a report to the legislature during each regular session of all such transfers.

SECTION 88. Provided that of the general fund appropriation for physical plant operations and maintenance (AGS 807), the sum of \$4,000 for fiscal year 1997-1998 shall be used to provide technology cable link up for Pauoa elementary school library.

SECTION 89. Provided that within current appropriations the board of education shall commission a study, conducted by qualified individuals not employed by the department of education, which shall examine the following:

- (1) Classification of the types of school instruction, services, and activities, as currently delivered by the department of education, that are considered essential for an adequate student education, as well as the types of instruction, services, and activities that are considered enrichment, peripheral, or ancillary;
- (2) Determination of the performance of the department of education in delivering essential student instruction and services;
- (3) Determination of the impact that a transfer of personnel and funds from non-essential to essential instruction and services would have upon student education; and
- (4) Recommendations concerning the improvement of the delivery of essential student instruction and services;

and provided further that the findings of this study shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 90. Provided that of the general fund appropriation for physical plant operations and maintenance (AGS 807), the sum of \$100,000 for fiscal year 1997-1998 shall be used to replace the existing public announcement system at Ma'ema'e elementary school with a new public announcement system.

SECTION 91. Provided that of the general fund appropriation for student transportation (AGS 808), the sum of \$35,000 for fiscal year 1997-1998 shall be used for the purchase of a mini bus for Hana high and elementary school.

SECTION 92. Provided that of the general fund appropriation for public libraries (EDN 407), the sum of \$52,770 for fiscal year 1997-1998 and the sum of \$58,529 for fiscal year 1998-1999 shall be used to fund workers' compensation costs of state public library employees.

SECTION 93. Provided that of the general fund appropriation for public libraries (EDN 407), the sum of \$250,000 for fiscal year 1997-1998 and the sum of \$250,000 for fiscal year 1998-1999 shall be allocated directly to public libraries statewide for the purchase of library books.

SECTION 94. Provided that the department of education shall prepare and submit a report which shall include, but not be limited to, the following information:

- (1) The number and sites of student-centered schools, as defined in section 302A-1123, Hawaii Revised Statutes;



- (2) Comparison of student performance, using generally accepted measures thereof, between student-centered schools and non-student-centered schools;
- (3) Comparisons between student-centered schools and non-student-centered schools which shall include, but not be limited to, the following: cost-efficiency, curriculum, services provided, and teacher, parent, and student morale and participation in school affairs; and
- (4) Recommendations concerning expansion of the student-centered schools 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 1998 regular session.

SECTION 95. Provided that the department of education shall report to the legislature of the opening of school facilities; provided further that this report shall provide the following information:

- (1) Location and size of the facilities to be opened and the projected enrollment of and rationale for opening the additional facility;
- (2) The resources required to enable the opening of the facility, including necessary repair and maintenance, establishment of utilities and communication services, equipment, and other costs associated with the facility's opening by cost element and means of financing; and
- (3) The resources required to operate the facility by cost element;

provided further that this section shall apply to all facilities established for the preceding four years and to all facilities projected to open within the next four years; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 96. Provided that the department of education is authorized to transfer funds among and within appropriations for special education, Felix, and comprehensive student alienation programs in school-based budgeting (EDN 100) and Felix administration, educational assessment, and prescriptive services in instructional support (EDN 200) for the purposes of addressing the requirements of the Felix consent decree which includes the implementation of the department of education's comprehensive student support system (CSSS); provided further that the designated CSSS demonstration sites shall include, but not be limited to, the McKinley, Kaiser, Molokai, and Konawaena high school complexes and the Mokihana project in the Kauai district; provided further that the departments of health, human services, accounting and general services, human resource development, and budget and finance, with the cooperation of the family courts, counties, and governor's office, shall work with the department of education to facilitate the appropriate implementation of the CSSS demonstration projects in order to meet the Felix consent decree expectations with personnel, funds, and/or technical assistance, as appropriate; provided further that the department of education shall prepare a report which shall include, but not be limited to, sources and destination of funds transferred, purposes of the fund transfer and progress of implementation toward meeting the goals and objectives of CSSS; provided further that the department of education, under the provisions of this section, shall not transfer allocated resources out of school-based budgeting (EDN 100); and 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 1998 and 1999 regular sessions.

SECTION 97. Provided that all applicable services provided pursuant to the comprehensive student support system (CSSS), including department of education

diagnostic and prescriptive services, comprehensive student alienation program services and school-to-work opportunities services, as well as family guidance center services, intensive in-school support services, and school-based day treatment services of the department of health, shall be delivered in a collaborative, integrated, interdisciplinary manner at the school level, consistent with the goals and objectives of the CSSS, to be implemented by the departments of education, health, and human services with the cooperation of the family courts, the office of the governor, and the counties.

HIGHER EDUCATION

SECTION 98. Provided that of the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$30,000 for fiscal year 1997-1998 and the sum of \$20,000 for fiscal year 1998-1999 shall be expended for the Pacific Congress on Marine Science and Technology (PACON) for the purpose of supporting PACON international; and provided further that any unexpended funds shall be lapsed to the general fund.

SECTION 99. Provided that the university of Hawaii, Manoa (UOH 100), within current appropriations, shall report to the legislature no less than twenty days prior to the convening of the 1998 regular session, in order for the legislature to properly appropriate funds to the university of Hawaii and to determine the manner of expenditure from the state budget, regarding:

- (1) The number and amount of tuition waivers and scholarships granted to financially needy students with priority given to students from ethnic groups which are under represented in the student population of the university of Hawaii;
- (2) The graduation rate of students from ethnic groups which are under represented in the student population of the university of Hawaii; and
- (3) The number of under represented minorities hired as faculty at the university of Hawaii and its community colleges.

SECTION 100. Provided that of the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$75,000 for fiscal year 1997-1998 shall be used for the purpose of establishing, developing, and operating the center for teacher education; provided that matching funds are committed by the National Network for Educational Renewal and university of Hawaii; provided further that the university may provide in-kind services of equal value.

SECTION 101. Provided that of the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$25,000 for fiscal year 1997-1998 shall be used for the purpose of replacing the backstop at the university of Hawaii rainbow baseball stadium.

SECTION 102. Provided that of the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$250,000 for fiscal year 1997-1998 shall be expended by the research corporation of the university of Hawaii for the development of multi-disciplinary technology conferences and related programs sponsored by the university of Hawaii, East-West center, businesses (both U.S. and foreign), nonprofit organizations, and other government agencies.

SECTION 103. Provided that of the general fund appropriation for university of Hawaii, West Oahu (UOH 700), the sum of \$281,104 for fiscal year 1997-1998 and the sum of \$281,104 for fiscal year 1998-1999 shall be used for the purpose of

developing a labor studies degree program and to ensure the continued operation of the center for labor education and research.

SECTION 104. Provided that the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$50,000 for fiscal year 1997-1998 shall be used for a workshop focusing on the conceptual design and construction of an ocean floating all-natural clean energy power station; and provided further that any unexpended funds shall be lapsed into the general fund.

SECTION 105. Provided that the university of Hawaii at Hilo (UOH 210), within current appropriations may have a baccalaureate program for astronomy commencing in the fall semester of 1997.

SECTION 106. Provided that a Master's in education program at university of Hawaii, Hilo (UOH 210), may be established commencing in fiscal year 1997-1998 within current appropriations.

SECTION 107. Provided that a Tropical Forestry specialization program in the college of agriculture may be established at the university of Hawaii, Hilo (UOH 210), commencing in fiscal year 1997-1998 within current appropriations.

SECTION 108. Provided that a Bachelor of Science in Active Volcano Technology may be established at the university of Hawaii, Hilo (UOH 210), commencing in fiscal year 1997-1998 within current appropriations.

SECTION 109. Provided that a Bachelor of Science in Marine Science may be established at the university of Hawaii, Hilo (UOH 210), commencing in fiscal year 1997-1998 within current appropriations.

SECTION 110. Provided that of the general fund appropriation for university of Hawaii, community colleges (UOH 800), the sum of \$2,500 for fiscal year 1997-1998 and the sum of \$2,500 for fiscal year 1998-1999 may be expended at the discretion of the senior vice president and chancellor for community colleges.

SECTION 111. Provided that of the general fund appropriation for university of Hawaii, community colleges (UOH 800), the sum of \$300,000 for fiscal year 1997-1998 may be used to establish an applied agriculture program at Kauai community college, to retrain and cross train former sugar workers for jobs in diversified agriculture, and which may also include the rental of ten to twenty acres of former sugar lands for hands on training.

SECTION 112. Provided that of the general fund appropriation for the university of Hawaii, community colleges (UOH 800), the sum of \$75,000 for fiscal year 1997-1998 and the sum of \$75,000 for fiscal year 1998-1999 shall be expended for the university of Hawaii center on Maui; and provided further that no funds shall be made available unless matched on a 1:1 state to county ratio.

SECTION 113. Provided that of the general fund appropriation for the university of Hawaii, systemwide support (UOH 900), the sum of \$647,513 for fiscal year 1997-1998 and the sum of \$660,335 for fiscal year 1998-1999, shall be used to fund unemployment compensation claims of former university of Hawaii state employees; and provided further that any unexpended funds shall be lapsed to the general fund.

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SECTION 114. Provided that of the general fund appropriation for the university of Hawaii, systemwide support (UOH 900), the sum of \$997,330 for fiscal year 1997-1998 and the sum of \$1,106,164 for fiscal year 1998-1999 shall be used to fund workers' compensation costs of the university of Hawaii state employees.

SECTION 115. Provided that of the general fund appropriation for university of Hawaii, systemwide support (UOH 900), the sum of \$1,000,000 for fiscal year 1997-1998 shall be deposited into the discoveries and inventions revolving fund for Student Information Systems (SIS); and provided further that any unencumbered funds shall be lapsed into the general fund.

### CULTURE AND RECREATION

SECTION 116. Provided that of the general fund appropriation for Hawaii public broadcasting authority (CCA 701), the sum of \$200,000 in fiscal year 1997-1998 shall be used exclusively for locally produced programming with revenue generating and international marketing potential.

SECTION 117. Provided that of the general fund appropriation for park development and operation (LNR 806), the sum of \$100,000 for fiscal year 1997-1998 and the sum of \$100,000 for fiscal year 1998-1999 shall be expended for a grant-in-aid to Mo'okini Luakini to preserve and protect the Mo'okini Heiau complex.

SECTION 118. Provided that of the general fund appropriation for park development and operation (LNR 806), the sum of \$150,000 for fiscal year 1997-1998 shall be expended for a grant-in-aid to the Hawaii Nature Center.

SECTION 119. Provided that of the special fund appropriation for spectator events and shows-aloha stadium (AGS 889), the sum of \$2,500 for fiscal year 1997-1998 and the sum of \$2,500 for fiscal year 1998-1999 may be expended at the discretion of the stadium manager for promotion and other stadium-related purposes.

### PUBLIC SAFETY

SECTION 120. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$5,000,000 for fiscal year 1997-1998 and the sum of \$10,000,000 for fiscal year 1998-1999 shall be used for the transportation and necessary operating costs of housing 300 inmates in FY 1997-1998 and 600 inmates in FY 1998-1999 in mainland based correctional facilities; provided further that any unencumbered and unexpended funds shall be lapsed to the general fund; and provided further that the department shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

### GOVERNMENT WIDE

SECTION 121. Except as otherwise provided, the appropriation for the office of the governor (GOV 100), shall be expended at the discretion of the governor.

SECTION 122. Provided that of the general fund appropriation for office of the governor (GOV 100), the sum of \$14,031 for fiscal year 1997-1998 and the sum of \$14,031 for fiscal year 1998-1999 shall be used 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 123. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100), shall be expended at the discretion of the lieutenant governor.

SECTION 124. Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of \$208,553,851 for fiscal year 1997-1998 and the sum of \$235,134,594 for fiscal year 1998-1999 shall be used for the following purposes:

<u>Purpose</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
Health fund premiums actives and retirees	\$ 202,959,234	\$ 229,539,977
Witness fees and related expenses	\$ 2,552,262	\$ 2,552,262
Court appointed counsel	\$ 3,042,355	\$ 3,042,355

provided further that the funds shall not be transferred for any other purpose; and provided further that the department of budget and finance shall submit to the legislature a detailed report of all expenditures no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 125. Provided that of the general fund appropriation for supporting services-revenue collection (TAX 107), the sum of \$692,082 for fiscal year 1997-1998 and the sum of \$587,908 for fiscal year 1998-1999 shall be used for the redesign and implementation of a new integrated tax information management system; provided further that any unencumbered and unexpended funds shall be lapsed to the general fund; and provided further that the department of taxation shall submit a progress and expenditure report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 126. Provided further that of the general fund appropriation for supporting services-revenue collection (TAX 107), the sum of \$102,136 for fiscal year 1997-1998 and the sum of \$102,136 for fiscal year 1998-1999 shall be used for the salary cost of one economist VII position and other current expenses to update the existing tax revenue projection model.

SECTION 127. Provided that, with the approval of the governor, expending agencies that use appropriations authorized in part II of this Act for audit services, may delegate that responsibility and transfer funds authorized for that purpose to the internal post audit (AGS 104), when it is determined by such agencies that it is advantageous to do so.

SECTION 128. Provided that of the general fund appropriation for financial administration division (BUF 115), the sum of \$393,278,770 for fiscal year 1997-1998 and the sum of \$408,875,140 for fiscal year 1998-1999 shall be used only for the following purpose:

<u>Purpose</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
Interest and principal on general obligation bonds	\$ 393,278,770	\$ 408,875,140

provided further that the funds shall not be transferred for any other purpose; and provided further that the department of budget and finance shall submit to the

legislature a detailed report of all expenditures no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 129. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$1,759,751 for fiscal year 1997-1998 and the sum of \$1,760,751 for fiscal year 1998-1999 shall be used to meet the requirements of the uniform disposition of unclaimed property program pursuant to chapter 523A, Hawaii Revised Statutes; and provided further that the department of budget and finance shall submit a progress and expenditure report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 130. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$30,000 for fiscal year 1997-1998 shall be made available to be established as a separate account for a bond improvement protocol fund to be expended at the discretion of the director of budget and finance for improvement of the state and counties' bond rating and sales.

SECTION 131. Provided that of the general fund appropriation for information processing services (AGS 131), the sum of \$614,690 for fiscal year 1997-1998 and the sum of \$325,440 for fiscal year 1998-1999 shall be used for the conversion of various state agencies' computer systems, local area networks, and electronic mail and software applications for compliance with the year 2000 four-digit year program code requirements; provided further that any unexpended funds shall be lapsed to the general fund; and provided further that the department of accounting and general services shall submit a progress and expenditure report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 132. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of \$6,490,773 for fiscal year 1997-1998 and the sum of \$6,421,784 for fiscal year 1998-1999 shall be expended to fund workers' compensation claims; and provided further that the department of human resources development shall submit an itemized expenditure report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 133. Provided that of the general fund appropriation for work force attraction, selection, classification, and effectiveness (HRD 102), the sum of \$3,339,636 for fiscal year 1997-1998 and the sum of \$3,405,772 for fiscal year 1998-1999 shall be used to fund unemployment compensation claims of former state employees; provided further that any unrequired funds shall be lapsed to the general fund; and provided further that the department shall submit a detailed report of all expenditures for such claims no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 134. Provided that, notwithstanding any appropriation or position ceiling, the governor may transfer positions and funds between existing programs of the state government to and from work force attraction, selection, classification and effectiveness (HRD 102), to improve efficiencies in the workers' compensation program; and provided further that the department of human resources development shall submit reports to the legislature of such transfers no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 135. Provided that of the general fund appropriation for retirement (BUF 141), the sum of \$274,799,023 for fiscal year 1997-1998 and the sum of

\$219,431,253 for fiscal year 1998-1999 shall be used only for the following purposes:

<u>Purpose</u>	<u>FY 1997-1998</u>	<u>FY 1998-1999</u>
Pension accumulation	\$ 176,505,360	\$ 120,134,480
Minimum pension	\$ - 0 -	\$ - 0 -
Social security and medicare contributions	\$ 98,293,663	\$ 99,296,773

provided further that the funds shall not be transferred for any other purpose; and provided further that the department of budget and finance shall submit to the legislature a detailed report of all expenditures not later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 136. Provided that of the special fund appropriation for public lands management (LNR 101), the sum of \$2,000,000 for fiscal year 1997-1998 shall be used for the planning, design, and implementation of the computerization of the department of land and natural resources land division to assist in the management of state lands; provided further that the department of land and natural resources may create an asset management program to more strategically and effectively manage the different classes of lands through real estate and market analyses; and provided further that a report on the expenditure of funds and progress of the implementation of the computerization shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 137. Provided that the department of accounting and general services shall submit an updated listing of all leases budgeted for and centralized within office leasing (AGS 223); provided further that this listing shall include, but not be limited to, a breakdown, by department and agency, of all individual leases, including the lessor, square footage, effective dates of each lease, the amount budgeted for each lease per fiscal year, the actual rent paid, and the address of each lease; provided further that all expenditures which exceed amounts budgeted for office leasing shall be identified; and provided further that this report shall be submitted to the legislature no later than twenty days before the 1998 and 1999 regular sessions.

SECTION 138. Provided that with the approval of the governor, expending agencies that use appropriations authorized in part II of this Act for repair and alterations, may delegate responsibility and transfer funds to the construction program (AGS 221) for the implementation of such repair and alterations, when it is determined by such agencies that it is advantageous to do so.

SECTION 139. Provided that of the general fund appropriation for building repairs and alterations (AGS 233), the sum of \$2,493,346 for fiscal year 1997-1998 and the sum of \$2,493,346 for fiscal 1998-1999 shall be used only for operation of the repairs and alterations program and shall not be transferred for personnel or any other purpose; provided further that the funds not expended for this purpose shall be lapsed to the general fund; and provided further that the department of accounting and general services shall provide a expenditure report submitted to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 140. Provided that of the general fund appropriation for Kauai county (SUB 501), the sum of \$1,000,000 for fiscal year 1997-1998 shall be

expended for advertising, direct marketing, literature, and ecological tourism awareness in order to provide the island of Kauai with greater economic viability.

**PART IV. CAPITAL IMPROVEMENT PROJECTS**

**SECTION 140A. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED.** The sums of money appropriated or authorized in part II of this Act for capital improvements 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 as such projects are listed in this section. Several related or similar projects may be combined into a single project, if such combination is advantageous or convenient for implementation; provided that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O	FISCAL YEAR 1998-99	M O F
<b>A. ECONOMIC DEVELOPMENT</b>							
<b>BED113 - STATE TOURISM OFFICE</b>							
1.	P94001	CONVENTION CENTER FACILITY, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CONVENTION CENTER FACILITY. PROJECT TO INCLUDE BUILDING AND GROUND IMPROVEMENT; PARKING; UTILITIES; FURNISHINGS; AND OTHER NECESSARY APPURTENANCES. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER.					
		DESIGN			1		
		CONSTRUCTION			1,998		
		EQUIPMENT			1		
		TOTAL FUNDING	BED		2,000C		C
2.	WC002	CONVENTION CENTER FACILITY SIGNAGE, OAHU					
		DESIGN AND CONSTRUCTION FOR DIRECTIONAL AND MESSAGE SIGNS FOR CONVENTION USERS AND THE GENERAL PUBLIC IN THE AREA SURROUNDING THE NEW HAWAII CONVENTION CENTER.					
		DESIGN			15		
		CONSTRUCTION			145		
		TOTAL FUNDING	BED		160C		C
3.	WC003	CONVENTION CENTER FACILITY SIDEWALK IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION OF SIDEWALK IMPROVEMENTS IN THE VICINITY OF THE HAWAII CONVENTION CENTER ALONG KALAKAUA AVENUE FROM ALA MOANA TO ALA WAI BOULEVARD.					
		DESIGN			100		
		CONSTRUCTION					830



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	BED		100C		830C
4.		ALA WAI CANAL PEDESTRIAN BRIDGE, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A PEDESTRIAN BRIDGE OVER THE ALA WAI CANAL IN THE VICINITY OF THE CONVENTION CENTER.					
		PLANS			50		
		DESIGN			200		
		CONSTRUCTION			1,250		
		TOTAL FUNDING	BED		1,500C		C
<b>BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION</b>							
5.	TE001	HILO BUSINESS INCUBATOR FACILITY, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A BUSINESS INCUBATOR FACILITY TO BE LOCATED IN THE UNIVERSITY OF HAWAII-HILO PARK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			350		
		DESIGN			350		
		CONSTRUCTION					2,799
		EQUIPMENT					1
		TOTAL FUNDING	BED		700C		C
			BED		N		2,800N
<b>AGR132 - ANIMAL DISEASE CONTROL</b>							
6.	281321	BIOSAFETY LABORATORY, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A BIOSAFETY LABORATORY TO CONDUCT RABIES ANTIBODY TESTING.					
		PLANS			1		
		DESIGN			98		
		CONSTRUCTION			700		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		800C		C
<b>AGR141 - AGRICULTURAL RESOURCE MANAGEMENT</b>							
7.	920011	LALAMILO DISTRIBUTION PIPELINE, WAIMEA IRRIGATION SYSTEM, HAWAII					
		PLANS AND DESIGN OF PIPELINE FOR LALAMILO TO REPLACE CEMENT LINED STEELPIPES CONTAINING ASBESTOS CONTAINING MATERIAL WITH DUCTILE IRON PIPE, INCLUDING APPURTENANT WORKS.					
		PLANS			10		
		DESIGN			20		
		TOTAL FUNDING	AGR		30C		C
8.	970001	WAIANAE AGRICULTURAL PARK, DRAINAGE IMPROVEMENTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, DESIGN AND CONSTRUCTION FOR THE WAIANA E AGRICULTURAL PARK SUBDIVISION, CONSISTING OF OPEN DITCHES, SEDIMENT PONDS AND OTHER APPURTENANT WORKS.					
		PLANS			50		
		DESIGN			100		50
		CONSTRUCTION			700		500
		TOTAL FUNDING	AGR		850C		550C
9.		UPCOUNTRY MAUI WATERSHED PROJECT, MAUI					
		PLANS AND DESIGN FOR INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED PROJECT, KULA, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL FINANCING AND/OR REIMBURSEMENT.					
		PLANS			400		
		DESIGN			550		
		TOTAL FUNDING	AGR		400C		C
			AGR		550N		N
10.		OCEAN VIEW EXPLORATORY WELL DEVELOPMENT, HAWAII					
		PLANS AND DESIGN FOR THE ENGINEERING AND CONSTRUCTION OF AN EXPLORATORY WELL NEAR MAMALAHOA HIGHWAY FOR OCEAN VIEW IN KAU, HAWAII.					
		PLANS			50		
		DESIGN			50		
		TOTAL FUNDING	AGR		100C		C
<b>AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE</b>							
11.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS FOR DEPARTMENT OF AGRICULTURE FACILITIES, STATEWIDE.					
		PLANS			1		
		DESIGN			68		
		CONSTRUCTION			630		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		700C		C
<b>BED120 - ENERGY DEVELOPMENT AND MANAGEMENT</b>							
12.	NELH13	NELHA/HOST PARK INFRASTRUCTURE UPGRADES, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR EXPANSION OF 8" HOST PARK WATER MAIN AND ELECTRICAL DISTRIBUTION IMPROVEMENTS.					
		PLANS			9		
		DESIGN			45		
		CONSTRUCTION			425		396

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	BED		479C		396C
13.	NELH15	NELHA/HOST PARK ELECTRICAL INFRASTRUCTURE UPGRADES, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE NELHA 12.47 KVOLT ELECTRICAL SYSTEM TO INSTALL ELECTRICAL POWER TO EXISTING STREET LIGHTS AND SECURITY HOUSE AND FOR A LAB PUMP STATION EMERGENCY GENERATOR.					
		PLANS			15		5
		DESIGN			35		12
		CONSTRUCTION			225		25
		EQUIPMENT			125		65
		TOTAL FUNDING	BED		400C		107C
<b>LNR141 - WATER AND LAND DEVELOPMENT</b>							
14.	G09	KAPAA HOMESTEADS WELL NO. 3, KAUAI					
		CONSTRUCTION FOR AN EXPLORATORY WELL PROJECT TO INCLUDE DRILLING, CASING, INSTALLATION, PUMP TESTING AND OTHER INCIDENTAL AND RELATED WORK.					
		CONSTRUCTION			725		
		TOTAL FUNDING	LNR		725C		C
15.	G21	HINA LANI DRIVE WATER TRANSMISSION LINE AND RESERVOIR, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF A WATER TRANSMISSION PIPELINE, RESERVOIR AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS			44		
		LAND			1		
		DESIGN			86		
		CONSTRUCTION					869
		TOTAL FUNDING	LNR		131C		869C
16.	G42	ALA WAI CANAL FLUSHING SYSTEM, OAHU					
		PLANS AND DESIGN FOR A FLUSHING SYSTEM TO IMPROVE CIRCULATION AND WATER QUALITY IN THE ALA WAI CANAL.					
		PLANS			300		
		DESIGN					500
		TOTAL FUNDING	LNR		300C		500C
17.	G78	KEAHOLE RESERVOIR, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION OF A WATER RESERVOIR, PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS			35		
		DESIGN			69		
		CONSTRUCTION			743		
		TOTAL FUNDING	LNR		847C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
18.	J36	LEEWARD POTABLE WATER WELL, OAHU					
		CONSTRUCTION FOR A POTABLE WATER WELL AND ITS DEVELOPMENT, TO INCLUDE CASING INSTALLATION, PUMP TESTING, PUMP CONTROLS AND OTHER INCIDENTAL AND RELATED WORK.					
		CONSTRUCTION					3,500
		TOTAL FUNDING	LNR		C		3,500C
19.	J38	WATER MASTER PLAN FOR STATE PROJECTS, OAHU					
		PLANS FOR A MASTER PLAN OF THE WATER REQUIREMENTS FOR STATE AGENCIES' PROJECTS ON OAHU.					
		PLANS				300	
		TOTAL FUNDING	LNR			300C	C
20.	J40	ALA WAI PROMENADE, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A PROMENADE ALONG ALA WAI CANAL BETWEEN THE KALAKAUA BRIDGE AND ALA WAI FIELD.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				998	
		TOTAL FUNDING	LNR			1,000C	C
21.	G25A	KEOPU EXPLORATORY WELL, HAWAII					
		DESIGN AND CONSTRUCTION OF AN EXPLORATORY WELL INCLUDING WELL DRILLING, CASING INSTALLATION, PUMP TESTING AND OTHER RELATED AND INCIDENTAL WORK.					
		DESIGN				20	
		CONSTRUCTION				1,600	
		TOTAL FUNDING	LNR			1,620C	C
22.	G43A	KAHUKU WELL DEVELOPMENT, OAHU					
		PLANS AND DESIGN FOR CONSTRUCTION OF PUMPS, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS				50	
		DESIGN				200	
		TOTAL FUNDING	LNR			250C	C
23.	G43B	PEARL HARBOR WELLS, PHASE I, EXPLORATORY WELLS AND SITE ACQUISITION, OAHU					
		LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR EXPLORATORY WELLS INCLUDING CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		LAND				1	
		DESIGN				1	
		CONSTRUCTION				997	2,000
		EQUIPMENT				1	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	LNR	1,000C			2,000C
24.	J37A	WATER PROJECT PARTNERSHIPS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT TO ENTER INTO PARTNERSHIPS WITH CITY AND/OR STATE AGENCIES OR PRIVATE ENTITIES TO EITHER DEVELOP OR PURCHASE WATER CREDITS TO MEET DEMANDS OF STATE PROJECTS.					
		PLANS		1			
		LAND		1			
		DESIGN		1			
		CONSTRUCTION		2,565			2,431
		EQUIPMENT		1			
		TOTAL FUNDING	LNR	2,569C			2,431C
25.	G75A	EXPLORATORY WATER WELLS, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THREE EXPLORATORY WATER WELLS AT VARIOUS OAHU LOCATIONS. PROJECT TO INCLUDE WELL DRILLING, CASING INSTALLATION, PUMP TESTING AND OTHER RELATED WORK.					
		PLANS		120			
		DESIGN		180			
		CONSTRUCTION					900
		TOTAL FUNDING	LNR	300C			900C
26.		PALOLO WATER DEVELOPMENT, OAHU					
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF PUMPS, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS					1
		LAND					1
		DESIGN					1
		CONSTRUCTION					4,997
		TOTAL FUNDING	LNR		C		5,000C

B. EMPLOYMENT

HMS802 - VOCATIONAL REHABILITATION

1. 802-3 HO'OPONO WORKSHOP AND AUDITORIUM AIR CONDITIONING, OAHU

CONSTRUCTION FOR AIR CONDITIONING OF THE HO'OPONO BUILDING WORKSHOP AND AUDITORIUM. PROJECT TO INCLUDE A DRYWALL SECTION IN THE WORKSHOP TO FACILITATE AIR CONDITIONING EFFECTIVENESS.

CONSTRUCTION		99		
TOTAL FUNDING	AGS	99N		N

C. TRANSPORTATION FACILITIES

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
<b>TRN102 - HONOLULU INTERNATIONAL AIRPORT</b>							
1.	A10A	HONOLULU INT'L AIRPORT LOOP ROAD, OAHU					
		DESIGN OF A LOOP ROAD TO PROVIDE ACCESS TO NEW FACILITIES.					
		DESIGN					730
		TOTAL FUNDING	TRN		B		730B
2.	A11A	HONOLULU INT'L AIRPORT INTERISLAND TERMINAL CONCESSION IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION OF A NEW 3,600 SQUARE FEET CANTILEVERED CONCESSION SPACE IN THE MAKAI PIER OF THE INTERISLAND TERMINAL.					
		DESIGN				104	
		CONSTRUCTION				946	
		TOTAL FUNDING	TRN			1,050B	B
3.	A20A	HONOLULU INT'L AIRPORT INTRA-TERMINAL TRANSPORTATION SYSTEM, PHASE II, OAHU					
		DESIGN AND CONSTRUCTION TO IMPLEMENT THE RECOMMENDATIONS OF THE INTRA-TERMINAL TRANSPORTATION SYSTEM, PHASE I PLANNING STUDY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					5,000
		CONSTRUCTION					45,000
		TOTAL FUNDING	TRN		B		26,250B
			TRN		N		23,750N
4.	A23A	HONOLULU INT'L AIRPORT SHORTENING OF RUNWAY 4L-22R, OAHU					
		DESIGN AND CONSTRUCTION FOR THE SHORTENING OF THE RUNWAY NEEDED TO ACCOMMODATE THE DIAMOND HEAD CONCOURSE EXPANSION.					
		DESIGN				35	
		CONSTRUCTION				315	
		TOTAL FUNDING	TRN			350B	B
5.	A23B	HONOLULU INT'L AIRPORT PERIMETER ROAD, OAHU					
		CONSTRUCTION FOR A PERIMETER ROAD THAT WILL PROVIDE ACCESS BETWEEN THE NORTHERN AND SOUTHERN PORTION OF THE AIRPORT.					
		CONSTRUCTION				2,000	
		TOTAL FUNDING	TRN			2,000B	B
6.	A23C	HONOLULU INT'L AIRPORT RUNWAY 8L-26R MIDFIELD ACCESS TAXIWAY, OAHU					
		DESIGN AND CONSTRUCTION FOR A MIDFIELD TAXIWAY TO RUNWAY 8L-26R.					
		DESIGN				500	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION		4,500			
		TOTAL FUNDING	TRN	5,000B			B
7.	A23D	HONOLULU INT'L AIRPORT RUNWAY 8R-26L EXTENSION WITH CONCRETE THRESHOLD, OAHU					
		DESIGN FOR A 100 FEET EXTENSION AND CONCRETE THRESHOLD FOR RUNWAY 8R-26L.					
		DESIGN					650
		TOTAL FUNDING	TRN		B		650B
8.	A23E	HONOLULU INT'L AIRPORT TRANSIENT AIRCRAFT PARKING, OAHU					
		DESIGN FOR AN APRON AT NORTH RAMP NEAR LAGOON DRIVE FOR AIRCRAFT NOT USING THE GATES (TRANSIENT AIRCRAFT).					
		DESIGN					229
		TOTAL FUNDING	TRN		B		229B
9.	A23F	HONOLULU INT'L AIRPORT ENGINE RUNUP PAD, OAHU					
		DESIGN AND CONSTRUCTION FOR AN ENGINE RUNUP PAD AT THE REEF RUNWAY.					
		DESIGN				50	
		CONSTRUCTION				450	
		TOTAL FUNDING	TRN			500B	B
10.	A23G	HONOLULU INT'L AIRPORT MAUNAWAI CANAL CULVERT EXTENSION, OAHU					
		DESIGN AND CONSTRUCTION TO EXTEND THE EXISTING MAUNAWAI CANAL CULVERT.					
		DESIGN				700	
		CONSTRUCTION				6,300	
		TOTAL FUNDING	TRN			7,000B	B
11.	A35A	HONOLULU INT'L AIRPORT DIAMOND HEAD CONCOURSE SIGNAGE AND GRAPHICS, OAHU					
		DESIGN FOR THE NEW DIAMOND HEAD CONCOURSE EXPANSION SIGNAGE AND GRAPHICS.					
		DESIGN					120
		TOTAL FUNDING	TRN		B		120B
12.	A37A	HONOLULU INT'L AIRPORT ADVANCE LANDING SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION FOR A GLOBAL POSITIONING SYSTEM (GPS) AND NODE.					
		DESIGN				5	
		CONSTRUCTION				45	
		TOTAL FUNDING	TRN			50B	B
13.	A41A	HONOLULU INT'L AIRPORT DIAMOND HEAD CONCOURSE CONCESSION IMPROVEMENTS, OAHU					
		DESIGN TO EXPAND AND RENOVATE 21,000 SQUARE FEET OF CONCESSION SPACE.					
		DESIGN					131

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	TRN		B		131B
14.	A41B	HONOLULU INT'L AIRPORT EWA CONCOURSE CONCESSION IMPROVEMENTS, OAHU					
		DESIGN TO EXPAND AND RENOVATE 14,400 SQUARE FEET OF CONCESSION SPACE.					
		DESIGN					89
		TOTAL FUNDING	TRN		B		89B
15.	A41C	HONOLULU INT'L AIRPORT OVERSEAS TERMINAL CONCESSION IMPROVEMENTS, OAHU					
		DESIGN TO EXPAND AND RENOVATE THE EXISTING CONCESSION SPACE IN THE CENTRAL TERMINAL AREA.					
		DESIGN					830
		TOTAL FUNDING	TRN		B		830B
16.	A41D	HONOLULU INT'L AIRPORT DIAMOND HEAD SERVICE COURT RELOCATION, OAHU					
		DESIGN AND CONSTRUCTION TO DEMOLISH AND RELOCATE EXISTING FACILITIES AT THE DIAMOND HEAD SERVICE COURT TO MAKE ROOM FOR THE NEW DIAMOND HEAD CONCOURSE EXTENSION.					
		DESIGN			106		
		CONSTRUCTION			954		
		TOTAL FUNDING	TRN		1,060B		B
17.	A41E	HONOLULU INT'L AIRPORT DIAMOND HEAD CONCOURSE, PHASE I, OAHU					
		DESIGN AND CONSTRUCTION FOR A DOUBLE LOADED EXTENSION OF THE DIAMOND HEAD CONCOURSE.					
		DESIGN			11,480		
		CONSTRUCTION					132,472
		TOTAL FUNDING	TRN		11,480B		132,472B
18.	A41F	HONOLULU INT'L AIRPORT TICKET LOBBY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO THE OVERSEAS TERMINAL TICKET LOBBY.					
		DESIGN			500		
		CONSTRUCTION			4,545		
		TOTAL FUNDING	TRN		5,045B		B
19.	A41G	HONOLULU INT'L AIRPORT MODIFICATIONS TO OVERSEAS TERMINAL, OAHU					
		DESIGN AND CONSTRUCTION TO MODIFY THE SECOND AND THIRD LEVELS OF THE OVERSEAS CONCOURSE TO MEET CUSTOMS AND IMMIGRATIONS REQUIREMENTS ON FOREIGN ARRIVALS.					
		DESIGN			1,000		
		CONSTRUCTION			9,090		



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	TRN	10,090B			B
20.	A41H	HONOLULU INT'L AIRPORT COMMUTER TERMINAL MODIFICATIONS, OAHU					
		DESIGN AND CONSTRUCTION TO MODIFY THE EXISTING COMMUTER TERMINAL.					
		DESIGN		100			
		CONSTRUCTION		909			
		TOTAL FUNDING	TRN	1,009B			B
21.	A41I	HONOLULU INT'L AIRPORT CENTRAL CONCOURSE MISCELLANEOUS MODIFICATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND MODIFICATIONS TO THE CENTRAL CONCOURSE. PROJECT INCLUDES A GARDEN WALKWAY, MOVING SIDEWALK IN THE CENTRAL CONCOURSE AREA AND RESTAURANT RENOVATIONS.					
		DESIGN		196			
		CONSTRUCTION		1,782			
		TOTAL FUNDING	TRN	1,978B			B
22.	A43B	HONOLULU INT'L AIRPORT LAGOON DRIVE FUEL STORAGE FACILITY, OAHU					
		DESIGN AND CONSTRUCTION FOR A NEW FUEL STORAGE FACILITY PROJECT AT LAGOON DRIVE SITE. PROJECT INCLUDES ABOVE GROUND STORAGE TANKS, NECESSARY SPILL PROTECTION SYSTEM, FUEL LINES AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		3,700			
		CONSTRUCTION				33,300	
		TOTAL FUNDING	TRN	3,700B		33,300B	
23.	A43C	HONOLULU INT'L AIRPORT DIAMOND HEAD CONCOURSE LOADING BRIDGES, OAHU					
		DESIGN AND CONSTRUCTION FOR EIGHT NEW LOADING BRIDGES FOR THE DIAMOND HEAD CONCOURSE EXPANSION.					
		DESIGN				320	
		CONSTRUCTION				2,880	
		TOTAL FUNDING	TRN		B	3,200B	
24.	A43D	HONOLULU INT'L AIRPORT UALENA STREET AIR CARGO FACILITY, OAHU					
		DESIGN AND CONSTRUCTION FOR A NEW CARGO FACILITY LOCATED ON UALENA STREET. PROJECT INCLUDES AN AIR CARGO BUILDING, PARKING, CARGO APRON AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		1,000			
		CONSTRUCTION		21,150			
		TOTAL FUNDING	TRN	22,150B			B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
25.	A43E	HONOLULU INT'L AIRPORT GROUND SUPPORT EQUIPMENT FACILITY SITE WORK, OAHU					
		DESIGN AND CONSTRUCTION FOR SITE PREPARATION TO CONSOLIDATE THE GROUND SUPPORT EQUIPMENT FACILITY AT UALENA STREET.					
		DESIGN					70
		CONSTRUCTION					630
		TOTAL FUNDING	TRN		B		700B
26.	A43F	HONOLULU INT'L AIRPORT INTERISLAND MAINTENANCE FACILITY SITE WORK, OAHU					
		DESIGN FOR SITE PREPARATION TO RELOCATE THE INTERISLAND AIRCRAFT MAINTENANCE FACILITY.					
		DESIGN					501
		TOTAL FUNDING	TRN		B		501B
27.	A43G	HONOLULU INT'L AIRPORT RENTAL CAR OPERATIONS EXPANSION, OAHU					
		DESIGN TO EXPAND THE EXISTING RENTAL CAR OPERATIONS.					
		DESIGN					374
		TOTAL FUNDING	TRN		B		374B
28.	A43H	HONOLULU INT'L AIRPORT WATER QUALITY MANAGEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR A SYSTEM TO COMPLY WITH PROVISIONS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM.					
		DESIGN				100	
		CONSTRUCTION				900	
		TOTAL FUNDING	TRN			1,000B	B
29.	A43I	HONOLULU INT'L AIRPORT GROUND TRANSPORTATION STAGING AREA, OAHU					
		DESIGN AND CONSTRUCTION OF A PARKING AREA FOR LARGE VEHICLES SUCH AS TRUCKS AND BUSES.					
		DESIGN					67
		CONSTRUCTION					603
		TOTAL FUNDING	TRN		B		670B

TRN111 - HILO INTERNATIONAL AIRPORT

30. 510A HILO INT'L AIRPORT HELICOPTER LEASE LOTS AND FACILITIES, HAWAII

DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS (GRADING, UTILITIES AND ACCESS) FOR NEW HELICOPTER LEASE LOTS AND SUPPORTING FACILITIES. PROJECT INCLUDES CONSTRUCTION OF APRON AND PARKING POSITIONS FOR HELICOPTERS.

DESIGN 150  
CONSTRUCTION 1,350

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	TRN			1,500B	B
31.	B10B	HILO INT'L AIRPORT HOLD CARGO BUILDING/LIGHT INDUSTRIAL FACILITIES, HAWAII					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL CARGO AND LIGHT INDUSTRIAL FACILITIES WITHIN THE AIRPORT. PROJECT INCLUDES PARKING, AREA FOR CARGO STORAGE, MAKE-UP AND BREAKDOWN AND INFRASTRUCTURE NEEDED TO SUPPORT THE FACILITY.					
		DESIGN				1,240	
		CONSTRUCTION					11,160
		TOTAL FUNDING	TRN			1,240B	11,160B
32.	B10C	HILO INT'L AIRPORT CONCESSION AND LOUNGE MODIFICATIONS, HAWAII					
		DESIGN AND CONSTRUCTION TO RELOCATE THE EXISTING CONCESSION FROM OUTSIDE THE SECURITY CHECKPOINT INTO THE PASSENGER LOUNGE AREA.					
		DESIGN					125
		CONSTRUCTION					1,137
		TOTAL FUNDING	TRN			B	1,262B
33.	B10D	HILO INT'L AIRPORT SIGNAGE AND GRAPHICS IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVED SIGNAGE OF THE CURBSIDE AND TERMINAL FACILITIES.					
		DESIGN				63	
		CONSTRUCTION				567	
		TOTAL FUNDING	TRN			630B	B
34.	B10E	HILO INT'L AIRPORT PASSENGER TERMINAL PARKING LOT MODIFICATIONS, HAWAII					
		DESIGN AND CONSTRUCTION TO RELOCATE THE PASSENGER PARKING LOT TICKET DISPENSER FROM THE WEST END OF THE PARKING LOT TO THE EAST END OF THE PARKING LOT AND OTHER RELATED PARKING LOT IMPROVEMENTS.					
		DESIGN				16	
		CONSTRUCTION				144	
		TOTAL FUNDING	TRN			160B	B
35.	B10F	HILO INT'L AIRPORT INTERISLAND CARRIER RELOCATION, HAWAII					
		DESIGN AND CONSTRUCTION TO RELOCATE ONE OF THE INTERISLAND CARRIERS TO THE WEST BUILDING OF THE EXISTING TERMINAL. PROJECT TO INCLUDE THE RELOCATION OF ONE INTERISLAND CARRIER, INSTALLATION OF A NEW BAGGAGE CARROUSEL AND RELOCATION OF THE HELICOPTER/AIR TOUR COUNTERS, COMPUTERS AND TELECOMMUNICATION EQUIPMENT.					
		DESIGN				138	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION				1,255	
		TOTAL FUNDING	TRN			1,393B	B
36.	B10G	HILO INT'L AIRPORT SEWER CONNECTION, HAWAII					
		DESIGN AND CONSTRUCTION FOR A SEWER CONNECTION TO THE COUNTY OF HAWAII SEWER SYSTEM.					
		DESIGN				49	
		CONSTRUCTION				441	
		TOTAL FUNDING	TRN			490B	B
37.	B10H	HILO INT'L AIRPORT T-HANGARS, HAWAII					
		DESIGN AND CONSTRUCTION FOR A NEW SIX BAY T-HANGAR.					
		DESIGN				120	
		CONSTRUCTION				1,193	
		TOTAL FUNDING	TRN			1,313B	B
<b>TRN114 - KE-AHOLE AIRPORT</b>							
38.	C03A	KEAHOLE-KONA INT'L AIRPORT ITINERANT AIRLINE AIRCRAFT PARKING, HAWAII					
		DESIGN AND CONSTRUCTION FOR AN APRON AREA TO BE USED FOR ITINERANT AIRCRAFT PARKING.					
		DESIGN				158	
		CONSTRUCTION				1,422	
		TOTAL FUNDING	TRN			1,580B	B
39.	C03B	KEAHOLE-KONA INT'L AIRPORT PARKING FACILITIES, HAWAII					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL GROUND TRANSPORTATION AND PUBLIC PARKING FACILITIES.					
		DESIGN				756	
		CONSTRUCTION					6,804
		TOTAL FUNDING	TRN			756B	6,804B
40.	C03C	KEAHOLE-KONA INT'L AIRPORT ROAD "P", HAWAII					
		DESIGN FOR ROAD "P" AS A SECOND ACCESS ROAD INTO THE AIRPORT.					
		DESIGN					130
		TOTAL FUNDING	TRN				130B
41.	C03D	KEAHOLE-KONA INT'L AIRPORT LANDSCAPING AND NON-POTABLE WATER SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION FOR LANDSCAPING AND NON-POTABLE WATER SYSTEM AT THE AIRPORT.					
		DESIGN				383	
		CONSTRUCTION				3,447	
		TOTAL FUNDING	TRN			3,830B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
42.	C03E	KEAHOLE-KONA INT'L AIRPORT OVERSEAS TERMINAL DEVELOPMENT, HAWAII					
		DESIGN AND CONSTRUCTION FOR A TWO LEVEL OVERSEAS DOMESTIC AND INTERNATIONAL ARRIVAL TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			2,640		
		CONSTRUCTION					33,000
		TOTAL FUNDING	TRN		2,640B		28,000B
			TRN			N	5,000N
43.	C03F	KEAHOLE-KONA INT'L AIRPORT HELIPORT, PHASE I, HAWAII					
		DESIGN AND CONSTRUCTION FOR A HELIPORT WITH 12 HELIPADS.					
		DESIGN					530
		CONSTRUCTION					4,770
		TOTAL FUNDING	TRN			B	5,300B
44.	C03G	KEAHOLE-KONA INT'L AIRPORT GENERAL AVIATION SITE PREPARATION, HAWAII					
		DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS (GRADING, UTILITIES AND ACCESS) FOR AN AVIATION AREA TO BE LEASED TO AIRPORT TENANTS FOR FUTURE DEVELOPMENT.					
		DESIGN			350		
		CONSTRUCTION					6,510
		TOTAL FUNDING	TRN		350B		6,510B
45.	C03H	KEAHOLE-KONA INT'L AIRPORT RAMP "K", HAWAII					
		DESIGN AND CONSTRUCTION FOR PAVING THE AREA IN THE VICINITY OF THE EXISTING HELIPORT AND GENERAL AVIATION AREA.					
		DESIGN			490		
		CONSTRUCTION					1,410
		TOTAL FUNDING	TRN		490B		1,410B
46.	C03I	KEAHOLE-KONA INT'L AIRPORT AIR TRAFFIC CONTROL TOWER, HAWAII					
		DESIGN AND CONSTRUCTION FOR AN AIR TRAFFIC CONTROL TOWER AT THE AIRPORT.					
		DESIGN			700		
		CONSTRUCTION					7,212
		TOTAL FUNDING	TRN		700B		7,212B
47.	C03J	KEAHOLE-KONA INT'L AIRPORT POSTAL FACILITY SITE DEVELOPMENT, HAWAII					
		DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS (GRADING, UTILITIES AND ACCESS) FOR A NEW U.S. POSTAL SERVICE OFFICE FACILITY.					
		DESIGN			165		
		CONSTRUCTION					1,485

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
TOTAL FUNDING			TRN	1,650B			B
48.	C03K	KEAHOLE-KONA INT'L AIRPORT WASTEWATER TREATMENT PLANT, HAWAII					
CONSTRUCTION FOR A NEW SEWAGE TREATMENT PLANT AT THE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
CONSTRUCTION				16,280			
TOTAL FUNDING			TRN	12,280B			B
			TRN	4,000N			N
49.	C03L	KEAHOLE-KONA INT'L AIRPORT GENERAL AVIATION FUEL STORAGE SYSTEM, HAWAII					
DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS NEEDED TO PROVIDE A FUEL STORAGE SYSTEM FOR GENERAL AVIATION.							
DESIGN				186			
CONSTRUCTION				1,674			
TOTAL FUNDING			TRN	1,860B			B
50.	C03M	KEAHOLE-KONA INT'L AIRPORT FUEL FARM SITE PREPARATION, HAWAII					
DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS NEEDED TO PROVIDE A FUEL FARM AT THE AIRPORT.							
DESIGN				193			
CONSTRUCTION				1,737			
TOTAL FUNDING			TRN	1,930B			B
51.	C03N	KEAHOLE-KONA INT'L AIRPORT AIR MONITORING SYSTEM, HAWAII					
DESIGN AND CONSTRUCTION FOR AN AIR QUALITY TESTING SYSTEM NEEDED TO MEET STATE AND FEDERAL CLEAN AIR STANDARDS AND REQUIREMENTS.							
DESIGN							10
CONSTRUCTION							90
TOTAL FUNDING			TRN		B		100B
52.	C030	KEAHOLE-KONA INT'L AIRPORT OVERSEAS AIRCRAFT PARKING APRON, HAWAII					
DESIGN AND CONSTRUCTION FOR AN APRON TO BE USED FOR OVERSEAS AIRCRAFT PARKING AT THE NEW OVERSEAS TERMINAL.							
DESIGN							640
CONSTRUCTION							5,760
TOTAL FUNDING			TRN		B		6,400B
<b>TRN116 - WAIMEA-KOHALA AIRPORT</b>							
53.	C55A	WAIMEA-KOHALA AIRPORT LANDSCAPING IMPROVEMENTS, HAWAII					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR LANDSCAPING WITHIN THE AIRPORT AND ALONG THE EXISTING ACCESS ROAD.					
		DESIGN			10		
		CONSTRUCTION			90		
		TOTAL FUNDING	TRN		100B		B
<b>TRN131 - KAHULUI AIRPORT</b>							
54.	D04A	KAHULUI AIRPORT TERMINAL DEVELOPMENT, MAUI					
		DESIGN FOR ADDITIONAL TICKETING LOBBY, CONCESSION AND PARKING FACILITIES.					
		DESIGN					2,336
		TOTAL FUNDING	TRN			B	2,336B
55.	D04B	KAHULUI AIRPORT SIGNAGE AND GRAPHICS IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR EXTERNAL SIGNAGE TO IMPROVE ACCESS INTO AND WITHIN THE AIRPORT.					
		DESIGN					31
		CONSTRUCTION					279
		TOTAL FUNDING	TRN			B	310B
56.	D08A	KAHULUI AIRPORT RENTAL CAR FACILITY MODIFICATIONS, PHASE I, MAUI					
		DESIGN AND CONSTRUCTION FOR SITE WORK (GRADING, UTILITIES AND ACCESS) FOR THE RENTAL CAR FACILITY RELOCATION.					
		DESIGN			580		
		CONSTRUCTION			5,220		
		TOTAL FUNDING	TRN		5,800B		B
57.	D08B	KAHULUI AIRPORT KEOLANI PLACE LEASE LOT, MAUI					
		DESIGN AND CONSTRUCTION FOR SITE WORK (GRADING, UTILITIES, AND ACCESS) AS WELL AS SUBDIVIDING FOR LEASE LOTS.					
		DESIGN			185		
		CONSTRUCTION					1,665
		TOTAL FUNDING	TRN		185B		1,665B
58.	D08C	KAHULUI AIRPORT NON-POTABLE WATER SYSTEM, MAUI					
		DESIGN FOR A NON-POTABLE WATER SYSTEM AT KAHULUI AIRPORT.					
		DESIGN					422
		TOTAL FUNDING	TRN			B	422B
59.	D08D	KAHULUI AIRPORT RELOCATE HOLD CARGO BUILDING, MAUI					
		CONSTRUCTION TO RELOCATE THE EXISTING CARGO BUILDING.					
		CONSTRUCTION			5,585		
		TOTAL FUNDING	TRN		5,585B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
60.	D08E	KAHULUI AIRPORT AVIATION CARGO APRON, TAXIWAY AND BUILDING, MAUI					
		DESIGN FOR AN AVIATION FACILITY. PROJECT WILL PROVIDE ADDITIONAL CARGO AIRCRAFT PARKING WITH TAXIWAY CONNECTION, A GENERAL CARGO BUILDING AND NECESSARY ACCESS AND UTILITIES.					
		DESIGN					1,342
		TOTAL FUNDING	TRN		B		1,342B
61.	D08F	KAHULUI AIRPORT AIRLINE GROUND SUPPORT FACILITY RELOCATION, MAUI					
		DESIGN TO RELOCATE THE EXISTING AIRLINE GROUND SUPPORT FACILITY.					
		DESIGN					575
		TOTAL FUNDING	TRN		B		575B
62.	D08G	KAHULUI AIRPORT HELICOPTER APRON AND TAXIWAY EXPANSION, MAUI					
		DESIGN AND CONSTRUCTION FOR EXPANSION OF THE CURRENT HELICOPTER APRON AND CONNECTING TAXIWAY.					
		DESIGN				76	
		CONSTRUCTION				684	
		TOTAL FUNDING	TRN			760B	B
<b>TRN133 - HANA AIRPORT</b>							
63.	D20A	HANA AIRPORT PRECISION APPROACH PATH INDICATOR SYSTEM, MAUI					
		DESIGN AND CONSTRUCTION FOR A PRECISION APPROACH PATH INDICATOR (PAPI) SYSTEM AT THE AIRPORT.					
		DESIGN				25	
		CONSTRUCTION				225	
		TOTAL FUNDING	TRN			250B	B
<b>TRN141 - MOLOKAI AIRPORT</b>							
64.	D55A	MOLOKAI AIRPORT ACCESS ROAD AND PARKING IMPROVEMENTS, MOLOKAI					
		DESIGN AND CONSTRUCTION FOR ACCESS ROAD AND PARKING LOT IMPROVEMENTS AT THE AIRPORT.					
		DESIGN				130	
		CONSTRUCTION				1,170	
		TOTAL FUNDING	TRN			1,300B	B
<b>TRN151 - LANAI AIRPORT</b>							
65.	D70A	LANAI AIRPORT PERIMETER FENCE, LANAI					
		DESIGN AND CONSTRUCTION FOR A SECURITY FENCE AROUND THE AIRPORT.					
		DESIGN					66



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION					594
		TOTAL FUNDING	TRN		B		660B
<b>TRN161 - LIHUE AIRPORT</b>							
66.	E03A	LIHUE AIRPORT RUNWAY 17-35 EXTENSION, KAUAI					
		DESIGN AND CONSTRUCTION TO EXTEND RUNWAY 17-35 TO 8,500 FEET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		1,000			29,000
		CONSTRUCTION					20,000B
		TOTAL FUNDING	TRN	1,000B			9,000N
			TRN		N		
67.	E03B	LIHUE AIRPORT AIR TRAFFIC CONTROL TOWER, KAUAI					
		DESIGN AND CONSTRUCTION FOR AN AIR TRAFFIC CONTROL TOWER AT THE AIRPORT.					
		DESIGN		700			7,212
		CONSTRUCTION					7,212B
		TOTAL FUNDING	TRN	700B			
68.	E03C	LIHUE AIRPORT POSTAL ACCESS ROAD, KAUAI					
		PLANS, DESIGN AND CONSTRUCTION FOR A CONNECTOR ROAD TO THE LIHUE POST OFFICE SERVICE ROAD.					
		PLANS		140			
		DESIGN		126			
		CONSTRUCTION		1,134			
		TOTAL FUNDING	TRN	1,400B			B
69.	E03D	LIHUE AIRPORT ADDITIONAL CARGO BUILDING, KAUAI					
		DESIGN FOR A NEW CARGO BUILDING ADJACENT TO THE COMMUTER TERMINAL.					
		DESIGN					350
		TOTAL FUNDING	TRN		B		350B
70.	E03E	LIHUE AIRPORT APRON SITE PREPARATION AND ROAD REALIGNMENT, KAUAI					
		CONSTRUCTION FOR A GENERAL AVIATION SUBDIVISION AT THE AIRPORT. PROJECT INCLUDES REALIGNING AHUKINI ROAD, DEVELOPMENT OF A LEASE LOT SUBDIVISION AND THE UPGRADING OF UTILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		11,850			
		TOTAL FUNDING	TRN	4,950B			B
			TRN	6,900N			N
71.	E03F	LIHUE AIRPORT HELIPORT IMPROVEMENTS, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION FOR A HELIPORT AT THE AIRPORT. PROJECT WILL CONSTRUCT HELIPORT HANGARS AND ADDITIONAL OFFICE SPACE.					
		CONSTRUCTION		2,500			
		TOTAL FUNDING	TRN	2,500B			B
72.	E03G	LIHUE AIRPORT GENERAL AVIATION APRON, KAUAI					
		DESIGN FOR A GENERAL AVIATION APRON AT THE AIRPORT.					
		DESIGN					550
		TOTAL FUNDING	TRN		B		550B
<b>TRN195 - AIRPORTS ADMINISTRATION</b>							
73.	F04A	HILO INTERNATIONAL AIRPORT MASTER PLAN AND NCP UPDATE, HAWAII					
		PLANS FOR A MASTER PLAN AND NOISE COMPATIBILITY PROGRAM UPDATE FOR HILO INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		500			
		TOTAL FUNDING	TRN	185B			B
			TRN	315N			N
74.	F04B	KAHULUI AIRPORT MASTER PLAN UPDATE, MAUI					
		PLANS TO UPDATE THE EXISTING MASTER PLAN AT KAHULUI AIRPORT.					
		PLANS		300			
		TOTAL FUNDING	TRN	300B			B
75.	F04C	LANAI AIRPORT MASTER PLAN AND NOISE COMPATIBILITY PROGRAM UPDATE, LANAI					
		PLANS TO UPDATE THE EXISTING MASTER PLAN AND NOISE COMPATIBILITY PROGRAM AT LANAI AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		350			
		TOTAL FUNDING	TRN	100B			B
			TRN	250N			N
76.	F04E	HONOLULU INT'L AIRPORT MASTER PLAN AND NCP UPDATE, OAHU					
		PLANS TO UPDATE THE MASTER PLAN AND THE NOISE COMPATIBILITY PROGRAM UPDATE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					400
		TOTAL FUNDING	TRN		B		100B
			TRN		N		300N

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
77.	F04F	HONOLULU INT'L AIRPORT ENVIRONMENTAL IMPACT STATEMENT UPDATE, OAHU					
		PLANS FOR AN UPDATE OF THE EXISTING ENVIRONMENTAL IMPACT STATEMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					300
		TOTAL FUNDING	TRN		B		75B
			TRN		N		225N
78.	F04J	STATEWIDE AIRPORT PLANNING STUDIES, STATEWIDE					
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES RESEARCH AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS.					
		PLANS		1,000		1,000	
		TOTAL FUNDING	TRN	1,000B		1,000B	
79.	F06B	LIHUE AIRPORT LAND ACQUISITION, KAUAI					
		LAND ACQUISITION OF A TRIANGULAR 47.9 ACRE PARCEL BETWEEN RUNWAYS 17-35 AND 3-21.					
		LAND		1,500			
		TOTAL FUNDING	TRN	1,500B			B
80.	F06D	MOLOKAI AIRPORT LAND ACQUISITION, MOLOKAI					
		LAND ACQUISITION FOR A LAND SWAP AND LEASE BUYOUT OF HAWAIIAN HOME LANDS IN CLOSE PROXIMITY OF THE AIRPORT.					
		LAND				1,000	
		TOTAL FUNDING	TRN		B	1,000B	
81.	F08A	AIRPORT TENANT IMPROVEMENT GUIDELINES, STATEWIDE					
		DESIGN FOR COMPILING A STANDARD FOR TENANT FUNDED IMPROVEMENTS WITHIN THE STATEWIDE AIRPORT SYSTEM.					
		DESIGN				500	
		TOTAL FUNDING	TRN		B	500B	
82.	F08B	AIRPORT SECURITY IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ANTICIPATED FAA REQUIRED SECURITY REQUIREMENTS AND IMPROVEMENTS OF VARIOUS AIRPORTS.					
		DESIGN		1,000		1,000	
		CONSTRUCTION		9,000		9,000	
		TOTAL FUNDING	TRN	10,000B		10,000B	
83.	F08C	AIRPORT HYDROCARBON AND HAZARDOUS MATERIALS MANAGEMENT, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION TO COMPLY WITH FEDERAL AND STATE ENVIRONMENTAL REQUIREMENTS RELATING TO FUEL/OIL AND OTHER ENVIRONMENTAL ISSUES.					
					100		
					900		
		TOTAL FUNDING	TRN		1,000B		B
84.	F08D	AIRPORT ASBESTOS SURVEY AND ABATEMENT PROGRAM, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR AN ASBESTOS SURVEY AND RESULTING ABATEMENT PROGRAM OF THE STATEWIDE AIRPORT SYSTEM.					
					500		
					1,500		
		TOTAL FUNDING	TRN		2,000B		B
85.	F08E	AIRPORT FACILITY INVENTORY AND GRAPHICAL INFORMATION SYSTEM, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR A GRAPHICAL INFORMATION SYSTEM (GIS) THAT INCLUDES A DETAILED SURVEY OF THE STATEWIDE AIRPORT SYSTEM.					
					100		
					900		
		TOTAL FUNDING	TRN		1,000B		B
86.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECTS STAFF COSTS, STATEWIDE					
		PLANS, DESIGN AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECTS RELATED POSITIONS.					
					350		350
					700		700
					700		700
		TOTAL FUNDING	TRN		1,750B		1,750B
87.	F08G	AIRPORT VARIOUS MISCELLANEOUS PROJECTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR VARIOUS PROJECTS NECESSARY TO COMPLY WITH NEW FAA REGULATIONS, UNANTICIPATED PROJECTS NEEDED FOR SAFETY AND SECURITY AND OTHER REQUIREMENTS.					
					250		250
					2,250		2,250
		TOTAL FUNDING	TRN		2,500B		2,500B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
88.	F04I	HONOLULU INT'L AIRPORT CONCESSION STUDY AND GUIDELINES, OAHU					
		PLANS FOR A CONCESSION STUDY TO MAXIMIZE REVENUES AS WELL AS PROVIDING DETAILS ON IMPROVING CONCESSION OPERATIONS, SITE SELECTION AND APPEARANCE.					
		PLANS			150		
		TOTAL FUNDING		TRN	150B		B
<b>TRN301 - HONOLULU HARBOR</b>							
89.	J06	SAND ISLAND CONTAINER YARD IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING AND OTHER IMPROVEMENTS.					
		DESIGN			1,500		
		CONSTRUCTION				7,000	
		TOTAL FUNDING		TRN	1,500B		B
				TRN	E	7,000E	
90.	J02	IMPROVEMENTS TO FACILITIES AT HONOLULU HARBOR, PIERS 19-36, OAHU					
		LAND ACQUISITION FOR PIERS 19-36 TO ACCOMMODATE THE EXPANSION OF MARITIME ACTIVITIES AT HONOLULU HARBOR.					
		LAND			8,500		
		TOTAL FUNDING		TRN	8,500B		B
<b>TRN303 - BARBERS POINT HARBOR</b>							
91.	J10	BARBERS POINT HARBOR DEEPENING, OAHU					
		PLANS FOR DEEPENING OF TURNING BASIN AND CHANNEL MODIFICATIONS AT BARBERS POINT HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			300		
		TOTAL FUNDING		TRN	300B		B
92.	J11	BARBERS POINT HARBOR IMPROVEMENTS, OAHU					
		CONSTRUCTION OF NEW BERTHING FACILITIES INCLUDING A PETROLEUM VESSEL PIER, AN EXTENSION TO PIER P-5 AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			11,000		
		TOTAL FUNDING		TRN	11,000E		E
93.	J13	BARBERS POINT HARBOR PIER IMPROVEMENTS, OAHU					
		DESIGN OF PIER P-7 AND OTHER IMPROVEMENTS.					
		DESIGN			800		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	TRN		800B		B
94.	J14	BARBERS POINT HARBOR NAVIGATIONAL IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS INCLUDING NAVIGATIONAL LIGHTS, A CONTROL TOWER AND OTHER IMPROVEMENTS.					
		DESIGN			200		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		200B		B
			TRN		1,000E		E
<b>TRN305 - KEWALO BASIN</b>							
95.	J12	KEWALO BASIN IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR REPLACEMENT OF CATWALKS, UTILITIES AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			1,400		
		TOTAL FUNDING	TRN		1,400B		B
<b>TRN311 - HILO HARBOR</b>							
96.	L10	HILO HARBOR IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT HILO HARBOR INCLUDING PIERS, YARDS, SHEDS, UTILITIES, ROADWAYS AND OTHER IMPROVEMENTS.					
		DESIGN			50		
		CONSTRUCTION			200		
		TOTAL FUNDING	TRN		250B		B
<b>TRN331 - KAHULUI HARBOR</b>							
97.	M06	KAHULUI HARBOR PIER IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR PIER STRENGTHENING, YARD AND OTHER IMPROVEMENTS.					
		DESIGN			600		
		CONSTRUCTION				5,000	
		TOTAL FUNDING	TRN		600B		B
			TRN		E		5,000E
98.	M09	KAHULUI HARBOR BARGE TERMINAL IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARDS, SHEDS AND OTHER IMPROVEMENTS.					
		DESIGN			400		
		CONSTRUCTION			4,000		
		TOTAL FUNDING	TRN		400B		B
			TRN		4,000E		E
<b>TRN351 - KAUMALAPAU HARBOR</b>							

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
99.	M12	KAUMALAPAU HARBOR IMPROVEMENTS, LANAI					
		DESIGN AND CONSTRUCTION FOR TRANSIT SHED, PAVING, LIGHTING, UTILITIES AND OTHER IMPROVEMENTS.					
		DESIGN			50		
		CONSTRUCTION					1,000
		TOTAL FUNDING	TRN		50B		1,000B
<b>TRN395 - HARBORS ADMINISTRATION</b>							
100.	I00	HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECTS STAFF COSTS, STATEWIDE					
		PLANS, DESIGN AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECTS RELATED POSITIONS.					
		PLANS			798		798
		DESIGN			1		1
		CONSTRUCTION			1		1
		TOTAL FUNDING	TRN		800B		800B
101.	I01	HARBOR PLANNING, STATEWIDE					
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.					
		PLANS			250		250
		TOTAL FUNDING	TRN		250B		250B
102.	I03	MISCELLANEOUS 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		275B		275B
103.	I05	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS AND OTHER FACILITIES.					
		DESIGN			50		50
		CONSTRUCTION			150		150
		TOTAL FUNDING	TRN		200B		200B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
104.	I06	PASSENGER TERMINAL FACILITIES, STATEWIDE					
		PLANS FOR IMPROVEMENTS TO CRUISE PASSENGER TERMINAL FACILITIES.				500	
		PLANS				500B	B
		TOTAL FUNDING		TRN			
105.	I07	REMEDIATION OF PETROLEUM, OIL AND LUBRICANTS CONTAMINATION, STATEWIDE					
		PLANS AND DESIGN FOR REMEDIATION OF PETROLEUM CONTAMINATED UNDERGROUND AREAS AT VARIOUS STATE HARBORS.				400	
		PLANS DESIGN				200	
		TOTAL FUNDING		TRN		600B	B
<b>TRN501 - OAHU HIGHWAYS</b>							
106.	S11	HAUULA BASEYARD IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR A NEW BASEYARD FACILITY.				550	
		CONSTRUCTION				550E	E
		TOTAL FUNDING		TRN			
107.	X92	OAHU DISTRICT WAREHOUSE BUILDING, OAHU					
		CONSTRUCTION FOR A WAREHOUSE BUILDING AT THE OAHU DISTRICT BASEYARD AND FOR THE RENOVATION OF AN EXISTING WAREHOUSE FOR A HEAVY EQUIPMENT REPAIR SHOP.				1,230	
		CONSTRUCTION				1,230E	E
		TOTAL FUNDING		TRN			
108.	S131	KALAELOA BOULEVARD TRUCK WEIGHING STATION, OAHU					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR A ROADWAY, INSPECTION AREA, WEIGHT STATION PAD AND A WEIGHT HOUSE. PROJECT TO INCLUDE FURNISHING AND INSTALLATION OF A WEIGHT SCALE, COMPUTER EQUIPMENT, SIGNALS, SIGNS AND OTHER APPURTENANCES.				1	
		LAND DESIGN				95	
		CONSTRUCTION				2,144	
		TOTAL FUNDING		TRN		2,240E	E
109.	S220	KALANIANAOLE HIGHWAY ROADSIDE BARRIER FROM HANAUMA BAY TO SANDY BEACH, OAHU					
		CONSTRUCTION FOR INSTALLING ROADSIDE BARRIERS AND PAVED SHOULDERS FROM HANAUMA BAY TO SANDY BEACH.				1,810	
		CONSTRUCTION				1,810E	E
		TOTAL FUNDING		TRN			



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
110.	S221	KALANIANAOLE HIGHWAY, INOAOLE STREAM BRIDGE, WAIMANALO, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF THE INOAOLE STREAM BRIDGE WITH A LARGER BRIDGE, INCLUDING IMPROVEMENTS TO THE ROADWAY APPROACHES, DETOUR ROAD AND UTILITY RELOCATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			5,280		
		TOTAL FUNDING	TRN		1,055E		E
			TRN		4,225N		N
111.	S222	MALAEKAHANA STREAM BRIDGE, OAHU					
		CONSTRUCTION FOR A NEW BRIDGE AT MALAEKAHANA STREAM ON KAMEHAMEHA HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			2,650		
		TOTAL FUNDING	TRN		530E		E
			TRN		2,120N		N
112.	S226	FARRINGTON HIGHWAY, PILIOKOE BRIDGE TO ALA HEMA STREET, OAHU					
		DESIGN AND CONSTRUCTION FOR INSTALLING HIGHWAY LIGHTING ALONG FARRINGTON HIGHWAY.					
		DESIGN			25		
		CONSTRUCTION			1,075		
		TOTAL FUNDING	TRN		1,100E		E
113.	S239	TRAFFIC MANAGEMENT SYSTEM, INTERSTATE H-1, H-2 AND KALANIANAOLE HIGHWAY, OAHU					
		CONSTRUCTION OF A TRAFFIC MANAGEMENT SYSTEM WHICH INCLUDES THE INSTALLATION OF VARIABLE & CHANGEABLE MESSAGE SIGNS, LOOP DETECTORS, EMERGENCY TELEPHONES, TRAFFIC SIGNAL SYSTEMS, FIBER-OPTIC CABLES AND CAMERAS (CCTV), TRAFFIC CONTROL CENTER & PROCUREMENT OF COMPUTER HARDWARE & SOFTWARE. THIS PROJECT IS DEEMED NECESSARY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					4,000
		TOTAL FUNDING	TRN			E	800E
			TRN			N	3,200N
114.	S240	KEAAHALA ROAD WIDENING, OAHU					
		DESIGN AND CONSTRUCTION FOR WIDENING KEAAHALA ROAD FROM TWO LANES TO FOUR LANES FROM POOKELA ROAD TO KAHEKILI HIGHWAY.					
		DESIGN			100		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION					3,050
		TOTAL FUNDING	TRN		100E		3,050E
115.	S243	KAILUA ROAD SHOULDER IMPROVEMENTS FOR BICYCLE ROUTE, OAHU					
		CONSTRUCTION FOR KAILUA ROAD BICYCLE ROUTE FROM KALANIANAOLE HIGHWAY TO HAMAKUA DRIVE INCLUDING UPGRADING AND PAVING THE SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING.					
		CONSTRUCTION					825
		TOTAL FUNDING	TRN		E		165E
			TRN		N		660N
116.	S244	ALA MOANA BOULEVARD IMPROVEMENTS, ATKINSON DRIVE TO KALAKAUA AVENUE, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO ALA MOANA BOULEVARD. PROJECT INCLUDES LANDSCAPING AND OTHER ROADWAY IMPROVEMENTS ON ALA MOANA BOULEVARD FROM ATKINSON DRIVE TO KALAKAUA AVENUE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					8,380
		TOTAL FUNDING	TRN		E		1,675E
			TRN		N		6,705N
117.	S253	INTERSTATE ROUTE H-1, PUNAHOU STREET OFF-RAMP IMPROVEMENTS, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR THE WIDENING OF INTERSTATE ROUTE H-1 AT THE PUNAHOU STREET OFF-RAMP. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			2,500		
		CONSTRUCTION					6,600
		TOTAL FUNDING	TRN		250E		660E
			TRN		2,250N		5,940N
118.	S254	KEEHI AND PEARL CITY BASEYARDS SECURITY WALL, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACING THE EXISTING CHAIN LINK PERIMETER FENCE WITH A CONCRETE TILE WALL.					
		DESIGN			45		
		CONSTRUCTION					450
		TOTAL FUNDING	TRN		45E		450E
119.	S255	WINDWARD BASEYARD WATER CONNECTION, OAHU					
		DESIGN AND CONSTRUCTION FOR INSTALLING A PERMANENT WATER CONNECTION TO THE WINDWARD BASEYARD.					
		DESIGN			10		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION			75		
		TOTAL FUNDING	TRN		85E		E
120.	S256	KEEHI BASEYARD WASHRACK AND WATER RECLAMATION TANK, OAHU					
		DESIGN AND CONSTRUCTION FOR INSTALLING A WASHRACK AND WATER RECLAMATION TANK FOR WASHING AND CLEANING STATE VEHICLES.					
		DESIGN			40		
		CONSTRUCTION					250
		TOTAL FUNDING	TRN		40E		250E
121.	S257	CASTLE HILLS ACCESS ROAD DRAINAGE IMPROVEMENTS, OAHU					
		LAND ACQUISITION AND DESIGN FOR STORM RETENTION STRUCTURES, EROSION CONTROL AND PROPERTY ACQUISITION TO REPAIR STORM DAMAGE AND EROSION.					
		LAND					500
		DESIGN			150		
		TOTAL FUNDING	TRN		150E		500E
122.	S258	FARRINGTON HIGHWAY IMPROVEMENTS, NANAKULI TO MAKAHA, OAHU					
		PLANS AND DESIGN FOR SAFETY AND OPERATIONAL IMPROVEMENTS TO FARRINGTON HIGHWAY INCLUDING SIDEWALKS, SIGNALIZED PEDESTRIAN CROSSWALKS OR BRIDGES, AND CONTINUOUS LEFT TURN LANES.					
		PLANS			1		
		DESIGN			999		
		TOTAL FUNDING	TRN		1,000E		E
123.	S259	INTERSTATE H-1 AND MOANALUA FREEWAYS, GLARE SCREENS AND GUARDRAILS, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACING GLARE SCREENS ON THE CONCRETE MEDIAN BARRIER AND REPLACING AND/OR INSTALLING GUARDRAILS ON THE H-1 FREEWAY AND MOANALUA FREEWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENTS.					
		DESIGN			90		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		250E		E
			TRN		840N		N
124.	S260	KALANIANAOLE HIGHWAY, ROCKFALL PROTECTION AT MAKAPUU, OAHU					
		DESIGN AND CONSTRUCTION FOR A ROCKFALL PROTECTION AND/OR SCALING BACK THE EXISTING SLOPES ON KALANIANAOLE HIGHWAY IN THE VICINITY OF MAKAPUU.					
		DESIGN			200		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION					2,000
		TOTAL FUNDING	TRN		200E		2,000E
125.	S261	KALANIANAOLE HIGHWAY IMPROVEMENTS FOR DISABILITY ACCESS, OAHU					
		DESIGN AND CONSTRUCTION FOR DISABILITY ACCESS ALONG KALANIANAOLE HIGHWAY FROM WEST HIND DRIVE TO KEAHOLE STREET. PROJECT INCLUDES WHEELCHAIR RAMPS, UTILITY RELOCATION, SIGN RELOCATION AND RECONSTRUCTING SIDEWALKS.					
		DESIGN			70		
		CONSTRUCTION			500		
		TOTAL FUNDING	TRN		570E		E
126.	S262	KAMEHAMEHA HIGHWAY LANDSCAPE BEAUTIFICATION AND IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR LANDSCAPE BEAUTIFICATION AND IMPROVEMENTS ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF THE ARIZONA MEMORIAL.					
		DESIGN			40		
		CONSTRUCTION			300		
		TOTAL FUNDING	TRN		340E		E
127.	S263	WAIALAE AVENUE LANDSCAPE BEAUTIFICATION AND IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR LANDSCAPE BEAUTIFICATION AND IMPROVEMENTS ON WAIALAE AVENUE IN THE VICINITY OF THE KAHALA MALL SHOPPING CENTER.					
		DESIGN			50		
		CONSTRUCTION			310		
		TOTAL FUNDING	TRN		360E		E
128.	S264	WAKANAKA STREET, INSTALLATION OF HIGHWAY LIGHTS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTING ON WAKANAKA STREET.					
		DESIGN			35		
		CONSTRUCTION					210
		TOTAL FUNDING	TRN		35E		210E
129.	S265	MOKAPU SADDLE ROAD, INSTALLATION OF HIGHWAY LIGHTS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTS ON MOKAPU SADDLE ROAD FROM H-3 FREEWAY TO ONEAWA STREET.					
		DESIGN			35		
		CONSTRUCTION					425
		TOTAL FUNDING	TRN		35E		425E
130.	S266	GUARDRAIL AND SHOULDER IMPROVEMENTS, VARIOUS LOCATIONS, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING THE EXISTING GUARDRAILS INCLUDING END TERMINALS AND CRASH ATTENUATORS, RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
					250		250
					3,000		3,000
		TOTAL FUNDING	TRN		650E		650E
			TRN		2,600N		2,600N
131.	S267	HIGHWAYS DIVISION LANDSCAPING MANAGING SYSTEM, OAHU					
		PLANS FOR DEVELOPMENT OF A LANDSCAPE MANAGING SYSTEM FOR THE ISLAND OF OAHU, INCLUDING WATER SOURCES FOR IRRIGATION, INTEGRATED VEGETATIVE MANAGEMENT, LANDSCAPE PLANNING, CONSTRUCTION AND MAINTENANCE.					
					300		
		TOTAL FUNDING	TRN		300E		E
132.	S268	KAMEHAMEHA HIGHWAY, REPLACEMENT OF HALAWA STREAM BRIDGE, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF HALAWA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
					65		
							3,780
		TOTAL FUNDING	TRN		20E		760E
			TRN		45N		3,020N
133.	S269	KAMEHAMEHA HIGHWAY, REPLACEMENT OF SOUTH PUNALUU BRIDGE, OAHU					
		DESIGN FOR REPLACEMENT OF SOUTH PUNALUU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
							600
		TOTAL FUNDING	TRN		E		125E
			TRN		N		475N
134.	S270	MISCELLANEOUS TRAFFIC OPERATIONAL IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRICTIONS, CONSTRUCTING TURNING LANES, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS AND OTHER IMPROVEMENTS.					
					95		95
					1,000		1,000

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	TRN		1,095E		1,095E
135.	SP9101	NORTH/SOUTH ROAD, KAPOLEI PARKWAY TO INTERSTATE ROUTE H-1, OAHU					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR A NEW MULTI-LANE HIGHWAY FROM KAPOLEI PARKWAY TO H-1 FREEWAY. PHASE ONE WILL BE FROM KAPOLEI PARKWAY TO FARRINGTON HIGHWAY AND PHASE TWO WILL BE FROM FARRINGTON HIGHWAY TO TO H-1 FREEWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			500		500
		DESIGN			4,000		
		CONSTRUCTION			14,000		
		TOTAL FUNDING	TRN		6,900E		100E
			TRN		11,600N		400N
136.	SP9602	FARRINGTON HIGHWAY, SIDEWALKS BETWEEN PAIWA AND LEOOLE STREETS, OAHU					
		CONSTRUCTION FOR SIDEWALKS ALONG THE MAKAI SIDE OF FARRINGTON HIGHWAY BETWEEN PAIWA (AWANUI) AND LEOOLE STREETS.					
		CONSTRUCTION			3,000		
		TOTAL FUNDING	TRN		3,000E		E
137.	SP9606	INTERSTATE ROUTE H-1, LUNALILO STREET OFF-RAMP AND ON-RAMP, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERIM IMPROVEMENTS ON H-1 FREEWAY IN THE WESTBOUND DIRECTION BETWEEN LUNALILO ON-RAMP AND VINEYARD OFF-RAMP.					
		DESIGN			1		
		CONSTRUCTION			1,029		
		TOTAL FUNDING	TRN		1,030E		E
138.		KALAKAUA AVENUE BRIDGE IMPROVEMENTS, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR WIDENING OF THE KALAKAUA AVENUE BRIDGE INCLUDING ADDITIONAL LANES AND SIDEWALKS.					
		PLANS			250		
		DESIGN			250		
		CONSTRUCTION					1,500
		TOTAL FUNDING	TRN		500C		1,500C
139.		ALA MOANA BOULEVARD SIGNAGE AND CROSSWALKS, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENT OF ADDITIONAL SIGNAGE AND CROSSWALKS ALONG ALA MOANA BOULEVARD BETWEEN KALAKAUA AVENUE AND ATKINSON DRIVE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS				10	
		DESIGN				40	
		CONSTRUCTION				400	
		EQUIPMENT				50	
		TOTAL FUNDING	TRN			500E	E
140.	R30	INTERSTATE ROUTE H-3, COAST GUARD ANTENNA REMOVAL, OAHU					
		CONSTRUCTION FOR THE DEMOLITION AND DISPOSAL OF THE COAST GUARD OMEGA STATION ANTENNA PRIOR TO THE OPENING OF THE H-3 FREEWAY TO PUBLIC TRAFFIC AND USAGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				3,000	
		TOTAL FUNDING	TRN			300E	E
			TRN			2,700N	N
141.	S18	KAMEHAMEHA HIGHWAY SAFETY IMPROVEMENTS, KIPAPA GULCH TOWARDS MILILANI, OAHU					
		DESIGN AND CONSTRUCTION FOR PHASE TWO OF SAFETY IMPROVEMENTS ON KAMEHAMEHA HIGHWAY FROM KIPAPA GULCH TOWARDS MILILANI TO CONTROL HILLSIDE EROSION. PROJECT TO INCLUDE ROCKFALL PROTECTION CHAIN LINK NETTING.					
		DESIGN				75	
		CONSTRUCTION				750	
		TOTAL FUNDING	TRN			825E	E
142.	S271	INTERSTATE H-1 AND MOANALUA FREEWAYS IMPROVEMENTS, PUULOA TO KAPIOLANI, OAHU					
		DESIGN AND CONSTRUCTION FOR AN ADDITIONAL LANE OF THE H-1 FREEWAY INBOUND LANES FROM THE VICINITY OF MIDDLE STREET TO THE VICINITY OF VINEYARD BOULEVARD AND OTHER IMPROVEMENTS TO IMPROVE TRAFFIC FLOW. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				300	
		CONSTRUCTION				1,500	
		TOTAL FUNDING	TRN			600E	E
			TRN			1,200N	N
143.	S272	FARRINGTON HIGHWAY IMPROVEMENTS, WAIPAHU DEPOT ROAD TO ANIANI STREET, OAHU					
		DESIGN FOR THE VERTICAL REALIGNMENT OF FARRINGTON HIGHWAY FROM WAIPAHU DEPOT ROAD TO ANIANI STREET TO INCLUDE BRIDGE REPLACEMENT, UTILITY RELOCATION, TEST PITS, BORINGS AND OTHER IMPROVEMENTS.					
		DESIGN					1,000
		TOTAL FUNDING	TRN			E	1,000E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
144.	SP9507	KUNIA ROAD WIDENING, SOUTH KUPUNA LOOP TO ANONUI STREET, OAHU					
		CONSTRUCTION FOR THE WIDENING OF KUNIA ROAD INCLUDING MODIFICATION OF LANE USE AND TRAFFIC SIGNALIZATION AT THE KUNIA ROAD/NORTH KUPUNA LOOP AND KUNIA ROAD/SOUTH KUPUNA LOOP INTERSECTIONS; WIDENING OF EXISTING WESTBOUND OFF RAMP FROM H-1 TO NORTHBOUND KUNIA ROAD; AND TRAFFIC SIGNALIZATION AT THE KUNIA ROAD INTERSECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			1,500		
		TOTAL FUNDING	TRN		700N		N
			TRN		800R		R
145.		MOANALUA ROAD AND H-1 WAI AU INTERCHANGE, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS IN THE VICINITY OF MOANALUA ROAD AND INTERSTATE H-1 WAI AU INTERCHANGE. PROJECT TO INCLUDE THE INSTALLATION OF TRAFFIC SIGNALIZATION AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			50		
		CONSTRUCTION			250		
		TOTAL FUNDING	TRN		300E		E
146.		MAUKA HIGHWAY, MAKAHA TO NANAKULI, OAHU					
		PLANS FOR DEVELOPMENT OF A MAUKA HIGHWAY, INCLUDING AN ENVIRONMENTAL IMPACT STATEMENT FOR A MAUKA HIGHWAY AS AN ALTERNATIVE ROUTE TO FARRINGTON HIGHWAY FROM MAKAHA TO NANAKULI.					
		PLANS			1,000		
		TOTAL FUNDING	TRN		1,000E		E
147.		FARRINGTON HIGHWAY, TRAFFIC SIGNALS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR INSTALLATION OF TRAFFIC SIGNAL LIGHTS AT TWO INTERSECTIONS: FARRINGTON HIGHWAY AND LAUMANIA STREET; FARRINGTON HIGHWAY AND WAIOMEA AVENUE.					
		DESIGN			99		
		CONSTRUCTION			840		
		EQUIPMENT			1		
		TOTAL FUNDING	TRN		940E		E
148.		FARRINGTON HIGHWAY, SAFETY IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT TO INSTALL FLASHING YELLOW LIGHTS ON FARRINGTON HIGHWAY AT TWO LOCATIONS: WAIANAE BOUND, BEFORE LAALOA STREET; HONOLULU BOUND, BEFORE WAIOMEA STREET.					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN			4		
		CONSTRUCTION			27		
		EQUIPMENT			1		
		TOTAL FUNDING	TRN		32E		E
149.		FARRINGTON HIGHWAY, DRAINAGE SYSTEM IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT TO IMPROVE DRAINAGE SYSTEM ON MAKAI SIDE OF FARRINGTON HIGHWAY FRONTING ULEHAWA BEACH PARK.					
		DESIGN			49		
		CONSTRUCTION			125		
		EQUIPMENT			1		
		TOTAL FUNDING	TRN		175E		E
150.		FARRINGTON HIGHWAY, DRAINAGE SYSTEM IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT TO IMPROVE DRAINAGE SYSTEM ON FARRINGTON HIGHWAY BETWEEN MOHIHI STREET AND HALELUA STREET.					
		DESIGN			25		
		CONSTRUCTION			127		
		EQUIPMENT			1		
		TOTAL FUNDING	TRN		153E		E
151.		FARRINGTON HIGHWAY, DRAINAGE SYSTEM IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS TO DRAINAGE SYSTEM ON MAUKA AND MAKAI SIDE OF FARRINGTON HIGHWAY FROM NANAKULI RANCH TO THE GTE BUILDING.					
		DESIGN			26		
		CONSTRUCTION			305		
		EQUIPMENT			1		
		TOTAL FUNDING	TRN		332E		E
152.		FORT WEAVER ROAD LANDSCAPING IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR LANDSCAPING IMPROVEMENTS AND THE INSTALLATION OF AN IRRIGATION SYSTEM FOR FORT WEAVER ROAD.					
		DESIGN			1		
		CONSTRUCTION			798		
		EQUIPMENT			1		
		TOTAL FUNDING	TRN		800E		E
153.		FARRINGTON HIGHWAY MEDIAL STRIP, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A MEDIAL STRIP FOR FARRINGTON HIGHWAY FROM KAMEHAMEHA HIGHWAY TO FORT WEAVER ROAD.					
		PLANS			500		
		DESIGN			1,500		
		CONSTRUCTION					5,000
		TOTAL FUNDING	TRN		2,000E		1,000E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			TRN		N		4,000N
154.		SALT LAKE BOULEVARD IMPROVEMENTS, PHASE III, OAHU					
		DESIGN AND CONSTRUCTION FOR SALT LAKE BOULEVARD IMPROVEMENTS, PHASE III.					
		DESIGN				200	
		CONSTRUCTION				1,800	
		TOTAL FUNDING	TRN			2,000E	E
155.		FARRINGTON HIGHWAY RETAINING WALL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL ALONG FARRINGTON HIGHWAY ABOVE THE WAIPAHU HIGH SCHOOL ATHLETIC FIELD.					
		DESIGN				15	
		CONSTRUCTION				350	
		TOTAL FUNDING	TRN			365E	E
156.		INTERSTATE H-2 MEDIAL STRIP, MILILANI TO WAHIAWA, OAHU					
		DESIGN AND CONSTRUCTION FOR A MEDIAL STRIP FOR INTERSTATE H-2 FROM MILILANI TO WAHIAWA TO PROVIDE ADDITIONAL PROTECTION AND NECESSARY IMPROVEMENTS FOR THE SAFETY OF DRIVING MOTORISTS.					
		DESIGN				50	
		CONSTRUCTION				200	
		TOTAL FUNDING	TRN			250E	E
157.		FORT WEAVER ROAD AND RENTON ROAD DRAINAGE IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR PAVED SHOULDERS, INLET STRUCTURES AND INSTALLATION OF CULVERTS TO CONNECT INTO EXISTING DRAINAGE SYSTEM TO ALLEVIATE FLOODING CONDITIONS AT THE INTERSECTION OF FORT WEAVER ROAD AND RENTON ROAD.					
		DESIGN				40	
		CONSTRUCTION				300	
		TOTAL FUNDING	TRN			340E	E
158.		FARRINGTON HIGHWAY AND WAIOMEA STREET INTERSECTION IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT FARRINGTON HIGHWAY AND WAIOMEA STREET. PROJECT TO INCLUDE THE INSTALLATION OF TRAFFIC LIGHTS, WARNING LIGHTS AND OTHER NECESSARY IMPROVEMENTS.					
		DESIGN				50	
		CONSTRUCTION				300	
		TOTAL FUNDING	TRN			350E	E
159.		KAMEHAMEHA HIGHWAY DRAINAGE IMPROVEMENTS AT KAAAWA, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR PAVED SHOULDERS, INLET STRUCTURES AND INSTALLATION OF DRAIN INTAKE STRUCTURES ON KAMEHAMEHA HIGHWAY IN KAAWA TO ALLEVIATE FLOODING CONDITIONS.					
			DESIGN		100		
			CONSTRUCTION		500		
			TOTAL FUNDING	TRN	600E		E
<b>TRN511 - HAWAII HIGHWAYS</b>							
160.	T64	KEAAU-PAHOA ROAD, KEAAU TOWN SECTION, HAWAII					
		CONSTRUCTION FOR A NEW ROADWAY AROUND KEAAU TOWN TO REDUCE TRAFFIC CONGESTION WITHIN THE TOWN. (SPECIAL FUNDS FROM DUTY FREE)					
			CONSTRUCTION		13,500		
			TOTAL FUNDING	TRN	13,500B		B
161.	T77	GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, HAWAII					
		DESIGN AND CONSTRUCTION FOR INSTALLING OF UPGRADED GUARDRAILS INCLUDING END TERMINALS AND ATTENUATORS, AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
			DESIGN		215		215
			CONSTRUCTION		2,040		2,040
			TOTAL FUNDING	TRN	455E		455E
				TRN	1,800N		1,800N
162.	T82	QUEEN KAAHUMANU HIGHWAY WIDENING, HAWAII					
		CONSTRUCTION FOR THE WIDENING OF QUEEN KAAHUMANU HIGHWAY TO A FOUR LANE DIVIDED HIGHWAY FROM PALANI ROAD TOWARDS KAWAIHAE INCLUDING PAVED SHOULDERS FOR A BIKE ROUTE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING AND/OR REIMBURSEMENT.					
			CONSTRUCTION				25,200
			TOTAL FUNDING	TRN		E	5,040E
				TRN		N	20,160N
163.	T110	HAWAII BELT ROAD, ROCKFALL PROTECTION AT VARIOUS SECTIONS, HAWAII					
		LAND ACQUISITION AND CONSTRUCTION OF SLOPE PROTECTION ALONG ROUTE 19, HAWAII BELT ROAD IN THE VICINITY OF MAULUA GULCH LAUPAHOEHOE GULCH AND KAWALI'I GULCH. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
			LAND		500		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION					3,500
		TOTAL FUNDING	TRN		100E		700E
			TRN		400N		2,800N
164.	T112	REPLACE BRIDGES AT KUPAPAU LUA, POPOO, AUWAI AKEAKUA AND HALAULANI, HAWAII					
		CONSTRUCTION FOR REPLACEMENT OF KUPAPAU LUA, POPOO, AUWAI AKEAKUA AND HALAULANI BRIDGES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					9,110
		TOTAL FUNDING	TRN		E		1,830E
			TRN		N		7,280N
165.	T116	KAWAIHAE ROAD BYPASS, WAIMEA TO KAWAIHAE, HAWAII					
		PLANS FOR A NEW ROAD FROM WAIMEA TO KAWAIHAE TO INCLUDE PLANNING AND ENVIRONMENTAL STUDIES.					
		PLANS					1,515
		TOTAL FUNDING	TRN		E		1,515E
166.	T117	PUAINAKO STREET IMPROVEMENTS FROM KILAUEA AVE. TO KANOELEHUA AVE., HAWAII					
		DESIGN AND CONSTRUCTION FOR INTERSECTION WIDENING AND TRAFFIC SIGNAL IMPROVEMENTS ON PUAINAKO STREET BETWEEN KILAUEA AVENUE TO KANOELEHUA AVENUE.					
		DESIGN			105		
		CONSTRUCTION					2,030
		TOTAL FUNDING	TRN		105E		2,030E
167.	T118	MISCELLANEOUS TRAFFIC OPERATIONAL IMPROVEMENTS, HAWAII					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATIONS INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES AND OTHER IMPROVEMENTS.					
		LAND			55		
		DESIGN			105		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		1,160E		E
168.	T119	HILO AND WAIMEA BASEYARDS WASTEWATER SYSTEMS, HAWAII					
		DESIGN AND CONSTRUCTION TO PROVIDE WASTEWATER IMPROVEMENTS NECESSARY TO MEET DEPARTMENT OF HEALTH'S COMPLIANCE.					
		DESIGN			25		25
		CONSTRUCTION			60		60

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	TRN		85E		85E
169.	T120	HANDICAPPED ACCESSIBILITY FOR SIDEWALKS ON ROUTES 240 AND 270, HAWAII					
		DESIGN AND CONSTRUCTION TO INSTALL WHEELCHAIR RAMPS AND RECONSTRUCT SIDEWALKS IN HONOKAA, HAWI, AND KAPAAU.					
		DESIGN					50
		CONSTRUCTION					100
		TOTAL FUNDING	TRN		E		150E
170.	T121	FLASHING WARNING LIGHTS AT VARIOUS HIGHWAY LOCATIONS, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF FLASHING WARNING LIGHTS ON ROUTE 11, ROUTE 19, ROUTE 130 AND ROUTE 250.					
		DESIGN					30
		CONSTRUCTION					100
		TOTAL FUNDING	TRN		E		130E
171.		ROUTE 11 AND OLD VOLCANO HIGHWAY STREET LIGHTS, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF STREET LIGHTS AT THE INTERSECTION OF ROUTE 11 AND OLD VOLCANO HIGHWAY.					
		DESIGN				1	
		CONSTRUCTION				18	
		EQUIPMENT				1	
		TOTAL FUNDING	TRN		20E		E
<b>TRN531 - MAUI HIGHWAYS</b>							
172.	V04	HONOAPILANI HIGHWAY WIDENING, KUIHELANI HIGHWAY TO MAALAEA HARBOR, MAUI					
		DESIGN AND CONSTRUCTION FOR THE WIDENING OF HONOAPILANI HIGHWAY, PHASE II, FROM NORTH KIHEI ROAD TO THE MAALAEA HARBOR ENTRANCE TO A FOUR-LANE DIVIDED HIGHWAY FOR ADDITIONAL CAPACITY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				100	
		CONSTRUCTION					10,600
		TOTAL FUNDING	TRN		20E		2,120E
			TRN		80N		8,480N
173.	V14	KUIHELANI HIGHWAY WIDENING, HONOAPILANI HIGHWAY TO PUUNENE AVENUE, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION FOR THE WIDENING OF KUIHELANI HIGHWAY, FROM HONOAPIILANI HIGHWAY TO PUUNENE AVENUE FROM TWO LANES TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
					10,150		
		TOTAL FUNDING	TRN		2,030E		E
			TRN		8,120N		N
174.	V48	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI					
		DESIGN AND CONSTRUCTION TO BUILD ASPHALT CONCRETE PAVED SHOULDERS, THE INSTALLATION OF NEW METAL GUARDRAILS AND/OR UPGRADING EXISTING GUARDRAILS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
					25		25
		CONSTRUCTION			1,250		1,250
		TOTAL FUNDING	TRN		275E		275E
			TRN		1,000N		1,000N
175.	V49	HONOAPIILANI HIGHWAY ROCKFALL PROTECTION ALONG THE PALI SECTION, MAUI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF CHAINLINK DRAPERY ALONG CUT SLOPES TO PREVENT ROCKS FROM FALLING ONTO THE HIGHWAY.					
					20		
		CONSTRUCTION			1,320		
		TOTAL FUNDING	TRN		1,340E		E
176.	V51	HONOAPIILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO PUAMANA, MAUI					
		LAND ACQUISITION FOR THE WIDENING OF THE EXISTING HIGHWAY AND/OR CONSTRUCTION OF A NEW ALIGNMENT FROM HONOKOWAI TO PUAMANA, LAHAINA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					9,475
		TOTAL FUNDING	TRN			E	1,985E
			TRN			N	7,490N
177.	V52	HANA HIGHWAY, REPLACEMENT OF THREE TIMBER BRIDGES, MAUI					
		CONSTRUCTION FOR THE REPLACEMENT OF THREE TIMBER BRIDGES AND APPROACHES, PHASE II, KAUPAKALUA AND UAOA BRIDGES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					8,000
		TOTAL FUNDING	TRN			E	1,600E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
			TRN		N		6,400N
178.	V73	PUUNENE AVE./MOKULELE HWY. WIDENING, KUIHELANI HWY. TO PIILANI HWY., MAUI					
		DESIGN FOR THE WIDENING OF PUUNENE AVENUE AND MOKULELE HIGHWAY FROM TWO LANES TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,010		
		TOTAL FUNDING	TRN		205E		E
			TRN		805N		N
179.	V74	PAIA BYPASS ROAD, MAUI					
		PLANS FOR A NEW ROUTE TO BYPASS THE TOWN OF PAIA.					
		PLANS			1,010		
		TOTAL FUNDING	TRN		1,010E		E
180.	V75	HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI					
		PLANS AND DESIGN TO REMOVE OVERHANGING, PROTRUDING AND/OR UNSTABLE ROCKS FROM THE SLOPES ABOVE HANA HIGHWAY.					
		PLANS			45		
		DESIGN					85
		TOTAL FUNDING	TRN		45E		85E
181.	V76	HANA HWY./KAAHUMANU AVE. BEAUTIFICATION, DAIRY ROAD TO NANAILOA OVERPASS, MAUI					
		DESIGN AND CONSTRUCTION FOR THE BEAUTIFICATION OF THE MAIN CORRIDOR BETWEEN KAHULUI AND WAILUKU TO INCLUDE LANDSCAPING AND IRRIGATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			110		
		CONSTRUCTION			1,025		
		TOTAL FUNDING	TRN		230E		E
			TRN		905N		N
182.	V77	STREET LIGHTS AT VARIOUS HIGHWAY LOCATIONS, MAUI					
		DESIGN AND CONSTRUCTION OF STREET LIGHTS ON VARIOUS LOCATIONS ON STATE HIGHWAYS.					
		DESIGN			50		
		CONSTRUCTION			200		
		TOTAL FUNDING	TRN		250E		E
183.	V78	HONOAPILANI HIGHWAY PASSING LANES, MAALAEA HARBOR TO PUAMANA, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS AND DESIGN TO CONSTRUCT PASSING LANES ON HONOAPILANI HIGHWAY BETWEEN MAALAEA HARBOR AND PUAMANA.					
		PLANS DESIGN			1 364		
		TOTAL FUNDING	TRN		365E		E
184.	V79	DRAINAGE IMPROVEMENTS AT VARIOUS LOCATIONS ON STATE HIGHWAYS, MAUI					
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO PREVENT FLOODING ON KAAHUMANU AVENUE, PUUNENE AVENUE AND HANA HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			385		
		CONSTRUCTION			3,250		
		TOTAL FUNDING	TRN		715E		E
			TRN		2,920N		N
185.	V80	HONOAPILANI HIGHWAY, REPLACEMENT OF OLOWALU "B" BRIDGE, MAUI					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF OLOWALU "B" BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND DESIGN			25		305
		CONSTRUCTION					1,175
		TOTAL FUNDING	TRN		5E		300E
			TRN		20N		1,180N
186.	V81	KEKAULIKE AVENUE, REPLACEMENT OF NAALAE GULCH (ALAE) BRIDGE, MAUI					
		DESIGN FOR REPLACEMENT OF NAALAE GULCH (ALAE) BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					670
		TOTAL FUNDING	TRN		E		140E
			TRN		N		530N
187.	V82	HONOAPILANI HIGHWAY STABILIZING EMBANKMENT SLOPE, MAUI					
		LAND ACQUISITION AND DESIGN FOR THE STABILIZING OF THE HIGHWAY EMBANKMENT FROM HONOKOWAI TO KAPALUA INCLUDING FLATTENING THE EMBANKMENT SLOPES AND CONSTRUCTING RETAINING WALLS.					
		LAND DESIGN			30		1,315
		TOTAL FUNDING	TRN		30E		1,315E
188.	V83	MISCELLANEOUS TRAFFIC OPERATIONAL IMPROVEMENTS, MAUI					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES INCLUDING ELIMINATING CONSTRICTIONS, CONSTRUCTING TURNING LANES, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS AND OTHER IMPROVEMENTS.					
		DESIGN			50		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		1,050E		E
189.	V63	KAHULUI AIRPORT ACCESS ROAD, MAUI					
		CONSTRUCTION FOR AN ACCESS ROAD FROM PUUNENE AVENUE TO KAHULUI AIRPORT. PROJECT TO INCLUDE AN INTERCHANGE AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION			65,000		
		TOTAL FUNDING	TRN		65,000B		B
190.		WAIEHU BEACH ROAD, MAUI					
		DESIGN AND CONSTRUCTION FOR A DUAL LEFT TURN STORAGE LANE ON WAIEHU BEACH ROAD TO KUHIO PLACE AND KEALII DRIVE. PROJECT TO INCLUDE THE INSTALLATION OF TRAFFIC LIGHTS AND OTHER NECESSARY IMPROVEMENTS.					
		DESIGN			160		
		CONSTRUCTION			600		
		TOTAL FUNDING	TRN		760E		E
<b>TRN541 - MOLOKAI HIGHWAYS</b>							
191.	W08	GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, MOLOKAI					
		DESIGN AND CONSTRUCTION FOR CONSTRUCTING ASPHALT CONCRETE PAVED SHOULDERS, INSTALLING AND/OR UPGRADING METAL GUARDRAILS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			20		
		CONSTRUCTION					610
		TOTAL FUNDING	TRN		5E		125E
			TRN		15N		485N
192.	W10	MOLOKAI BASEYARD, MOLOKAI					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR A MAINTENANCE BASEYARD FACILITY ON MOLOKAI. PROJECT TO INCLUDE AN OFFICE BUILDING, STORAGE SHED, MOTOR VEHICLE AND EQUIPMENT SHED, MECHANICS SHOP AND SITE IMPROVEMENTS.					
		LAND			400		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN			100		
		CONSTRUCTION					3,100
		TOTAL FUNDING	TRN		500E		3,100E
<b>TRN561 - KAUAI HIGHWAYS</b>							
193.	X06	KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI					
		PLANS FOR WIDENING OF KAUMUALII HIGHWAY FROM LIHUE TO WEST OF MALUHIA ROAD FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			2,850		
		TOTAL FUNDING	TRN		570E		E
			TRN		2,280N		N
194.	X07	KUHIO HIGHWAY IMPROVEMENTS, HANAMAULU TO KAPAA, KAUAI					
		LAND ACQUISITION AND DESIGN FOR A NEW KAPAA BYPASS AND/OR WIDENED SECTIONS OF KUHIO HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND DESIGN			5,400		11,000
		TOTAL FUNDING	TRN		1,080E		2,200E
			TRN		4,320N		8,800N
195.	X51	GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, KAUAI					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS INCLUDING END TERMINALS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			310		110
		CONSTRUCTION			3,030		1,015
		TOTAL FUNDING	TRN		675E		230E
			TRN		2,665N		895N
196.	X63	KAUMUALII HIGHWAY SHORING CAUSEWAY, KAUAI					
		CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY, KUHIO HIGHWAY AND RICE STREET INTERSECTIONS. PROJECT TO INCLUDE REALIGNMENT OF KAUMUALII HIGHWAY, RELOCATION OF UTILITY POLES, DRAINAGE IMPROVEMENTS AND RECONSTRUCTION OF THE TRAFFIC SIGNALS. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION			7,110		

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	TRN	7,110B			B
197.	X105	KAUMUALII HIGHWAY, ACCELERATION LANE AT MALUHIA ROAD, KAUAI					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION OF AN ACCELERATION LANE WITH SHOULDERS STARTING FROM MALUHIA ROAD AND GOING EAST ALONG KAUMUALII HIGHWAY. PROJECT INCLUDES RELOCATING EXISTING POWER POLES AND TRAFFIC SIGNS, AND EXTENDING CULVERTS.					
		LAND		100			
		DESIGN		80			
		CONSTRUCTION		690			
		TOTAL FUNDING	TRN	870E			E
198.	X106	KUHIO HIGHWAY, MOIKEHA BRIDGE WIDENING, KAUAI					
		DESIGN FOR WIDENING MOIKEHA BRIDGE TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					240
		TOTAL FUNDING	TRN		E		50E
			TRN		N		190N
199.	X107	WESTSIDE SATELLITE BASEYARD, KAUAI					
		DESIGN FOR A SATELLITE BASEYARD INCLUDING A NEW OFFICE BUILDING, EQUIPMENT STORAGE AREA, MATERIALS STORAGE AREA AND A PARKING AREA.					
		DESIGN		400			
		TOTAL FUNDING	TRN	400E			E
200.	X108	KUHIO HIGHWAY, REPLACEMENT OF WAIPA STREAM BRIDGE, KAUAI					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR REPLACEMENT OF WAIPA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		410			
		DESIGN		710			
		CONSTRUCTION				4,140	
		TOTAL FUNDING	TRN	230E		830E	
			TRN	890N		3,310N	
201.	X109	KUHIO HIGHWAY, REPLACEMENT OF WAIKOKO STREAM BRIDGE, KAUAI					
		DESIGN FOR REPLACEMENT OF WAIKOKO STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					290
		TOTAL FUNDING	TRN		E		65E
			TRN		N		225N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
202.	X110	KUHIO HIGHWAY SHOULDER IMPROVEMENTS, PRINCEVILLE TO HAENA, KAUAI					
		DESIGN FOR STABILIZING AND/OR PAVING THE SHOULDERS; REMOVING AND INSTALLING GUARDRAILS AND REFLECTOR MARKERS; CONSTRUCTING CONCRETE GUTTERS; EXTENDING EXISTING DRAINAGE PIPES AND STRUCTURES; AND TRIMMING AND DRESSING OF SHOULDERS.					
			DESIGN				310
		TOTAL FUNDING	TRN		E		310E
203.	X111	CENTRALIZED DISTRICT OFFICE AND BASEYARD COMPLEX, KAUAI					
		DESIGN FOR A NEW CENTRALIZED DISTRICT OFFICE AND BASEYARD COMPLEX FOR THE HIGHWAYS DIVISION KAUAI DISTRICT OFFICE.					
			DESIGN			1,000	
		TOTAL FUNDING	TRN			1,000E	E
204.	X112	MISCELLANEOUS TRAFFIC OPERATIONAL IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION. PROJECT INCLUDES ELIMINATING CONSTRUCTIONS, CONSTRUCTING TURNING LANES, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS AND OTHER IMPROVEMENTS.					
			DESIGN			50	
			CONSTRUCTION			1,200	
		TOTAL FUNDING	TRN			1,250E	E
205.	X68	KUHIO HIGHWAY, WAIKAEA BRIDGE WIDENING, KAUAI					
		DESIGN AND CONSTRUCTION FOR WIDENING WAIKAEA BRIDGE AND ITS APPROACHES FROM 3 TO 4 LANES INCLUDING CONSTRUCTING PAVED SHOULDERS AND LEFT-TURN STORAGE LANES FOR OHIA STREET AND ULU STREET INTERSECTIONS AND THE PONO KAI SUBDIVISION ENTRANCE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
			DESIGN			25	
			CONSTRUCTION			2,500	
		TOTAL FUNDING	TRN			505E	E
			TRN			2,020N	N
206.		KUHIO HIGHWAY DRAINAGE IMPROVEMENTS, KAUAI					
		PLANS, DESIGN AND CONSTRUCTION FOR FLOOD MITIGATIVE MEASURES INCLUDING BUT NOT LIMITED TO CULVERTS, AND OTHER MISCELLANEOUS DRAINAGE IMPROVEMENTS FROM THE HANAIEI BRIDGE ALONG KUHIO HIGHWAY THROUGH HANAIEI TOWN.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS			5		
		DESIGN			10		
		CONSTRUCTION			85		
		TOTAL FUNDING	TRN		100B		B

TRN595 - HIGHWAYS ADMINISTRATION

207. X96 CLOSE-OUT OF HIGHWAY RIGHT-OF-WAY, STATEWIDE

LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS TO PROVIDE THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.

LAND		300	300
TOTAL FUNDING	TRN	300E	300E

208. X97 MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, GRATED DROP INLETS, LINED SWALES, HEADWALLS AND CULVERTS AT VARIOUS LOCATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		130	130
CONSTRUCTION		1,560	1,010
TOTAL FUNDING	TRN	445E	335E
	TRN	1,245N	805N

209. X98 IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE

DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY INCLUDING THE 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.

DESIGN		375	375
CONSTRUCTION		2,500	2,500
TOTAL FUNDING	TRN	875E	875E
	TRN	2,000N	2,000N

210. 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		1,750	1,750
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	TRN		420E		420E
			TRN		1,330N		1,330N
211.	X220	INSTALLATION OF EMERGENCY TELEPHONES AT VARIOUS HIGHWAY LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF EMERGENCY SOLAR POWERED CELLULAR TELEPHONES ON EACH ISLAND. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			30		30
		CONSTRUCTION			765		765
		TOTAL FUNDING	TRN		185E		185E
			TRN		610N		610N
212.	X221	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS HIGHWAY LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF EXISTING TRAFFIC CONTROLLERS, CABLES AND CONDUITS, PULLBOXES AND TRAFFIC SIGNAL APPURTENANCES TO PROVIDE INTERCONNECTION OF SIGNALIZED INTERSECTIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			300		
		CONSTRUCTION			1,500		1,500
		TOTAL FUNDING	TRN		600E		300E
			TRN		1,200N		1,200N
213.	X223	TELECOMMUNICATIONS PLAN, STATEWIDE					
		PLANS FOR PERMITTING THE USE OF THE HIGHWAY RIGHT-OF-WAY FOR TELECOMMUNICATIONS, TO INCLUDE BUT NOT LIMITED TO OPTIC FIBER CABLES AND CONDUITS.					
		PLANS			300		
		TOTAL FUNDING	TRN		300E		E
214.	X224	HIGHWAY SHORELINE PROTECTION, STATEWIDE					
		PLANS FOR DEVELOPING A STATEWIDE MASTER PLAN FOR THE PROTECTION OF THE STATE HIGHWAYS BEING IMPACTED BY SHORELINE EROSION.					
		PLANS			500		
		TOTAL FUNDING	TRN		500E		E
215.	X225	HIGHWAYS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECTS STAFF COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECTS RELATED POSITIONS.					
		PLANS			1		1
		LAND			1		1
		DESIGN			1		1
		CONSTRUCTION			18,997		18,997
		TOTAL FUNDING	TRN		6,000B		6,000B
			TRN		10,000E		10,000E
			TRN		3,000N		3,000N

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

- 840801 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. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		20,369	
TOTAL FUNDING	HTH	3,395C	C
	HTH	16,974N	N

- 840802 STATE CAPITALIZATION GRANT DRINKING WATER REVOLVING FUND, STATEWIDE

CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS TO COMPLY WITH THE SAFE DRINKING WATER ACT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		15,575	15,575
TOTAL FUNDING	HTH	3,115C	3,115C
	HTH	12,460N	12,460N

LNR402 - FORESTS AND WILDLIFE RESOURCES

- D-45 KAWAI NUI MARSH WILDLIFE SANCTUARY, OAHU

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION FOR WILDLIFE CONSERVATION FACILITIES TO INCLUDE: SHALLOW PONDS, WATER CONTROL STRUCTURES, VEGETATION REMOVAL, BOUNDARY FENCES AND BOUNDARY SIGNS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					3,420
		TOTAL FUNDING	LNR		C		855C
			LNR		N		2,565N
4.	D-70	MOKULEIA FOREST RESERVE FIREBREAK ROAD, OAHU					
		CONSTRUCTION FOR A FIREBREAK ROAD IN THE MOKULEIA FOREST RESERVE ADJACENT TO MAKUA VALLEY FIRING RANGE.					
		CONSTRUCTION				35	
		TOTAL FUNDING	LNR			35C	C
5.	D-71	HILO BASEYARD UNDERGROUND FUEL TANK REPLACEMENT AND HYDRAULIC LIFT, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE REMOVAL AND DISPOSAL OF THREE (3) UNDERGROUND FUEL TANKS AND REPLACEMENT WITH ABOVE GROUND FUEL STORAGE SYSTEMS. THIS PROJECT IS NEEDED TO COMPLY WITH FEDERAL, STATE, AND COUNTY SAFETY REGULATIONS AND MEET OPERATIONAL NEEDS. PROJECT WILL ALSO INCLUDE A HYDRAULIC LIFT TO SERVICE VEHICLES.					
		PLANS				2	
		DESIGN				3	
		CONSTRUCTION					120
		EQUIPMENT				25	
		TOTAL FUNDING	LNR			30C	120C
<b>LNR404 - WATER RESOURCES</b>							
6.	G55B	KALAOA MONITOR WELL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR A DEEP MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		CONSTRUCTION				480	
		EQUIPMENT				20	
		TOTAL FUNDING	LNR			500C	C
7.	G55C	KAHALUU MONITOR WELL, KONA, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR A DEEP MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		CONSTRUCTION				210	
		EQUIPMENT				20	
		TOTAL FUNDING	LNR			230C	C



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
8.	G55D	LAHAINA MONITOR WELL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A DEEP MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		CONSTRUCTION			230		
		EQUIPMENT			20		
		TOTAL FUNDING	LNR		250C		C
9.	G55F	MONITOR WELL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A DEEP MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		CONSTRUCTION			265		
		EQUIPMENT			20		
		TOTAL FUNDING	LNR		285C		C
<b>LNR405 - CONSERVATION &amp; RESOURCES ENFORCEMENT</b>							
10.	H08	HUNTER EDUCATION FACILITY, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A HUNTER EDUCATION FACILITY TO INCLUDE OFFICE SPACE, CLASSROOM/TRAINING, AND STORAGE FACILITIES AND HANDICAP ACCESS. FEDERAL FUNDS ARE AVAILABLE THROUGH THE PITTMAN-ROBERTSON PROGRAM.					
		PLANS			5		
		DESIGN			40		
		CONSTRUCTION					425
		TOTAL FUNDING	LNR		45N		425N
11.	H09	HUNTER EDUCATION FACILITY, WAIMEA, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION FOR A HUNTER EDUCATION FACILITY TO INCLUDE OFFICE SPACE, CLASSROOM/TRAINING, AND STORAGE FACILITIES AND HANDICAP ACCESS. FEDERAL FUNDS ARE AVAILABLE THROUGH THE PITTMAN-ROBERTSON PROGRAM.					
		PLANS			5		
		DESIGN			40		
		CONSTRUCTION					425
		TOTAL FUNDING	LNR		45N		425N
<b>LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT</b>							
12.	950026	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS		1,560		1,560	
		TOTAL FUNDING	LNR	1,560C		1,560C	
<b>E. HEALTH</b>							
<b>HTH101 - TUBERCULOSIS/HANSEN'S DISEASE CONTROL</b>							
1.	101801	LANAKILA HEALTH CENTER, RENOVATE TB CONTROL PROGRAM SPACE, OAHU					
		PLANS AND DESIGN TO RENOVATE THE TB CONTROL PROGRAM SPACE TO MEET INFECTION CONTROL GUIDELINES.					
		PLANS		24			
		DESIGN		116			
		TOTAL FUNDING	AGS	140C			C
<b>HTH111 - HANSEN'S DISEASE INSTITUTIONAL SERVICES</b>							
2.	111801	HALE MOHALU HOSPITAL, ASBESTOS REMOVAL, PHASE II, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL OF ASBESTOS MATERIALS. PROJECT TO INCLUDE THE REPLACEMENT OF CEILING AND LIGHT FIXTURES IN VARIOUS AREAS OF THE HOSPITAL.					
		DESIGN		25			
		CONSTRUCTION		225			
		TOTAL FUNDING	AGS	250C			C
3.	111802	KALAUPAPA MEDICAL FACILITY, INFECTIOUS WASTE CONTROL STERILIZER, MOLOKAI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW STERILIZER FOR INFECTIOUS WASTE CONTROL AT THE KALAUPAPA MEDICAL FACILITY.					
		DESIGN		15			
		CONSTRUCTION		50			
		EQUIPMENT		50			
		TOTAL FUNDING	AGS	115C			C
<b>HTH501 - DEVELOPMENTAL DISABILITIES</b>							
4.	501801	HILO DAY ACTIVITY CENTER, NEW FACILITY, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW FACILITY FOR THE HILO DAY ACTIVITY PROGRAM.					
		DESIGN		288			
		CONSTRUCTION				4,582	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		EQUIPMENT					1
		TOTAL FUNDING	AGS		288C		4,583C
5.	501803	WAIMANO TRAINING SCHOOL AND HOSPITAL, WATER SYSTEM IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE WATER SYSTEM AT WAIMANO. PROJECT WILL INCLUDE INCREASING WATER CAPACITY AND REPLACEMENT OF DISTRIBUTION LINES.					
		DESIGN				75	
		CONSTRUCTION				955	
		TOTAL FUNDING	AGS		1,030C		C
6.		WAIPAHU INDEPENDENT LIVING APARTMENT COMPLEX, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR DEVELOPMENT OF AN ASSISTIVE TECHNOLOGY ENHANCED, INDEPENDENT LIVING APARTMENT COMPLEX FOR PEOPLE WITH SEVERE PHYSICAL DISABILITIES TO BE LOCATED IN WAIPAHU.					
		DESIGN				1	
		CONSTRUCTION				698	
		EQUIPMENT				1	
		TOTAL FUNDING	HTH		700C		C
<b>HTH595 - HEALTH RESOURCES ADMINISTRATION</b>							
7.		WAIANAE COAST COMPREHENSIVE HEALTH CENTER, OAHU					
		DESIGN AND CONSTRUCTION FOR A CENTRAL AIR CONDITIONING SYSTEM.					
		DESIGN				62	
		CONSTRUCTION				224	
		TOTAL FUNDING	HTH		286C		C
8.		KOKUA KALIHI VALLEY HEALTH CENTER, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW HEALTH CENTER FACILITY FOR THE LOW INCOME RESIDENTS OF KALIHI VALLEY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.					
		PLANS				1	
		LAND				1	
		DESIGN				1	
		CONSTRUCTION				496	
		EQUIPMENT				1	
		TOTAL FUNDING	HTH		500C		C
9.		KAHUKU HOSPITAL, LONG TERM CARE UNIT, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATIONS AND IMPROVEMENTS TO THE LONG TERM CARE UNIT AT KAHUKU HOSPITAL.					
		PLANS				10	
		DESIGN				100	
		CONSTRUCTION					2,999

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		EQUIPMENT					1
		TOTAL FUNDING	HTH		110C		3,000C
<b>HTH210 - COMMUNITY HOSPITALS</b>							
10.		MALUHIA FACILITY IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE EXPANSION AND IMPROVEMENT OF THE ADULT DAY HEALTH CENTER FOR THE PROGRAM OF ALL INCLUSIVE CARE FOR THE ELDERLY (PACE).					
		DESIGN			39		
		CONSTRUCTION			638		
		EQUIPMENT			25		
		TOTAL FUNDING	HTH		702C		C
11.		MAUI MEMORIAL HOSPITAL, AIR CONDITIONING IMPROVEMENTS, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR AIR CONDITIONING IMPROVEMENTS AT MAUI MEMORIAL HOSPITAL TO INCLUDE THE INSTALLATION OF VARIOUS AIR CONDITIONING COMPONENTS.					
		CONSTRUCTION			257		
		EQUIPMENT			1		
		TOTAL FUNDING	HTH		258C		C
12.		KULA HOSPITAL, WINDOW RENOVATION AND IMPROVEMENTS, MAUI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR WINDOW RENOVATION AND IMPROVEMENTS AT KULA HOSPITAL TO INCLUDE THE NECESSARY INSTALLATION OF VARIOUS WINDOW COMPONENTS.					
		DESIGN			59		
		CONSTRUCTION			900		
		EQUIPMENT			1		
		TOTAL FUNDING	HTH		960C		C
13.		MAUI MEMORIAL HOSPITAL, MASTER PLAN DEVELOPMENT, MAUI					
		PLANS FOR MASTER PLAN DEVELOPMENT OF MAUI MEMORIAL HOSPITAL FOR FACILITIES AND FUTURE REQUIREMENTS.					
		PLANS			245		
		TOTAL FUNDING	HTH		245C		C
<b>HTH420 - ADULT MENTAL HEALTH</b>							
14.		FRIENDSHIP HOUSE, KAUAI					
		DESIGN, CONSTRUCTION AND EQUIPMENT TO COMPLETE THE FRIENDSHIP HOUSE ON KAUAI.					
		DESIGN			1		
		CONSTRUCTION			248		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		250C		C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
<b>HTH430 - HAWAII STATE HOSPITAL</b>							
15.	430801	HAWAII STATE HOSPITAL, INSTALL DURESS SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL A DURESS SYSTEM THROUGHOUT THE HOSPITAL COMPLEX.					
		DESIGN			94		
		CONSTRUCTION					1,061
		TOTAL FUNDING	AGS		94C		1,061C
16.	430802	HAWAII STATE HOSPITAL, FUEL STORAGE TANKS, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE UNDERGROUND FUEL STORAGE TANKS ON HOSPITAL GROUNDS.					
		DESIGN			20		
		CONSTRUCTION			76		
		TOTAL FUNDING	AGS		96C		C
17.	430803	HAWAII STATE HOSPITAL, UPGRADE EMERGENCY POWER SYSTEM, OAHU					
		DESIGN TO UPGRADE THE EMERGENCY POWER SYSTEM FOR THE HOSPITAL.					
		DESIGN			124		
		TOTAL FUNDING	AGS		124C		C
<b>HTH460 - CHILD &amp; ADOLESCENT MENTAL HEALTH</b>							
18.	460801	RESIDENTIAL CHILDREN'S FACILITIES, STATEWIDE					
		PLANS, DESIGN AND CONSTRUCTION FOR RESIDENTIAL CHILDREN'S FACILITIES FOR THE CHILD AND ADOLESCENT MENTAL HEALTH DIVISION.					
		PLANS			180		
		DESIGN			206		
		CONSTRUCTION			3,500		
		TOTAL FUNDING	AGS		3,886C		C
19.		TRAILERS FOR COMPREHENSIVE STUDENT SUPPORT SYSTEM (CSSS), STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE COMPREHENSIVE STUDENT SUPPORT SYSTEM (CSSS) INITIATIVE. PROJECT MAY INCLUDE PURCHASE OF PORTABLE TRAILERS FOR THE CSSS PROGRAM.					
		PLANS			1		
		DESIGN			24		
		CONSTRUCTION			100		
		EQUIPMENT			375		
		TOTAL FUNDING	HTH		500C		C
<b>HTH610 - ENVIRONMENTAL HEALTH SERVICES</b>							
20.	610301	NEW VECTOR CONTROL FACILITY, HALAWA, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW VECTOR CONTROL FACILITY TO REPLACE EXISTING FACILITY. FACILITY TO INCLUDE LABORATORY FACILITIES AND OFFICES FOR THE VECTOR ADMINISTRATION AND FIELD OPERATIONS. PROJECT TO ALSO INCLUDE ON-SITE AND OFF-SITE IMPROVEMENTS AND NECESSARY APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				7,348	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS			7,449C	C

HTH904 - EXECUTIVE OFFICE ON AGING

21. HELPING HANDS HAWAII WAREHOUSE AND OFFICE SPACE, OAHU

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A HELPING HANDS HAWAII WAREHOUSE AND OFFICE BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

PLANS				1	
LAND				1	
DESIGN				2,246	
CONSTRUCTION				1	
EQUIPMENT				1	
TOTAL FUNDING	HTH			2,250C	C

HTH907 - GENERAL ADMINISTRATION

22. 907501 CORRECTIONS TO ACCOMMODATE HANDICAPPED IN DOH FACILITIES, STATEWIDE

CONSTRUCTION FOR MODIFICATIONS FOR THE HANDICAPPED TO CORRECT EXISTING ARCHITECTURAL BARRIERS AT DEPARTMENT OF HEALTH FACILITIES.

CONSTRUCTION				2,000	
TOTAL FUNDING	AGS			2,000C	C

23. 907802 DIAMOND HEAD HEALTH CENTER, RELOCATE FRESH AIR INTAKE FOR A/C SYSTEM, OAHU

DESIGN AND CONSTRUCTION TO RELOCATE THE FRESH AIR INTAKE FOR THE AIR CONDITIONING SYSTEM.

DESIGN				33	
CONSTRUCTION				226	
TOTAL FUNDING	AGS			259C	C

24. WAIMANALO HEALTH CENTER, OAHU

PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR CODE AND RELATED IMPROVEMENTS FOR THE WAIMANALO HEALTH CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

PLANS				2	
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN			2		
		CONSTRUCTION			344		
		EQUIPMENT			2		
		TOTAL FUNDING	HTH		250C		C
			HTH		100R		R

F. SOCIAL SERVICES

HMS501 - YOUTH SERVICES ADMINISTRATION

1. 501-98 HYCF COMPLEX PROJECT II, OAHU

PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR FACILITIES ON THE HYCF COMPLEX GROUNDS AND SATELLITE ADJUNCTS, INCLUDING RENOVATIONS AND INFRASTRUCTURE SUPPORT AND IMPROVEMENTS, PHASES II, III AND IV.

PLANS			1	
DESIGN			700	
CONSTRUCTION			7,199	
EQUIPMENT			100	
TOTAL FUNDING	AGS		8,000C	C

HMS502 - YOUTH SERVICES PROGRAM

2. MAUI YOUTH AND FAMILY SERVICES CAMPUS SUPPORT BUILDING, MAUI

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE MAUI YOUTH AND FAMILY SERVICES CAMPUS SUPPORT BUILDING TO HOUSE SUBSTANCE ABUSE RESIDENTIAL HOMES, THERAPEUTIC GROUP HOMES, INDEPENDENT LIVING HOME AND AND OTHER NECESSARY IMPROVEMENTS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

PLANS			1	
LAND			1	
DESIGN			1	
CONSTRUCTION			1,996	
EQUIPMENT			1	
TOTAL FUNDING	HMS		2,000C	C

DEF112 - SERVICES TO VETERANS

3. 0VS931 VETERANS' CEMETERIES UPGRADE AND DEVELOPMENT, STATEWIDE

CONSTRUCTION FOR THE UPGRADE AND DEVELOPMENT OF VETERANS' CEMETERIES AT VARIOUS NEIGHBOR ISLAND SITES INCLUDING KAUAI, MAUI, MOLOKAI, LANAI, HILO AND WEST HAWAII.

CONSTRUCTION			800	
TOTAL FUNDING	DEF		800C	C

HMS220 - RENTAL HOUSING SERVICES

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
4.	HA9705	HAUIKI HOMES SMOKE DETECTORS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF SMOKE DETECTORS AT HAUIKI HOMES.					
		DESIGN				5	
		CONSTRUCTION				45	
		TOTAL FUNDING	HMS			50C	C
5.	HA9709	HAUIKI HOMES AND PALOLO HOMES I, RETAINING WALLS, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL NEW RETAINING WALLS AT HAUIKI HOMES AND PALOLO HOMES I.					
		DESIGN				30	
		CONSTRUCTION				290	
		TOTAL FUNDING	HMS			320C	C
6.	HA9720	HAUIKI HOMES PAINT ABATEMENT AND REPAINTING, OAHU					
		DESIGN AND CONSTRUCTION TO REMOVE AND DISPOSE OF EXTERIOR LEAD BASED PAINT AND REPAINT BUILDINGS AT HAUIKI HOMES.					
		DESIGN				125	
		CONSTRUCTION					1,575
		TOTAL FUNDING	HMS			125C	1,575C
7.	HA98A1	HALE NANA KAI O KEA, NEW SEWER LINE, KAUAI					
		CONSTRUCTION FOR INSTALLATION OF NEW SEWER LINE AT HALE NANA KAI O KEA ON A SHARED BASIS.					
		CONSTRUCTION				35	
		TOTAL FUNDING	HMS			35C	C
8.	HA98A2	STATE PUBLIC HOUSING LEAD BASED PAINT ABATEMENT AND REROOFING, STATEWIDE					
		DESIGN FOR THE ABATEMENT OF LEAD BASED PAINT AND INSTALLATION OF IMPROVED ROOFING SYSTEMS IN STATE LOW INCOME HOUSING UNITS.					
		DESIGN				800	
		TOTAL FUNDING	HMS			800C	C
9.	HA9808	PALOLO HOMES I STAIRS, WALLS AND SIDEWALKS, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL STAIRS, WALLS AND SIDEWALKS AT PALOLO HOMES I.					
		DESIGN				30	
		CONSTRUCTION				285	
		TOTAL FUNDING	HMS			315C	C
10.	HA9810	PUAHALA HOMES STAIRS, WALLS AND SIDEWALKS, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL STAIRS, WALLS AND SIDEWALKS AT PUAHALA HOMES.					
		DESIGN				20	



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION				180	
		TOTAL FUNDING	HMS			200C	C
11.	KALIHI	VALLEY HOMES, ROADWAY AND SEWER LINE, OAHU					
		PLANS, DESIGN AND CONSTRUCTION TO RECONSTRUCT THE ROADWAY TO THE ENTRANCE OF THE PROJECT AND THE RECONSTRUCTION OF THE EXISTING 8 INCH SEWER LINE.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				198	
		TOTAL FUNDING	HMS			200C	C
<b>HMS807 - TEACHER HOUSING</b>							
12.	TH9801	TEACHER HOUSING LEAD BASED PAINT ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE ABATEMENT OF LEAD BASED PAINT IN TEACHER HOUSING COTTAGES, STATEWIDE. HAZARDOUS LEAD BASED PAINT WILL BE REMOVED OR ENCAPSULATED FROM TEACHER HOUSING COTTAGES.					
		DESIGN				59	
		CONSTRUCTION				589	
		TOTAL FUNDING	HMS			648C	C
13.	TH9802	TEACHER HOUSING DEMOLITION AND NEW CONSTRUCTION, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE DEMOLITION OF UNREQUIRED COTTAGES AND CONSTRUCTION OF REPLACEMENT TEACHER HOUSING COTTAGES.					
		DESIGN				102	
		CONSTRUCTION				1,026	
		TOTAL FUNDING	HMS			1,128C	C
<b>HMS229 - HOUSING ASSISTANCE ADMINISTRATION</b>							
14.	H-7061	KALIHI VALLEY HOMES IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR BUILDING AND SITE IMPROVEMENTS AT THE EXISTING KALIHI VALLEY HOMES PROJECT TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION					803
		TOTAL FUNDING	HMS			N	803N
15.	H-7062	WAIPAHU I HOUSING IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR BUILDING AND SITE IMPROVEMENTS AT WAIPAHU I HOUSING TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION					525
		TOTAL FUNDING	HMS			N	525N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
16.	HA1704	LANAKILA HOMES IMPROVEMENTS, HAWAII					
		CONSTRUCTION FOR SITE AND BUILDING IMPROVEMENTS FOR THE LANAKILA HOMES TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION			1,365		1,517
		TOTAL FUNDING	HMS		1,365N		1,517N
17.	HA1705	WAIMANALO HOMES IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR SITE AND BUILDING IMPROVEMENTS AT THE WAIMANALO HOMES TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION			1,248		
		TOTAL FUNDING	HMS		1,248N		N
18.	HA1708	KOOLAU VILLAGE BUILDING IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR VARIOUS SITE AND BUILDING IMPROVEMENTS TO RENOVATE KOOLAU VILLAGE TO CURRENT CODES AND STANDARDS.					
		CONSTRUCTION			956		
		TOTAL FUNDING	HMS		956N		N
19.	HA7081	MAILI I HOUSING IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR BUILDING AND SITE IMPROVEMENTS AT THE EXISTING MAILI I PROJECT TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION					695
		TOTAL FUNDING	HMS			N	695N
20.	HA7053	MAILI II HOUSING IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR BUILDING AND SITE IMPROVEMENTS AT THE EXISTING MAILI II PROJECT TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION					1,268
		TOTAL FUNDING	HMS			N	1,268N
21.	H704A1	KALANIHUIA HOUSING ASBESTOS REMOVAL AND REROOFING, OAHU					
		CONSTRUCTION FOR ASBESTOS REMOVAL AND REROOFING AT KALANIHUIA HOUSING.					
		CONSTRUCTION			160		
		TOTAL FUNDING	HMS		160N		N
22.	H705A1	MAYOR WRIGHT HOMES HEALTH AND SAFETY IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR INTERIM ABATEMENT OF LEAD BASED PAINT, SPALLING CONCRETE AND DETERIORATED RAILINGS AT MAYOR WRIGHT HOMES.					
		CONSTRUCTION			875		
		TOTAL FUNDING	HMS		875N		N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
23.	H912A1	KUHIO PARK TERRACE DEMOLITION AND PARKING IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR THE DEMOLITION OF BUILDINGS D-1 AND D-2 AND CONSTRUCT A NEW PARKING LOT AT KUHIO PARK TERRACE.					
		CONSTRUCTION				150	
		TOTAL FUNDING	HMS			150N	N
<b>BUF225 - PRIVATE HOUSING DEVELOPMENT &amp; OWNERSHIP</b>							
24.	HF8903	MILOLII WATER DEVELOPMENT PROJECT, HAWAII					
		CONSTRUCTION OF WATER WELLS, WATER DESALINATION STORAGE WATER TANKS, WATER LINES, AND NECESSITIES TO PROVIDE WATER FOR MILOLII RESIDENTS IN FULFILLMENT OF HEALTH REQUIREMENTS BY THE DEPARTMENT OF HEALTH.					
		CONSTRUCTION				50	
		TOTAL FUNDING	BUF			50C	C
25.		HOUSING INITIATIVES FOR PERSONS WITH SPECIAL NEEDS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR LIVING UNITS FOR PERSONS WITH SPECIAL NEEDS, STATEWIDE.					
		PLANS				20	
		LAND				887	
		DESIGN				29	
		CONSTRUCTION				264	
		TOTAL FUNDING	BUF			1,200C	C
<b>HHL602 - PLANNG, DEV, MGT &amp; GEN SPPT FOR HAWN HMSTDs</b>							
26.	LMD001	HAWAIIAN HOME LANDS DEVELOPMENT, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF HAWAIIAN HOME LANDS FOR RESIDENTIAL, AGRICULTURAL, AND OTHER PURPOSES PERMITTED BY THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.					
		PLANS				1	
		LAND				1	
		DESIGN				1	
		CONSTRUCTION				99,997	
		TOTAL FUNDING	HHL			100,000E	E
<b>G. FORMAL EDUCATION</b>							
<b>EDN100 - SCHOOL-BASED BUDGETING</b>							
1.	001	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES AND/OR TRAILER PORTABLES WHILE SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION/ REPAIR.					
					250		250
					4,500		4,500
					250		250
			AGS		5,000B		5,000B
2.	002	LUMP SUM CIP-MINOR RENOVATIONS TO BUILDINGS AND SCHOOL SITES, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES.					
					150		150
					1,600		1,600
					100		100
			AGS		1,850B		1,850B
3.	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 TO MEET FUTURE AND UNFORESEEN NEEDS AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.					
					995		1,000
					5		
			AGS		1,000B		1,000B
4.	004	LUMP SUM CIP-RENOVATIONS FOR NOISE ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION HIGH TEMPERATURE PROBLEMS.					
					100		100
					1,300		1,900
			AGS		1,400B		2,000B
5.	005	LUMP SUM CIP-FIRE PROTECTION, CODE VIOLATIONS AND ALARM SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS TO MEET COUNTY FIRE PROTECTION STANDARDS AND/OR FIRE CODE VIOLATIONS.					
					150		150
					850		850

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	AGS		1,000B		1,000B
6.	006	LUMP SUM CIP-ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS.					
		DESIGN			250		250
		CONSTRUCTION			3,000		3,000
		TOTAL FUNDING	AGS		3,250B		3,250B
7.	007	LUMP SUM CIP-SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND/OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION.					
		DESIGN			25		
		CONSTRUCTION			120		
		EQUIPMENT			5		
		TOTAL FUNDING	AGS		150B		B
8.	008	LUMP SUM CIP-ASBESTOS AND/OR LEAD PAINT REMOVAL IN SCHOOL BUILDINGS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE CORRECTION, IMPROVEMENT AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS, STATEWIDE. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD PAINT.					
		DESIGN					50
		CONSTRUCTION					450
		TOTAL FUNDING	AGS			B	500B
9.	009	LUMP SUM CIP-REQUIREMENTS FOR HEALTH AND SAFETY/LAWS AND ORDINANCES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES AND/OR COUNTY REQUIREMENTS.					
		DESIGN			50		50
		CONSTRUCTION			450		450
		TOTAL FUNDING	AGS		500B		500B
10.	011	LUMP SUM CIP-PROJECT ADJUSTMENT FUND, STATEWIDE					
		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 PROJECT.					
		DESIGN			200		200
		CONSTRUCTION			1,750		1,750
		EQUIPMENT			50		50

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	AGS	2,000B		2,000B	
11.	012	LUMP SUM CIP-TELECOMMUNICATIONS AND POWER INFRASTRUCTURE, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS.					
		DESIGN		250		250	
		CONSTRUCTION		3,700		3,700	
		EQUIPMENT		50		50	
		TOTAL FUNDING	AGS	4,000B		4,000B	
12.	014	LUMP SUM CIP-CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CIP PROJECTS FOR THE DOE. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CIP RELATED POSITIONS.					
		PLANS		250		250	
		TOTAL FUNDING	EDN	250B		250B	
13.	060	LUMP SUM CIP-STATE/DISTRICT RELOCATIONS AND IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS.					
		DESIGN		15			
		CONSTRUCTION		59			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	75B			B
14.		LUM SUM CIP - ELECTRICAL UPGRADES, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES AT SCHOOLS, STATEWIDE.					
		DESIGN		1		1	
		CONSTRUCTION		998		998	
		EQUIPMENT		1		1	
		TOTAL FUNDING	AGS	1,000B		1,000B	
15.		LUMP SUM CIP-EDUCATIONAL TECHNOLOGY INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR EDUCATIONAL TECHNOLOGY INFRASTRUCTURE IMPROVEMENTS.					
		DESIGN		102		102	
		CONSTRUCTION		3,000		3,000	
		EQUIPMENT		50		20	
		TOTAL FUNDING	AGS	3,152B		3,122B	
16.	301W80	CASTLE HIGH SCHOOL, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION TO DEMOLISH AND REMOVE OLD GYM (BLDG. W) UPON THE COMPLETION OF THE NEW GYM.					
		DESIGN			73		
		CONSTRUCTION			427		
		TOTAL FUNDING	AGS		500B		B
17.	402004	CASTLE HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			1,225		
		EQUIPMENT			75		
		TOTAL FUNDING	AGS		1,300B		B
18.	253A51	EWA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AN ADMINISTRATION/LIBRARY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES; AND RENOVATE TEMPORARY FACILITIES TO CLASSROOMS.					
		DESIGN			200		
		CONSTRUCTION				2,875	
		EQUIPMENT				125	
		TOTAL FUNDING	AGS		200B	3,000B	
19.	404J60	IAO INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF THE ARMORY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			700		
		CONSTRUCTION				4,800	
		EQUIPMENT				200	
		TOTAL FUNDING	AGS		700B	5,000B	
20.	371A51	KAHAKAI ELEMENTARY SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AN ADMINISTRATION AND/OR LIBRARY BUILDING(S); GROUND AND SITE IMPROVEMENTS; RENOVATE TEMPORARY FACILITIES TO CLASSROOMS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			275		
		CONSTRUCTION				3,438	
		EQUIPMENT				175	
		TOTAL FUNDING	AGS		275B	3,613B	
21.	449151	KAPAA II ELEMENTARY SCHOOL, KAUAI					
		PLANS AND DESIGN FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES; AND OFF SITE INFRASTRUCTURE.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS			200		
		DESIGN			800		
		TOTAL FUNDING	AGS		1,000B		B
22.	821151	KAPOLEI HIGH SCHOOL, OAHU					
		DESIGN FOR FIRST INCREMENT OF NEW HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1,000
		TOTAL FUNDING	AGS			B	1,000B
23.	822151	KAPOLEI INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT OF NEW INTERMEDIATE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			500		
		CONSTRUCTION			17,765		
		EQUIPMENT			500		
		TOTAL FUNDING	AGS		18,765B		B
24.	822251	KAPOLEI INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1,000		
		CONSTRUCTION					17,101
		EQUIPMENT					1
		TOTAL FUNDING	AGS		1,000B		17,102B
25.	448100	KAUAI INTERMEDIATE SCHOOL (NEW), KAUAI					
		LAND ACQUISITION, CONSTRUCTION AND EQUIPMENT FOR THE FIRST INCREMENT OF THE NEW SCHOOL. PROJECT TO INCLUDE CLASSROOMS; SUPPORT FACILITIES; ON/OFF SITE INFRASTRUCTURE; PARKING; PLAYCOURTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		LAND			500		
		CONSTRUCTION			2,650		16,800
		EQUIPMENT					300
		TOTAL FUNDING	AGS		3,150B		17,100B
26.	448251	KAUAI INTERMEDIATE SCHOOL, KAUAI					
		DESIGN FOR SECOND INCREMENT; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			1,000		
		TOTAL FUNDING	AGS		1,000B		B
27.	354151	KEAAU HIGH SCHOOL, HAWAII					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT; CLASSROOMS; COVERED WALKWAYS; SUPPORT FACILITIES; PLAYFIELDS AND PLAYCOURTS; TEACHER STATIONS AND STORAGE; ON/OFF SITE INFRASTRUCTURE, PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		29,500			
		EQUIPMENT		500			
		TOTAL FUNDING	AGS	30,000B			B
28.	354251	KEAAU HIGH SCHOOL, HAWAII					
		DESIGN FOR SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		1,200			
		TOTAL FUNDING	AGS	1,200B			B
29.	354351	KEAAU HIGH SCHOOL, HAWAII					
		DESIGN FOR THIRD INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					850
		TOTAL FUNDING	AGS		B		850B
30.	353251	KEAAU II ELEMENTARY SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SECOND INCREMENT; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		750			
		CONSTRUCTION					7,250
		EQUIPMENT					250
		TOTAL FUNDING	AGS	750B			7,500B
31.	392351	KEALAKEHE HIGH SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SECOND AND/OR THIRD INCREMENT; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		755			
		CONSTRUCTION		9,847			
		EQUIPMENT		300			
		TOTAL FUNDING	AGS	10,902B			B
32.	392451	KEALAKEHE HIGH SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE FOURTH INCREMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		700			
		CONSTRUCTION					5,125
		TOTAL FUNDING	AGS	700B			5,125B
33.	534006	KEONEPOKO ELEMENTARY SCHOOL, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR CAFETERIA WITH PREPARATION KITCHEN; COVERED WALKWAYS; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			1,027		
		TOTAL FUNDING	AGS		1,077B		B
34.	459151	KILAUEA ELEMENTARY SCHOOL, KAUAI					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			1,610		
		EQUIPMENT			40		
		TOTAL FUNDING	AGS		1,650B		B
35.	457A51	KING KAUMUALII ELEMENTARY SCHOOL, KAUAI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. RENOVATION OF TEMPORARY ADMINISTRATION OFFICE TO CLASSROOMS.					
		DESIGN			175		
		CONSTRUCTION				1,750	
		EQUIPMENT				20	
		TOTAL FUNDING	AGS		175B	1,770B	
36.	435451	KING KEKAULIKE HIGH SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR FOURTH INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			11,000	10,000	
		EQUIPMENT			618		
		TOTAL FUNDING	AGS		11,618B	10,000B	
37.		KING KEKAULIKE HIGH SCHOOL, MAUI					
		DESIGN AND CONSTRUCTION FOR A WATER STORAGE TANK FOR KING KEKAULIKE HIGH SCHOOL TO BE BUILT BY THE BOARD OF WATER SUPPLY, COUNTY OF MAUI.					
		DESIGN			5		
		CONSTRUCTION			1,095		
		TOTAL FUNDING	AGS		1,100B		B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
38.	375151	KONAWAENA ELEMENTARY (NEW) SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			500		
		CONSTRUCTION			4,860	13,455	
		EQUIPMENT				250	
		TOTAL FUNDING	AGS		5,360B	13,705B	
39.	375251	KONAWAENA ELEMENTARY SCHOOL (NEW), HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			700		
		CONSTRUCTION				4,685	
		EQUIPMENT				200	
		TOTAL FUNDING	AGS		700B	4,885B	
40.	411015	KUALAPUU ELEMENTARY SCHOOL, MOLOKAI					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			180		
		TOTAL FUNDING	AGS		180B		B
41.	412051	KULA ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				2,350	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS			2,400B	
42.	271051	LEIHOKU ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			2,350		
		EQUIPMENT			40		
		TOTAL FUNDING	AGS		2,390B		B
43.	215051	MAKALAPA ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN ADMINISTRATION BUILDING; RENOVATION OF TEMPORARY ADMINISTRATION OFFICES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			2,250		
		EQUIPMENT			125		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	AGS			2,375B	B
44.	216060	MILILANI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF AIR CONDITIONING FOR YEAR-ROUND MULTITRACK EDUCATION ACCOMMODATIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				300	
		CONSTRUCTION					2,900
		EQUIPMENT					100
		TOTAL FUNDING	AGS			300B	3,000B
45.	238251	MILILANI INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR FIRST AND SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN				1,000	
		CONSTRUCTION				17,450	
		EQUIPMENT				350	
		TOTAL FUNDING	AGS			18,800B	B
46.	421051	MOLOKAI HIGH AND INTERMEDIATE SCHOOL, MOLOKAI					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				3,725	
		EQUIPMENT				75	
		TOTAL FUNDING	AGS			3,800B	B
47.	852060	OLD MAUI HIGH SCHOOL SITE, MAUI					
		DESIGN FOR RENOVATION OF SITE FOR HAWAIIAN LANGUAGE IMMERSION PROGRAM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				300	
		TOTAL FUNDING	AGS			300B	B
48.	243A51	PEARL RIDGE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; RENOVATION OF TEMPORARY FACILITIES TO CLASSROOM(S); EQUIPMENT AND APPURTENANCES.					
		DESIGN				175	
		CONSTRUCTION					1,500
		EQUIPMENT					75
		TOTAL FUNDING	AGS			175B	1,575B
49.	314030	PUOHALA ELEMENTARY SCHOOL, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR RETAINING STRUCTURE AND DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			60		
		CONSTRUCTION					500
		TOTAL FUNDING	AGS		60B		500B
50.	147051	ROYAL ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR ADMINISTRATION/LIBRARY FACILITY; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS. RENOVATE EXISTING FACILITIES TO CLASSROOMS.					
		DESIGN			235		
		TOTAL FUNDING	AGS		235B		B
51.	284151	ROYAL KUNIA ELEMENTARY SCHOOL, OAHU					
		PLANS AND DESIGN FOR FIRST INCREMENT OF NEW SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					200
		DESIGN					1,300
		TOTAL FUNDING	AGS			B	1,500B
52.	420C51	SAMUEL ENOKA KALAMA INTERMEDIATE SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A NEW LIBRARY FACILITY; RENOVATE TEMPORARY LIBRARY TO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			2,525		
		EQUIPMENT			75		
		TOTAL FUNDING	AGS		2,600B		B
53.	288A51	WAI'AU ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR ADMINISTRATION/LIBRARY BUILDING(S); RENOVATION OF TEMPORARY FACILITIES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			3,225		
		EQUIPMENT			175		
		TOTAL FUNDING	AGS		3,400B		B
54.	424031	WAIHEE ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR A PLAYFIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			125		
		TOTAL FUNDING	AGS		125B		B
55.	424051	WAIHEE ELEMENTARY SCHOOL, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN FOR CLASSROOM BUILDING; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN					225
		TOTAL FUNDING	AGS		B		225B
56.	290251	WAIKELE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		450			
		CONSTRUCTION		7,900			
		EQUIPMENT		250			
		TOTAL FUNDING	AGS	8,600B			B
57.	393351	WAIKOLOA ELEMENTARY SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THIRD INCREMENT TO INCLUDE LIBRARY AND CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			225		
		CONSTRUCTION					3,200
		EQUIPMENT					100
		TOTAL FUNDING	AGS		225B		3,300B
58.		MISCELLANEOUS SCHOOL RENOVATIONS AND IMPROVEMENTS TO OLD URBAN SCHOOLS, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR MISCELLANEOUS RENOVATIONS AND IMPROVEMENTS TO OLDER URBAN HONOLULU DISTRICT SCHOOLS (KAAHUMANU ELEMENTARY; KALIHI KAI ELEMENTARY; LIKELIKE ELEMENTARY; MCKINLEY HIGH; AND ROOSEVELT HIGH); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				1	
		DESIGN				55	
		CONSTRUCTION				2,000	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			2,057C	C
59.		TECHNOLOGY INFRASTRUCTURE IMPROVEMENTS TO VARIOUS DOE SCHOOLS, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR COMPLETE TECHNOLOGY INFRASTRUCTURE IMPROVEMENTS TO VARIOUS DEPARTMENT OF EDUCATION SCHOOLS (KAIMUKI INTER, JEFFERSON, LIHOLIHO, WAIKIKI, ALA WAI, WASHINGTON, LIKELIKE, PALOLO, JARRETT, ROOSEVELT, STEVENSON, LINCOLN, MCKINLEY, ROYAL, DOLE, KALIHI WAENA, HIGHLANDS INTER, KUHIO, AND LUNALILO); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			1		
		DESIGN			249		
		CONSTRUCTION			2,500		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		2,751C		C
60.		AIEA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SPRINKLER SYSTEM IMPROVEMENTS TO INCLUDE AN AUTOMATIC SPRINKLER HEAD SYSTEM.					
		DESIGN			1		
		CONSTRUCTION			93		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		95C		C
61.		BEN PARKER ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR DRAINAGE IMPROVEMENTS TO INCLUDE CONCRETE LINING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			399		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		500C		C
62.		CENTRAL INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF SIX HUNDRED STUDENT LOCKERS.					
		DESIGN			1		
		CONSTRUCTION			43		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		45C		C
63.		EWA BEACH ELEMENTARY SCHOOL, OAHU					
		EQUIPMENT FOR A NEW CAFETORIUM FOR EWA BEACH ELEMENTARY SCHOOL.					
		EQUIPMENT			22		
		TOTAL FUNDING	AGS		22C		C
64.		FARRINGTON HIGH SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE IMPROVEMENTS TO THE EXISTING DRAINAGE SYSTEM SURROUNDING THE ATHLETIC COMPLEX AND ATHLETIC FIELD; MISCELLANEOUS IMPROVEMENTS TO THE LOCKER/SHOWER AND RESTROOM FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				1	
		DESIGN				58	
		CONSTRUCTION				400	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			460C	C
65.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A MOVABLE POOL BULKHEAD.					
		DESIGN				1	
		CONSTRUCTION				258	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			260C	C
66.		KALAHEO HIGH SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF SECURITY SCREENS AND OTHER MISCELLANEOUS IMPROVEMENTS THROUGHOUT THE COMPLEX.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				197	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			200C	C
67.		KALANI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A MULTIPURPOSE CLASSROOM FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				73	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			75C	C
68.		KAWANANAKOA INTERMEDIATE SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENTS TO THE AUDITORIUM. PROJECT TO INCLUDE THE RENOVATION OF THE ELECTRICAL SYSTEM, LIGHTING, PLUMBING, P.A. SYSTEM, AND OTHER MISCELLANEOUS EQUIPMENT AND APPURTENANCES.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				197	
		EQUIPMENT				1	



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	AGS			200C	C
69.		KAWANANAKOA INTEMEDATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF UNDERGROUND PLUMBING THROUGHOUT THE CAMPUS AND OTHER MISCELLANEOUS IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				15	
		CONSTRUCTION				100	
		EQUIPMENT				10	
		TOTAL FUNDING	AGS			125C	C
70.		KAWANANAKOA INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF THREE HUNDRED STUDENT LOCKERS.					
		DESIGN				3	
		CONSTRUCTION				15	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			19C	C
71.		KING LIHOLIHO ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AIR CONDITIONING OF CLASSROOMS.					
		DESIGN				1	
		CONSTRUCTION				190	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			192C	C
72.		KONAWAENA HIGH SCHOOL, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION FOR AN ALL-WEATHERIZED TRACK AND OTHER MISCELLANEOUS IMPROVEMENTS TO THE ATHLETIC FIELD AND COMPLEX.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				98	
		TOTAL FUNDING	AGS			100C	C
73.		LAHAINA INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE STUDENT MULTI-PURPOSE CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				62	
		CONSTRUCTION				1,400	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			1,463C	C
74.		LAHAINALUNA HIGH SCHOOL, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			174		
		CONSTRUCTION					3,057
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		274C		3,057C
75.		LANAKILA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL.					
		DESIGN			20		
		CONSTRUCTION			130		
		TOTAL FUNDING	AGS		150C		C
76.		LEHUA ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A PARKING LOT AND OTHER IMPROVEMENTS.					
		PLANS			1		
		DESIGN			248		
		CONSTRUCTION			1		
		TOTAL FUNDING	AGS		250C		C
77.		LIHIKAI ELEMENTARY SCHOOL, MAUI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR (2) PORTABLE SPECIAL EDUCATION FACILITIES.					
		DESIGN			8		
		CONSTRUCTION			201		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		210C		C
78.		MAEMAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION AND UPGRADE OF THE ELECTRICAL SYSTEM AND OTHER IMPROVEMENTS INCLUDING TRANSFORMERS, PANELS AND ADDITIONAL ELECTRICAL OUTLETS.					
		DESIGN			45		
		CONSTRUCTION			220		
		TOTAL FUNDING	AGS		265C		C
79.		MAEMAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RECONSTRUCTION AND IMPROVEMENTS TO SCHOOL'S ENTRANCE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			200		
		TOTAL FUNDING	AGS		250C		C
80.		NOELANI ELEMENTARY SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR THE RENOVATION AND/OR EXPANSION OF THE ADMINISTRATION BUILDING TO INCLUDE SPACE FOR THE PCNC, A +, AND OTHER SCHOOL PROGRAMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			57		
		CONSTRUCTION			233		
		TOTAL FUNDING	AGS		290C		C
81.		NUUANU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF SECURITY SCREENS FOR BUILDINGS B, F, H, AND I AND OTHER NECESSARY IMPROVEMENTS.					
		DESIGN			8		
		CONSTRUCTION			97		
		TOTAL FUNDING	AGS		105C		C
82.		NUUANU ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THE RESURFACING OF THE PARKING LOT, PLAYGROUND PLAYCOURT AND PATHS BETWEEN THE TWO AREAS; GROUND AND SITE IMPROVEMENTS.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			118		
		TOTAL FUNDING	AGS		120C		C
83.		NUUANU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE SCHOOL LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		
		CONSTRUCTION			899		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,000C		C
84.		PAHOA ELEMENTARY SCHOOL, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			48		
		TOTAL FUNDING	AGS		50C		C
85.		PEARL CITY ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AIR CONDITIONING OF BUILDINGS H, I, J, AND K.					
		DESIGN			1		
		CONSTRUCTION			773		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		775C		C
86.		PEARL RIDGE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF A CLASSROOM OR EXPANSION OF THE ADMINISTRATION BUILDING TO INCLUDE A VIDEO STUDIO AND BROADCAST BOOTH ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			20		
		CONSTRUCTION			150		
		EQUIPMENT			5		
		TOTAL FUNDING	AGS		175C		C
87.		ROOSEVELT HIGH SCHOOL, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR MASTER PLANNING OF RENOVATIONS AND IMPROVEMENTS TO THE CAMPUS, BUILDINGS, GROUNDS AND ATHLETIC FIELDS.					
		PLANS			249		
		LAND			1		
		DESIGN			100		
		TOTAL FUNDING	AGS		350C		C
88.		SALT LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF SEVEN CLASSROOMS INTO HALF PODS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			418		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		420C		C
89.		SALT LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT TO AIR CONDITION FOURTEEN HALF-PODS.					
		DESIGN			1		
		CONSTRUCTION			68		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		70C		C
90.		WAIMALU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF A CLASSROOM TO INCLUDE A VIDEO STUDIO AND BROADCAST BOOTH ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			20		
		CONSTRUCTION			70		
		EQUIPMENT			85		
		TOTAL FUNDING	AGS		175C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
<b>AGS807 - PHYSICAL PLANT OPERATIONS &amp; MAINTENANCE-AGS</b>							
91.	CSD02	LUMP SUM CIP, SCHOOL BUILDING IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ROOFING IMPROVEMENTS FOR PUBLIC SCHOOL FACILITIES.					
		DESIGN			784		
		CONSTRUCTION			5,747		
		TOTAL FUNDING	AGS		6,531C		C
92.		LUMP SUM CIP, SCHOOL BUILDING IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. PROJECT MAY INCLUDE ROOFING, AIR CONDITIONING, PAINTING, PLUMBLING, OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES MAINTAINED BY DAGS AND/OR DOE.					
		DESIGN			500		500
		CONSTRUCTION			16,500		16,500
		EQUIPMENT			500		500
		TOTAL FUNDING	AGS		17,500C		17,500C
<b>EDN407 - PUBLIC LIBRARIES</b>							
93.	01-H&S	HEALTH AND SAFETY REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR HEALTH AND SAFETY PROJECTS AT PUBLIC LIBRARY FACILITIES. PROJECT INCLUDES, BUT IS NOT LIMITED TO, ASBESTOS ABATEMENT, FIRE PROTECTION, REMOVAL OF ARCHITECTURAL BARRIERS, IMPROVEMENTS TO BUILDINGS AND GROUNDS, PROVISIONS FOR ENVIRONMENTAL CONTROLS AND THE REPLACEMENT OF HAZARDOUS FACILITIES.					
		PLANS			60		60
		DESIGN			300		300
		CONSTRUCTION			2,000		2,000
		EQUIPMENT			40		40
		TOTAL FUNDING	AGS		2,400C		2,400C
94.	02-NSK	NORTH SHORE KAUAI PUBLIC LIBRARY, KAUAI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					
		DESIGN			1		1
		CONSTRUCTION			3,998		1
		EQUIPMENT			1		398
		TOTAL FUNDING	AGS		4,000C		400C
95.	04-KOH	KOHALA PUBLIC LIBRARY, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN				200	
		CONSTRUCTION				3,999	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		C	4,200C	
96.	05-KAP	KAPOLEI PUBLIC LIBRARY, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS.					
		DESIGN		509		1	
		CONSTRUCTION				8,393	
		EQUIPMENT				489	
		TOTAL FUNDING	AGS	509C		8,883C	
97.		MANOA PUBLIC LIBRARY, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY AND ACOUSTICAL CONTROLS					
		PLANS		50			
		LAND		2			
		DESIGN		600			
		CONSTRUCTION				5,999	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS	652C		6,000C	
98.		PEARL CITY PUBLIC LIBRARY, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING STALLS AND OTHER NECESSARY IMPROVEMENTS FOR THE PEARL CITY PUBLIC LIBRARY.					
		PLANS		10			
		DESIGN		40			
		CONSTRUCTION		200			
		TOTAL FUNDING	AGS	250C			C
99.		AIEA PUBLIC LIBRARY (NEW), OAHU					
		PLANS, LAND ACQUISITION AND DESIGN FOR FEASIBILITY STUDY TO LOCATE AND/OR BUILD A NEW LIBRARY FACILITY AT THE OLD AIEA SUGAR MILL AND/OR THE HAWAII SUGAR PLANTERS ASSOCIATION (HSPA) RESEARCH LAB FACILITY. PROJECT MAY INCLUDE THE POSSIBILITY OF ACQUIRING THE NECESSARY PROPERTY AND/OR BUILDINGS.					
		PLANS		249			
		LAND		1			
		DESIGN		100			
		TOTAL FUNDING	AGS	350C			C

UOH100 - UNIVERSITY OF HAWAII, MANOA

100. M86 UHM, FOOD SERVICE FACILITIES, OAHU

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO THE FOOD SERVICES FACILITIES.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			497		
		EQUIPMENT			1		
		TOTAL FUNDING	UOH		500B		B
101.	M87	UHM, PARKING IMPROVEMENTS, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR PARKING IMPROVEMENTS ON THE MANOA CAMPUS.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			497		
		EQUIPMENT			1		
		TOTAL FUNDING	UOH		500W		W
102.	023	UHM, CRAWFORD HALL RENOVATION, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION OF CRAWFORD HALL TO PROVIDE FOR MODERN TEACHING AND LEARNING FACILITIES.					
		DESIGN			264		1
		CONSTRUCTION					3,641
		EQUIPMENT					345
		TOTAL FUNDING	AGS		264C		3,987C
103.	041	UHM, HAWAII HALL RENOVATION, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF HAWAII HALL. PROJECT TO INCLUDE SITE IMPROVEMENTS, EQUIPMENT AND OTHER RELATED WORK.					
		DESIGN			1,135		
		CONSTRUCTION					12,040
		EQUIPMENT					1
		TOTAL FUNDING	AGS		1,135C		12,041C
104.	050	UHM, SPECIAL EVENTS ARENA AND ATHLETICS SUPPORT FACILITIES, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE SPECIAL EVENTS ARENA AND ATHLETICS SUPPORT FACILITIES. ALSO, FOR THE DEMOLITION OF EXISTING FACILITIES AND RELOCATION AND RENOVATION OF FACILITIES FOR PROGRAMS AFFECTED BY THIS PROJECT.					
		DESIGN			408		
		CONSTRUCTION			4,784		
		EQUIPMENT			460		
		TOTAL FUNDING	UOH		5,652C		C
105.	173	UHM, MAUNA KEA OBSERVATORY, EDUCATION AND INFORMATION CENTER, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE EDUCATION AND INFORMATION CENTER AT MAUNA KEA.					
		DESIGN				22	
		CONSTRUCTION				1,408	
		EQUIPMENT				98	
		TOTAL FUNDING	AGS			1,528R	R
106.	175	UHM, COCONUT ISLAND MARINE RESEARCH LABORATORY, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE COCONUT ISLAND MARINE RESEARCH LABORATORY. PROJECT MAY BE USED TO SUPPLEMENT PRIVATE CONTRIBUTIONS FOR THE MARINE RESEARCH LABORATORY AND RELATED FACILITIES.					
		CONSTRUCTION				600	
		EQUIPMENT				500	
		TOTAL FUNDING	UOH			1,100C	C
107.	178	UHM, HAMILTON LIBRARY, PHASE III, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR HAMILTON LIBRARY, PHASE III, RENOVATION OF EXISTING LIBRARY, AND OTHER LIBRARY SUPPORT FACILITIES.					
		DESIGN				1	400
		CONSTRUCTION				36,500	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			36,502C	400C
108.	181	UHM, KRAUSS HALL COMPLEX RENOVATION, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF THE KRAUSS HALL COMPLEX. PROJECT TO INCLUDE EQUIPMENT REMOVAL, DEMOLITION, FACILITY RENOVATION, NEW FURNITURE AND EQUIPMENT FOR OLD KRAUSS HALL AND KRAUSS ANNEX.					
		DESIGN				60	
		CONSTRUCTION				1,290	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS			1,450B	B
109.	532	UHM, INSTITUTE FOR ASTRONOMY, UNIVERSITY PARK FACILITY IN HILO, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A HEADQUARTER FACILITY FOR THE INSTITUTE FOR ASTRONOMY PERSONNEL AT THE UNIVERSITY PARK IN HILO.					
		DESIGN					1
		CONSTRUCTION					1
		EQUIPMENT					2,478
		TOTAL FUNDING	AGS			C	2,480C
110.	291	UHM, WOMEN'S SOFTBALL STADIUM, OAHU					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A WOMEN'S SOFTBALL STADIUM. PROJECT TO INCLUDE A GRANDSTAND, FENCING AND OTHER APPURTENANCES AT THE MAKAI CAMPUS.					
		DESIGN			1		
		CONSTRUCTION			398		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		400C		C
<b>UOH210 - UNIVERSITY OF HAWAII, HILO</b>							
111.	342	UHH, CLASSROOM/OFFICE BUILDING, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR INSTRUCTIONAL FACILITIES AT THE UNIVERSITY OF HAWAII AT HILO.					
		PLANS			200		
		DESIGN			1,000		
		CONSTRUCTION				14,600	
		EQUIPMENT				1,400	
		TOTAL FUNDING	AGS		1,200C	16,000C	
112.	345	UHH, MARINE SCIENCE BUILDING, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW CLASSROOM/OFFICE BUILDING FOR THE MARINE SCIENCE PROGRAM.					
		PLANS			70		
		DESIGN			180		
		TOTAL FUNDING	AGS		250C		C
113.	440	UHH, UNIVERSITY PARK, PHASE II, HAWAII					
		DESIGN AND CONSTRUCTION FOR INFRASTRUCTURE AND OTHER IMPROVEMENTS AT THE UHH MAUKA CAMPUS SITE TO ACCOMMODATE THE DEVELOPMENT AND EXPANSION OF UHH'S STUDENT HOUSING, ACADEMIC AND RESEARCH PROGRAMS.					
		DESIGN			207		
		CONSTRUCTION				3,024	
		TOTAL FUNDING	AGS		207C	3,024C	
114.	960071	UHH, FEDERAL RESEARCH FACILITY, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A FEDERAL RESEARCH FACILITY AT THE UNIVERSITY PARK. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, INFRASTRUCTURE, EQUIPMENT AND APPURTENANCES, AND OTHER RELATED WORK.					
		DESIGN					1
		CONSTRUCTION				12,000	
		EQUIPMENT				1	
		TOTAL FUNDING	UOH		N	12,002N	

**UOH700 - UNIVERSITY OF HAWAII AT WEST OAHU**

115. UHWO, RELOCATION OF TEMPORARY FACILITIES, HAWAII

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RELOCATION AND RENOVATION OF TEMPORARY FACILITIES FROM THE KAPIOLANI COMMUNITY COLLEGE TO LEEWARD COMMUNITY COLLEGE TO ADDRESS ACCREDITATION REQUIREMENTS FOR THE INTERIM CAMPUS OF THE UNIVERSITY OF HAWAII-WEST OAHU. PROJECT MAY INCLUDE GROUND AND SITE IMPROVEMENTS AT KAPIOLANI COMMUNITY COLLEGE.					
		DESIGN			1		
		CONSTRUCTION			331		
		EQUIPMENT			1		
		TOTAL FUNDING	UOH		333C		C
<b>UOH800 - UH - COMMUNITY COLLEGES</b>							
116.	M81	MAU, MOLOKAI EDUCATIONAL CENTER, MOLOKAI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE PERMANENT CAMPUS OF THE MOLOKAI EDUCATIONAL CENTER. PROJECT TO INCLUDE NEW FACILITIES, SITE WORK, UTILITIES, AND OTHER RELATED WORK.					
		PLANS			213		
		CONSTRUCTION			3,655		
		EQUIPMENT			294		
		TOTAL FUNDING	UOH		4,162C		C
117.	477	HAW, WEST HAWAII EDUCATIONAL CENTER, PERMANENT CAMPUS DEVELOPMENT, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE PERMANENT CAMPUS OF THE WEST HAWAII EDUCATIONAL CENTER. PROJECT TO INCLUDE NEW FACILITIES, SITE WORK, UTILITIES, AND OTHER RELATED WORK.					
		PLANS			100		
		DESIGN			630		
		TOTAL FUNDING	UOH		730C		C
118.	K-54	KAU, CAMPUS DEVELOPMENT, KAUAI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR NEW FACILITIES AT KAUAI COMMUNITY COLLEGE INCLUDING SITE WORK, UTILITIES, BUILDINGS, RENOVATIONS AND ADDITIONS TO EXISTING FACILITIES.					
		DESIGN			661		
		CONSTRUCTION					9,288
		EQUIPMENT					1,431
		TOTAL FUNDING	AGS		661C		10,719C
119.	M100	MAU, CAMPUS DEVELOPMENT, MAUI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR NEW FACILITIES AT MAUI COMMUNITY COLLEGE INCLUDING SITE WORK, UTILITIES, BUILDINGS, AND RENOVATION TO EXISTING FACILITIES.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN			1		1
		CONSTRUCTION		14,257			1
		EQUIPMENT		1,171		1,742	
		TOTAL FUNDING	AGS	15,429C		1,744C	
120.	W100	WIN, CAMPUS DEVELOPMENT, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR NEW FACILITIES AT WINDWARD COMMUNITY COLLEGE INCLUDING SITE WORK, UTILITIES, AND RENOVATIONS TO EXISTING FACILITIES.					
		DESIGN			420		1
		CONSTRUCTION		5,524		15,578	
		EQUIPMENT		1		2,551	
		TOTAL FUNDING	AGS	5,945C		18,130C	
121.		HON, MARINE PROPULSION FACILITY, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A MARINE PROPULSION FACILITY FOR HONOLULU COMMUNITY COLLEGE.					
		PLANS			1		
		DESIGN			98		
		CONSTRUCTION			1		
		TOTAL FUNDING	AGS	100C			C
122.		HAW, CAMPUS DEVELOPMENT, HAWAII					
		PLANS FOR THE MASTER PLANNING AND FEASIBILITY STUDY OF THE HAWAII COMMUNITY COLLEGE TO RELOCATE FROM THE PRESENT UNIVERSITY OF HAWAII AT HILO SITE TO A POSSIBLE DOWNTOWN HILO SITE.					
		PLANS			100		
		TOTAL FUNDING	UOH	100C			C
<b>UOH900 - UOH, SYSTEM WIDE SUPPORT</b>							
123.	503	SYS, LAND ACQUISITION AND MAJOR CIP PLANNING, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR LONG RANGE DEVELOPMENT PLANS, INCLUDING UPDATES OF LONG RANGE DEVELOPMENT PLANS FOR VARIOUS UNIVERSITY CAMPUSES, PROJECT DEVELOPMENT REPORTS, AND LAND ACQUISITION FOR UNIVERSITY PROGRAMS.					
		PLANS			1,800		800
		LAND			1		
		TOTAL FUNDING	UOH	1,801C		800C	
124.	511	SYS, UNIVERSITY OF HAWAII BOOKSTORES, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO UNIVERSITY OF HAWAII BOOKSTORES, SYSTEMWIDE.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION		497			
		EQUIPMENT			1		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	UOH		500W		W
125.	521	SYS, INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR UTILITY INFRASTRUCTURE IMPROVEMENTS AND RELATED FACILITIES AT UNIVERSITY CAMPUSES, SYSTEMWIDE.					
		DESIGN			691		
		CONSTRUCTION			4,407		4,400
		EQUIPMENT			3		200
		TOTAL FUNDING	AGS		5,101C		4,600C
126.	531	SYS, MODIFICATIONS FOR THE HANDICAPPED, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT, FOR MODIFICATIONS FOR THE HANDICAPPED TO IDENTIFY AND CORRECT EXISTING ARCHITECTURAL BARRIERS AT ALL UNIVERSITY CAMPUSES, EXTENSION SITES, AND OTHER RELATED FACILITIES.					
		DESIGN			100		100
		CONSTRUCTION			5,000		5,000
		EQUIPMENT			1		1
		TOTAL FUNDING	AGS		5,101C		5,101C
127.	536	SYS, HEALTH, SAFETY AND CODE REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY AND OTHER CODE REQUIREMENTS.					
		PLANS			1		1
		DESIGN			364		92
		CONSTRUCTION			6,719		1,081
		EQUIPMENT			1		1
		TOTAL FUNDING	AGS		7,085C		1,175C
128.	537	SYS, FIRE SAFETY IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR FIRE SAFETY SYSTEMS. THE PROJECT MAY INCLUDE FIRE ALARM SYSTEMS, FIRE DETECTION SYSTEMS, FIRE SPRINKLER SYSTEMS AND CENTRAL FIRE ALARM SYSTEMS ON UNIVERSITY CAMPUSES AND FACILITIES, STATEWIDE.					
		PLANS			1		
		DESIGN			263		
		CONSTRUCTION			2,431		1,030
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		2,696C		1,030C
129.	539	SYS, HAWAII INTERACTIVE TELEVISION SYSTEM (HITS), STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE UPGRADE AND MODERNIZATION OF THE HAWAII INTERACTIVE TELEVISION SYSTEM (HITS), STATEWIDE. PROJECT TO INCLUDE UPGRADING MICROWAVE DISHES, ASSOCIATED TOWER STRENGTHENING, EQUIPMENT UPGRADES, OTHER NECESSARY IMPROVEMENTS AND/OR ANY ALTERNATIVE EXPENDITURE WHICH WILL PROVIDE EQUIVALENT SERVICES STATEWIDE FOR THE EXPECTED LIFETIME OF AN UPGRADED MICROWAVE SYSTEM.					
		DESIGN			1		
		CONSTRUCTION			600		
		EQUIPMENT			2,399		
		TOTAL FUNDING	UOH		3,000C		C
130.	540	SYS, RENOVATION OF CLASSROOMS, LABS AND OTHER RELATED SPACES, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE MODERNIZATION AND IMPROVEMENT OF CLASSROOMS, LABORATORIES, OFFICES AND RELATED SPACES TO PROVIDE SAFER, MORE CONDUCTIVE TEACHING AND LEARNING ENVIRONMENTS FOR THE STUDENTS, FACULTY AND STAFF.					
		DESIGN			200		
		CONSTRUCTION			2,700		
		EQUIPMENT			100		
		TOTAL FUNDING	UOH		3,000C		C
131.	541	SYS, FACILITIES IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENEWAL AND RENOVATION OF THE UNIVERSITY'S PHYSICAL PLANT. PROJECT INCLUDES REROOFING AND MECHANICAL AND ELECTRICAL SYSTEMS, OTHER RELATED REPAIRS AND ASSOCIATED PROJECT COSTS.					
		DESIGN			1,500		1
		CONSTRUCTION			13,006		5,710
		EQUIPMENT			1		1
		TOTAL FUNDING	UOH		14,507C		5,712C
<b>H. CULTURE AND RECREATION</b>							
<b>LNR806 - PARK DEVELOPMENT AND OPERATION</b>							
1.	F11	IOLANI PALACE RESTORATION, OAHU					
		DESIGN AND CONSTRUCTION FOR CLIMATE CONTROL IMPROVEMENTS.					
		DESIGN			25		
		CONSTRUCTION			150		
		TOTAL FUNDING	LNR		175C		C
2.	F14	KEALAKEKUA BAY STATE HISTORICAL PARK, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR PHASE I DEVELOPMENT INCLUDING PARKING, RESTROOMS AND OTHER DEVELOPMENT IN THE NAPOOPOO AREA OF KAAWALOA.					
					50		
							500
			LNR	50C			500C
3.	F15	ROYAL MAUSOLEUM STATE MONUMENT, OAHU					
		DESIGN AND CONSTRUCTION OF HOUSE, RESTROOM AND UTILITY SYSTEM AND IMPROVEMENTS TO DRIVEWAY AND LANDSCAPING.					
					25		
							250
			LNR	25C			250C
4.	F37	DIAMOND HEAD STATE MONUMENT, OAHU					
		PLANS AND DESIGN FOR THE INCREMENTAL DEVELOPMENT AS DETERMINED BY EXISTING NEEDS AND A MASTER PLAN. DEVELOPMENT TO INCLUDE A VISITORS CENTER.					
					250		
					750		
			LNR	1,000C			C
5.	F46	KOEKE/WAIMEA CANYON STATE PARK COMPLEX, KAUAI					
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF WAIMEA CANYON LOOKOUT INCLUDING NEW TOILET FACILITIES, PARKING AREAS, WALKWAYS AND LANDSCAPING.					
					40		
							400
			LNR	40C			400C
6.	F48	KEAIWA HEIAU STATE RECREATION AREA, OAHU					
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF PAVILLION, COMFORT STATION, WATER TANK AND ROADWAY IMPROVEMENTS.					
							40
							400
			LNR			C	440C
7.	F57	KAHANA VALLEY STATE PARK, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INCREMENTAL DEVELOPMENT OF A "LIVING PARK" WITH VALLEY RESIDENTS; DEMOLITION OF FORMER HOMES; RESTORATION OF SITE OF FORMER HOMES FOR DEVELOPED PARK EXPANSION ALONG ESTUARY; AND BEACH PARK AREA IMPROVEMENTS.					
					50		
							500

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	LNR	450C			C
			LNR	100N			N
8.	F58	WAILOA RIVER STATE RECREATION AREA, HAWAII					
		DESIGN AND CONSTRUCTION OF ROADWAY, PARKING AREAS, SIDEWALKS, AND COVERED WALKWAYS INCLUDING LIGHTING.					
		DESIGN					40
		CONSTRUCTION					350
		TOTAL FUNDING	LNR		C		390C
9.	F59	KAUMAHINA STATE WAYSIDE, MAUI					
		DESIGN AND CONSTRUCTION OF WALKWAY, SCENIC LOOKOUT AND OTHER IMPROVEMENTS AT KAUMAHINA STATE WAYSIDE IN HANA.					
		DESIGN				30	
		CONSTRUCTION				200	
		TOTAL FUNDING	LNR		230C		C
10.	F64	MAUNA KEA STATE RECREATION COMPLEX, HAWAII					
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF CABINS AND OTHER IMPROVEMENTS.					
		DESIGN				50	
		CONSTRUCTION				400	
		TOTAL FUNDING	LNR		450C		C
11.	F72	KAENA POINT STATE PARK, OAHU					
		DESIGN AND CONSTRUCTION FOR THE SHORELINE PARK FROM MAKUA TO MOKULEIA INCLUDING RECONSTRUCTION OF EXISTING FACILITIES. PROJECT TO INCLUDE TEMPORARY MANAGEMENT FOR SHORELINE AREAS TO CONTROL EXISTING USE, INCLUDES MAKUA SECURITY RESIDENCE AND OTHER IMPROVEMENTS FOR THIS AREA.					
		DESIGN				40	
		CONSTRUCTION				400	
		TOTAL FUNDING	LNR		440C		C
12.	F73	MAKENA-LAPEROUSE STATE PARK, MAUI					
		DESIGN AND CONSTRUCTION OF A SECURITY RESIDENCE AND OTHER IMPROVEMENTS.					
		DESIGN				25	
		CONSTRUCTION				250	
		TOTAL FUNDING	LNR		275C		C
13.	F74	HAENA BEACH STATE PARK, KAUAI					
		DESIGN AND CONSTRUCTION FOR A SEWAGE SYSTEM, PARKING AREA AND OTHER IMPROVEMENTS.					
		DESIGN				30	
		CONSTRUCTION				250	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	LNR	280C			C
14.	F75	HAPUNA BEACH STATE PARK, HAWAII					
		DESIGN AND CONSTRUCTION FOR INITIAL DEVELOPMENT AT WAILEA BAY AND GENERAL PARK IMPROVEMENTS.					
		DESIGN			50		
		CONSTRUCTION					500
		TOTAL FUNDING	LNR	50C			500C
15.	H06	IMPROVEMENTS TO CABINS AND CAMPGROUNDS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO CABINS AND CAMPGROUNDS AT SELECTED STATE PARKS.					
		DESIGN			25		25
		CONSTRUCTION			250		250
		TOTAL FUNDING	LNR	275C			275C
16.	H09	LANDSCAPING AND PARK IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS TO PARK GROUNDS AND FACILITIES FOR HEALTH AND SAFETY INCLUDING FACILITIES TO AID THE HANDICAPPED.					
		DESIGN			150		150
		CONSTRUCTION			1,000		1,000
		TOTAL FUNDING	LNR	1,150C			1,150C
17.	H45	SACRED FALLS STATE PARK, OAHU					
		DESIGN AND CONSTRUCTION OF PAVED ENTRY ROAD, PARKING AREA, GATES AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			30		
		CONSTRUCTION			250		
		TOTAL FUNDING	LNR	280C			C
18.	H87	KONA COAST STATE PARK, HAWAII					
		DESIGN AND CONSTRUCTION OF TOILET FACILITIES, PAVILION, AND PICNIC AREAS.					
		DESIGN			40		
		CONSTRUCTION			300		
		TOTAL FUNDING	LNR	340C			C
19.	F37X	DIAMOND HEAD SUMMIT TRAIL, OAHU					
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF SUMMIT TRAIL, LANDSCAPING, ADDITIONAL PARKING AND WALKWAY IMPROVEMENTS.					
		DESIGN			40		
		CONSTRUCTION			300		
		TOTAL FUNDING	LNR	340C			C
20.	F57X	KAHANA VALLEY STATE PARK, OAHU					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF THREE COMFORT STATIONS, PARK ORIENTATION/MAINTENANCE FACILITY AND PAVED PARKING AREAS.					
		DESIGN			60		
		CONSTRUCTION			500		
		TOTAL FUNDING	LNR		560C		C
21.	F59X	PUAA KAA STATE WAYSIDE, MAUI					
		DESIGN AND CONSTRUCTION OF WALKWAYS, PAVILIONS AND PICNIC IMPROVEMENTS.					
		DESIGN					30
		CONSTRUCTION					200
		TOTAL FUNDING	LNR			C	230C
22.	F73X	MAKENA STATE PARK, MAUI					
		DESIGN AND CONSTRUCTION OF COMFORT STATIONS.					
		DESIGN			60		
		CONSTRUCTION					600
		TOTAL FUNDING	LNR		60C		600C
23.		AHUKINI STATE RECREATIONAL PIER, KAUAI					
		DESIGN AND CONSTRUCTION FOR A SELF COMPOSTING TOILET FACILITY.					
		DESIGN			40		
		CONSTRUCTION					200
		TOTAL FUNDING	LNR		40C		200C
24.		WAILUA RIVER STATE PARK, KAUAI					
		DESIGN AND CONSTRUCTION FOR A NEW LOOKOUT AT OPAEKAA FALLS INCLUDING HANDICAP IMPROVEMENTS AND A NEW COMFORT STATION.					
		DESIGN			50		
		CONSTRUCTION					400
		TOTAL FUNDING	LNR		50C		400C
25.		WAIANAPANAPA STATE PARK, MAUI					
		DESIGN AND CONSTRUCTION OF RENTAL CABINS, PICNIC SHELTERS AND OTHER PARK IMPROVEMENTS.					
		DESIGN			50		
		CONSTRUCTION					250
		TOTAL FUNDING	LNR		50C		250C
26.		SAND ISLAND STATE RECREATION AREA, OAHU					
		DESIGN AND CONSTRUCTION OF PARK DEVELOPMENT AS PER MASTER PLAN AND IMPROVEMENTS TO PARK INFRASTRUCTURE.					
		DESIGN			60		
		CONSTRUCTION					400
		TOTAL FUNDING	LNR		60C		400C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
27.		WAHIAWA FRESHWATER PARK, OAHU					
		DESIGN AND CONSTRUCTION FOR A JOGGING/BIKE PATH AT WAHIAWA FRESHWATER PARK.					
		DESIGN			1		
		CONSTRUCTION			249		
		TOTAL FUNDING	LNR		250C		C
<b>LNR801 - OCEAN-BASED RECREATION</b>							
28.	271A	ALA WAI BOAT HARBOR FLOATING DOCKS REPLACEMENT, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF FLOATING DOCKS B, C, D, F AND G.					
		PLANS			3		
		DESIGN			97		
		CONSTRUCTION					900
		TOTAL FUNDING	LNR		100D		900D
29.	271B	ALA WAI BOAT HARBOR PIER REPLACEMENT, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR REPLACEMENT, IMPROVEMENT AND UPGRADE OF EXISTING PIERS INCLUDING THE CROSS DOCK.					
		PLANS			6		
		DESIGN			144		
		CONSTRUCTION					600
		TOTAL FUNDING	LNR		150D		600D
30.	278B	HEEIA KEA BOAT HARBOR COMFORT STATION, OAHU					
		PLANS, DESIGN AND CONSTRUCTION OF A NEW COMFORT STATION AND RELATED WORK AT HEEIA BOAT HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL MATCHING FUNDS UNDER THE FEDERAL AID IN SPORT FISHING RESTORATION ACT.					
		PLANS			20		
		DESIGN			20		
		CONSTRUCTION			260		600
		TOTAL FUNDING	LNR		75D		D
			LNR		225N		N
31.	299A	PLANNING FOR BOAT HARBOR FACILITIES, STATEWIDE					
		PLANS FOR CONTINUED STUDIES, RESEARCH AND ADVANCED PLANNING OF BOAT HARBOR FACILITIES ON ALL ISLANDS.					
		PLANS			125		125
		TOTAL FUNDING	LNR		125D		125D
32.	299B	IMPROVEMENTS TO BOAT HARBOR FACILITIES, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS EXISTING BOAT HARBOR FACILITIES THROUGHOUT THE STATE INCLUDING DREDGING, PAVING, UTILITIES AND OTHER BERTHING AND SHORE FACILITIES INCLUDING ADMINISTRATIVE OFFICES.					
		PLANS			30		30
		DESIGN			30		30
		CONSTRUCTION			240		240
		TOTAL FUNDING	LNR		300D		300D
33.		DAY USE MOORING BUOYS, STATEWIDE					
		DESIGN AND EQUIPMENT FOR DAY USE MOORING BUOYS.					
		DESIGN			1		
		EQUIPMENT			32		
		TOTAL FUNDING	LNR		33D		D
34.	282A	KUHIO BEACH IMPROVEMENTS, OAHU					
		PLANS AND DESIGN FOR NEW AND/OR MODIFICATIONS TO EXISTING SEAWALLS FRONTING KUHIO BEACH BETWEEN KAPAHULU AVENUE AND LILUOKALNI AVENUE.					
		PLANS					300
		DESIGN					400
		TOTAL FUNDING	LNR			C	700C
35.	207A	KAILUA-KONA WHARF IMPROVEMENTS, HAWAII					
		PLANS AND DESIGN FOR THE RENOVATION AND IMPROVEMENTS TO THE KAILUA-KONA WHARF.					
		PLANS			60		
		DESIGN			200		
		TOTAL FUNDING	LNR		260C		C
<b>LNR807 - PARK INTERPRETATION</b>							
36.	F02B	STATEWIDE INTERPRETIVE PROGRAM DEVELOPMENT, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A SERIES OF INTERPRETIVE SIGNS AND SIGN KIOSKS IN SELECTED STATE PARKS.					
		PLANS			10		10
		DESIGN			10		10
		CONSTRUCTION			40		70
		EQUIPMENT					10
		TOTAL FUNDING	LNR		60B		100B
37.	F37B	DIAMOND HEAD STATE MONUMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERPRETIVE DEVELOPMENT FOR DIAMOND HEAD INCLUDING A TOLL/INFORMATION CENTER AND LANDSCAPING.					
		DESIGN			25		
		CONSTRUCTION			250		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	LNR		275B		B
38.	F74B	HAENA STATE PARK, KAUAI					
		PLANS, DESIGN AND CONSTRUCTION TO DEVELOP AN INTERPRETIVE PROGRAM INCLUDING THE RESTORATION OF TARO LO'I.					
		PLANS					20
		DESIGN					30
		CONSTRUCTION					200
		TOTAL FUNDING	LNR			B	250B
39.	H70B	MALAEKAHANA STATE PARK, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE AND DEVELOP AN UNDERUTILIZED PAVILLION INTO AN INTERPRETIVE CENTER.					
		DESIGN			20		
		CONSTRUCTION					200
		TOTAL FUNDING	LNR		20B		200B
40.	H87B	KONA COAST STATE PARK, HAWAII					
		DESIGN AND CONSTRUCTION TO DEVELOP AN EDUCATION CENTER, OTHER INTERPRETIVE FACILITIES AND INTERPRETIVE PROGRAM MATERIALS FOR THE MAHAUULA BAY SECTION OF THE PARK.					
		DESIGN			30		
		CONSTRUCTION			300		
		TOTAL FUNDING	LNR		330B		B
<b>LNR809 - PARKS ADMINISTRATION</b>							
41.		MANA DRAG STRIP RACE TRACK, KAUAI					
		PLANS, DESIGN AND CONSTRUCTION FOR THE RESURFACING AND RENOVATIONS OF THE MANA DRAG STRIP RACE TRACK ASPHALT SURFACE; GROUND AND SITE IMPROVEMENTS.					
		PLANS			1		
		DESIGN			34		
		CONSTRUCTION			150		
		TOTAL FUNDING	LNR		185C		C
<b>I. PUBLIC SAFETY</b>							
<b>PSD402 - HALAWA CORRECTIONAL FACILITY</b>							
1.	P98058	HALAWA CORRECTIONAL FACILITY, ADDITIONS AND RENOVATIONS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT TO CONVERT EXISTING SPACE FOR 150 BED SPACES AND ADDITION OF NEW SPACE TO PROVIDE FOR DISPLACED PROGRAM FUNCTIONS.					
		DESIGN			35		
		CONSTRUCTION			419		
		EQUIPMENT			75		

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	AGS		529C		C
<b>PSD403 - KULANI CORRECTIONAL FACILITY</b>							
2.	P98060	KULANI CORRECTIONAL FACILITY, WATER SYSTEM IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WATER SYSTEM TO INCREASE WATER COLLECTION AND STORAGE CAPACITIES.					
		DESIGN			144		
		CONSTRUCTION			2,190		
		TOTAL FUNDING	AGS		2,334C		C
3.	P98063	KULANI CORRECTIONAL FACILITY, EXPANSION AND IMPROVEMENTS, HAWAII					
		PLANS AND DESIGN FOR THE DEVELOPMENT OF INFRASTRUCTURE, SITEWORK TO PROVIDE FOR A MAJOR EXPANSION AT THE FACILITY SITE.					
		PLANS			525		
		DESIGN			775		
		TOTAL FUNDING	AGS		1,300C		C
<b>PSD404 - WAIAWA CORRECTIONAL FACILITY</b>							
4.	P98057	WAIAWA CORRECTIONAL FACILITY, NEW 200-BED "KASHBOX" COMPOUND, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT TO CONSTRUCT A NEW 200-BED MINIMUM DORMITORY, RELATED SUPPORT SPACES AND SITE WORK FOR THE "KASHBOX" SUBSTANCE ABUSE PROGRAM.					
		DESIGN			219		
		CONSTRUCTION			3,468		
		EQUIPMENT			260		
		TOTAL FUNDING	AGS		2,088C		C
			AGS		1,859N		N
<b>PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER</b>							
5.	P98059	HAWAII COMMUNITY CORRECTIONAL CENTER, PERIMETER FENCING SYSTEM, HAWAII					
		DESIGN AND CONSTRUCTION TO CONSTRUCT NEW PERIMETER FENCING SYSTEM AROUND THE FACILITY COMPLEX.					
		DESIGN			55		
		CONSTRUCTION			534		
		TOTAL FUNDING	AGS		589C		C
<b>PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER</b>							
6.	P97029	OAHU COMMUNITY CORRECTIONAL CENTER, PLAN REVIEW USE IMPROVEMENTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS SITE IMPROVEMENTS AT THE LAUMAKA WORK RELEASE CENTER TO SATISFY PRU OBLIGATIONS TO COUNCIL RESOLUTION NO. 94-367.					
		DESIGN				39	
		CONSTRUCTION				383	
		TOTAL FUNDING	AGS			422C	C
7.	P98056	OAHU COMMUNITY CORRECTIONAL CENTER, ADDITIONS AND RENOVATIONS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT TO DEVELOP NEW HOUSING FOR 168 INMATES. ALSO, CONVERT EXISTING BUILDINGS AT OCCC TO HOUSE 116 INMATES AND PROVIDE NECESSARY IMPROVEMENTS TO INFRASTRUCTURE AND FACILITY.					
		DESIGN				213	
		CONSTRUCTION				3,461	
		EQUIPMENT				270	
		TOTAL FUNDING	AGS			3,944C	C
<b>PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER</b>							
8.	P98055	WOMEN'S COMMUNITY CORRECTIONAL CENTER, ADDITIONS AND RENOVATIONS, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AN 84-BED MINIMUM DORMATORY FOR INCARCERATED FEMALES BETWEEN KAALA AND MAUNAWILI COTTAGES. RELOCATE "PORTABLE CLASSROOM" BUILDINGS AND PROVIDE FOR NECESSARY IMPROVEMENTS TO INFRASTRUCTURE AND FACILITY.					
		DESIGN				130	
		CONSTRUCTION				1,864	
		EQUIPMENT				110	
		TOTAL FUNDING	AGS			2,104C	C
<b>PSD900 - GENERAL ADMINISTRATION</b>							
9.	P98601	GENERAL ADMINISTRATION, NEW PRISON FACILITIES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR SITE DEVELOPMENT AND FURNISHINGS OF NEW PRISON FACILITIES VIA NORMAL DESIGN/ CONSTRUCT METHOD, PURCHASE, LEASE/BACK PURCHASE OPTION AGREEMENT, AND/OR DESIGN/BUILD PROCESS. PLANNING MAY INCLUDE A COMMUNITY PARTNERING PROCESS AND DEVELOPMENT OF A BENEFIT/ ENHANCEMENT PACKAGE. FUNDS MAY BE USED TO MATCH FEDERAL FUNDS, AS MAY BE AVAILABLE.					
		PLANS				496	
		LAND				1	
		DESIGN				1	
		CONSTRUCTION				1	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		500C		C
<b>LNR810 - PREVENTION OF NATURAL DISASTERS</b>							
10.	G38	KAHULUI FLOOD CONTROL PROJECT, MAUI					
		PLANS AND DESIGN FOR DRAINAGE IMPROVEMENTS ON THE EASTERN BOUNDARY OF KANAHA POND.					
		PLANS			100		
		DESIGN			100		
		TOTAL FUNDING	LNR		200C		C
11.	G83A	ALA WAI CANAL FLOOD STUDY, OAHU					
		PLANS TO STUDY AND DETERMINE HYDRAULIC CAPACITY AND WATER SURFACE ELEVATIONS AT VARIOUS FLOOD FLOWS WITHIN THE ALA WAI CANAL, ESTIMATE POTENTIAL FLOOD DAMAGES AND MITIGATIVE MEASURES. USE OF FUND IS CONTINGENT UPON FEDERAL MATCHING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			400		
		TOTAL FUNDING	LNR		200C		C
			LNR		200N		N
12.	G85A	LOWER KAPAHI RESERVOIR IMPROVEMENTS, KAUAI					
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO LOWER KAPAHI RESERVOIR'S OUTLET STRUCTURE TO HANDLE STORM FLOWS.					
		PLANS			10		
		DESIGN			10		
		CONSTRUCTION			100		
		TOTAL FUNDING	LNR		120C		C
13.		WAIMANALO VALLEY DRAINAGE MASTER PLAN, OAHU					
		PLANS FOR WAIMANALO VALLEY DRAINAGE MASTER PLAN TO IDENTIFY MITIGATIVE MEASURES TO ALLEVIATE FLOODING.					
		PLANS			300		
		TOTAL FUNDING	LNR		300C		C
14.	G83BEG	ALA WAI CANAL DREDGING, KAPAHULU LIBRARY TO ALA WAI BOAT HARBOR, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR DREDGING OF ALA WAI CANAL BETWEEN ALA WAI BOAT HARBOR AND KAPAHULU LIBRARY TO REMOVE SEDIMENTATION BUILD-UP AND RESTORE HYDRAULIC CAPACITY.					
		PLANS			250		
		DESIGN			1,000		
		CONSTRUCTION					10,350

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	LNR		1,250C		10,350C
15.		KAUKONAHOA STREAM DREDGING, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THE DREDGING OF KAUKONAHOA STREAM IN THE VICINITY OF FARRINGTON HIGHWAY TO PREVENT EROSION AND FLOODING. PROJECT TO INCLUDE RENOVATION AND OTHER NECESSARY IMPROVEMENTS TO THE STREAM.					
		PLANS			1		
		DESIGN			49		
		CONSTRUCTION			450		
		TOTAL FUNDING	LNR		500C		C
<b>DEF110 - AMELIORATION OF PHYSICAL DISASTERS</b>							
16.	A33	ARMY NATIONAL GUARD ARMORY, KAUNAKAKAI, MOLOKAI					
		CONSTRUCTION FOR A NATIONAL GUARD ARMORY FACILITY TO INCLUDE ALL UTILITIES, ACCESS ROAD, PARKING AREAS, AND OTHER SUPPORTING FEATURES.					
		CONSTRUCTION			300		
		TOTAL FUNDING	AGS		300C		C
17.	A37	MAUI ARMY NATIONAL GUARD ARMORY, MAUI					
		PLANS FOR A MAJOR ARMORY COMPLEX CONSOLIDATING THE EXISTING FACILITIES, UTILITIES, ACCESS ROAD, PARKING, SECURITY FENCING AND OTHER RELATED WORK.					
		PLANS			300		
		TOTAL FUNDING	AGS		300C		C
18.	C13	REPLACEMENT/UPGRADE OF DISASTER WARNING AND COMMUNICATIONS DEVICES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT AND UPGRADE OF CIVIL DEFENSE WARNING SIRENS, OTHER WARNING DEVICES & COMMUNICATIONS EQUIPMENT TO EXPAND THE COVERAGE OF WARNING SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1		1
		LAND			1		1
		DESIGN			40		45
		CONSTRUCTION			475		490
		EQUIPMENT			118		123
		TOTAL FUNDING	AGS		510C		530C
			AGS		125N		130N
19.	A9701	BLDG. NO. 700 PACIFIC MULTIFUNCTIONAL TRAINING BRIGADE, BELLOWS AFS, OAHU					



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS TO RENOVATE A SPECIALLY DESIGNED COMPLEX OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION INCLUDING ALL UTILITIES, ACCESS ROADS, PARKING AREAS, FENCING, TRAINING FIELDS AND OTHER SUPPORTING FEATURES.					
		PLANS			100		
		TOTAL FUNDING	AGS		100C		C
<b>K. GOVERNMENT-WIDE SUPPORT</b>							
<b>GOV100 - OFFICE OF THE GOVERNOR</b>							
1.	G01	PROJECT ADJUSTMENT FUND, STATEWIDE					
		DESIGN FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.					
		DESIGN			1		1
		TOTAL FUNDING	AGS		1C		1C
<b>BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY</b>							
2.	KA001	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, MAUKA AREA INCREMENTS 2,3, AND 4, OAHU					
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR: KAMAKEE STREET FROM QUEEN STREET TO ALA MOANA BOULEVARD; KAMAKEE STREET TO KEWALO BASIN; AND, KEWALO BASIN ENTRANCE. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY, DRAINAGE, SEWER, WATER, ELECTRICAL, TELEPHONE, AND CABLE TELEVISION SYSTEMS.					
		PLANS			1		
		LAND			1		
		DESIGN			1		
		CONSTRUCTION			11,106		
		TOTAL FUNDING	BED		11,109C		C
3.	KA002	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, MAKAI AREA INCREMENTS 2, 3, AND 4, OAHU					
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR ILALO STREET FROM WARD AVENUE TO SOUTH AND PUNCHBOWL STREETS. PROJECT TO INCLUDE IMPROVEMENTS TO THE ROADWAY, DRAINAGE, SEWER, WATER, ELECTRICAL, TELEPHONE, AND CABLE TELEVISION SYSTEMS.					
		PLANS			3		1
		LAND			3		1
		DESIGN			3,994		
		CONSTRUCTION			16,300		15,998
		TOTAL FUNDING	BED		20,300C		16,000C
4.	KA003	KAKAAKO MAKAI DEVELOPMENT, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS FOR THE DEVELOPMENT OF THE MAKAI AREA, INCLUDING PROPOSED PROJECTS AND INFRASTRUCTURAL AND OTHER IMPROVEMENTS.					
		PLANS				1,000	
		TOTAL FUNDING	BED			1,000C	
5.	KA004	KAKAAKO PARKING STRUCTURE, OAHU					
		PLANS AND DESIGN FOR THE COSTS OF PORTIONS THEREOF ASSOCIATED WITH CONSTRUCTION OF A 4,500 STALL PUBLIC PARKING STRUCTURE.					
		PLANS				1	
		DESIGN				1,999	
		TOTAL FUNDING	BED			2,000D	
6.	KA005	STATE OFFICE BUILDING, OAHU					
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE PURCHASE OF A STATE OFFICE BUILDING. PROJECT TO INCLUDE ACQUISITION OF FACILITY, RENOVATIONS, UPGRADE, AND OTHER RELATED IMPROVEMENTS TO AIR CONDITIONING SYSTEM, INTERIOR RENOVATION, ASBESTOS REMOVAL AND OTHER RELATED WORK.					
		PLANS				1	
		LAND				1	
		DESIGN				1	
		CONSTRUCTION				20,497	
		TOTAL FUNDING	BED			20,500E	
7.	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. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.					
		PLANS				1,797	1,797
		LAND				1	1
		DESIGN				1	1
		CONSTRUCTION				1	1
		TOTAL FUNDING	BED			1,800C	1,800C
8.		POHUKAINA ELEMENTARY SCHOOL (NEW), OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, DESIGN AND CONSTRUCTION FOR THE CONSTRUCTION OF THE NEW POHUKAINA ELEMENTARY SCHOOL VIA LEASEBACK/ PURCHASE OPTION AGREEMENT USING A PRIVATE DEVELOPER SELECTED BY REQUEST FOR PROPOSAL (RFP) PROCESS, OR BY STATE ISSUING CERTIFICATE OF PARTICIPATION (COP) USING A DESIGN/BUILD RFP PROCESS OR THE CONSTRUCTION OF TEMPORARY FACILITIES TO PROVIDE FOR AN ELEMENTARY SCHOOL IN DOWNTOWN HONOLULU.					
		PLANS			248		
		DESIGN			1		
		CONSTRUCTION			1		
		TOTAL FUNDING	BED		250C		C
9.		SAND ISLAND IMPROVEMENTS, OAHU					
		PLANS, LAND, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO STATE LANDS AT SAND ISLAND.					
		PLANS					20
		LAND					1
		DESIGN					200
		CONSTRUCTION					28,154
		TOTAL FUNDING	BED			C	28,375C
<b>BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING</b>							
10.	98-01	HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE					
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995.					
		CONSTRUCTION			60,000		30,000
		TOTAL FUNDING	BUF		60,000C		30,000C
11.	98-02	STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE					
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.					
		CONSTRUCTION			156,887		128,522
		TOTAL FUNDING	BUF		156,887C		128,522C
12.		RENTAL HOUSING TRUST FUND, STATEWIDE					
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE RENTAL HOUSING TRUST FUND.					
		CONSTRUCTION			10,000		10,000
		TOTAL FUNDING	BUF		10,000C		10,000C
13.		AIRPORT REVENUE FUND, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE AIRPORT REVENUE FUND FOR INTEREST PAYMENTS ON THE \$64.4 MILLION USED FOR THE KAPOLEI LAND PURCHASE.					
		CONSTRUCTION				2,100	
		TOTAL FUNDING	BUF			2,100C	C
<b>AGS161 - COMMUNICATION</b>							
14.	BUF02	TELECOMMUNICATIONS SITE, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A TELECOMMUNICATIONS FACILITY TO SUPPLEMENT THE EXISTING TELECOMMUNICATIONS SITE AT ROUND TOP AND THE CAPITOL COMPLEX.					
		CONSTRUCTION				955	
		EQUIPMENT				130	
		TOTAL FUNDING	AGS			1,085C	C
15.	ICSD02	LIHUE STATE OFFICE BUILDING, EMERGENCY GENERATOR, KAUAI					
		DESIGN AND CONSTRUCTION TO INSTALL AND ENCLOSE EMERGENCY GENERATOR, FUEL TANKS, AND PERFORM ELECTRICAL WORK FOR COMMUNICATION FACILITIES AT LIHUE STATE OFFICE BUILDING.					
		DESIGN				45	
		CONSTRUCTION				215	
		TOTAL FUNDING	AGS			260C	C
16.	ICSD03	WAILUKU STATE OFFICE BUILDING, EMERGENCY GENERATOR, MAUI					
		DESIGN AND CONSTRUCTION TO INSTALL AND ENCLOSE EMERGENCY GENERATOR, FUEL TANKS, AND PERFORM ELECTRICAL WORK FOR COMMUNICATION FACILITIES AT WAILUKU STATE OFFICE BUILDING.					
		DESIGN					45
		CONSTRUCTION					215
		TOTAL FUNDING	AGS				260C
17.	ICSD10	STATE 800 MHZ RADIO SYSTEM, STATEWIDE					
		PLANS AND DESIGN FOR INSTALLATION OF AN 800 MHZ RADIO SYSTEM, STATEWIDE.					
		PLANS				110	
		DESIGN				55	360
		TOTAL FUNDING	AGS			165C	360C
18.	101004	MICROWAVE TOWER AND GENERATOR ENCLOSURE, MOLOKAI					
		EQUIPMENT FOR A MICROWAVE TOWER AND GENERATOR AT THE KAUNAKAKAI CIVIC CENTER. TOWER SHALL SUPPORT THE MICROWAVE ANTENNA TO LINK KAUNAKAKAI TO THE STATEWIDE MICROWAVE BACKBONE.					
		EQUIPMENT				235	110

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	AGS		235C		110C
<b>LNR101 - PUBLIC LANDS MANAGEMENT</b>							
19.	E85-D	DLNR OAHU BASEYARD, OAHU					
		DESIGN AND CONSTRUCTION FOR A DEPARTMENT BASEYARD, WAREHOUSE AND PARKING AREA WITH OTHER INCIDENTAL AND RELATED WORK.					
		DESIGN			150		
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR		150B		1,000B
20.	56131Q	KAWAI NUI MARSH MAINTENANCE BASEYARD, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR A MAINTENANCE FACILITY WITH SECURED AREA FOR OFFICE SPACE, STORAGE FOR EQUIPMENT, TOOLS AND SUPPLIES, PARKING AREA FOR MAINTENANCE VEHICLES AND OTHER RELATED WORK.					
		PLANS			20		
		DESIGN			30		
		CONSTRUCTION			250		
		TOTAL FUNDING	LNR		300B		B
21.	E78	RESOURCE LAND ACQUISITIONS, STATEWIDE					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION INCLUDING ACQUISITION OF EASEMENTS OR LANDS HAVING VALUE AS A RESOURCE TO THE STATE, INCLUDING LANDS HAVING NATURAL, ENVIRONMENTAL, RECREATIONAL, SCENIC, OPEN SPACE, CULTURAL OR HISTORICAL VALUE.					
		LAND			13,998		
		DESIGN			1		
		CONSTRUCTION			1		
		TOTAL FUNDING	LNR		14,000C		C
<b>AGS221 - CONSTRUCTION</b>							
22.	B27	ADVANCED PLANNING, STATEWIDE					
		PLANS FOR PROVIDING ASSISTANCE TO THE PUBLIC, STATE AND COUNTIES IN MATTERS RELATING TO DAGS' PUBLIC WORKS DIVISION AND INCLUDES THE PREPARATION OF PROGRAMS, REPORTS, STUDIES, INVENTORIES, REVIEWS AND PERFORMANCES OF ALL NECESSARY ACTIVITIES TO CARRY OUT DAGS FUNCTIONS.					
		PLANS			50		
		TOTAL FUNDING	AGS		50C		C
23.	B28	STATE OFFICE BUILDINGS, REMODELING, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR REMODELING AND UPGRADING OF OFFICES OCCUPIED BY STATE AGENCIES IN STATE OWNED SPACE AND PROVIDE ADEQUATE SPACE FOR AGENCIES TO ACCOMMODATE THEIR OPERATIONAL REQUIREMENTS. PROJECT TO INCLUDE REMODELING FOR REORGANIZATION, PROGRAM CHANGES, STAFFING CHANGES, CORRECTION OF INEFFICIENT OFFICE LAYOUTS, PLUMBING, ELEVATORS, ETC.					
		DESIGN			120		125
		CONSTRUCTION			800		840
		EQUIPMENT			5		5
		TOTAL FUNDING	AGS		925C		970C
24.	C43	KAHULUI CIVIC CENTER, PHASE I, MAUI					
		PLANS, DESIGN AND CONSTRUCTION FOR THE CONSTRUCTION OF THE KAHULUI CIVIC CENTER VIA LEASEBACK/PURCHASE OPTION AGREEMENT USING A PRIVATE DEVELOPER SELECTED BY REQUEST FOR PROPOSAL (RFP) PROCESS, OR BY STATE ISSUING CERTIFICATE OF PARTICIPATION (COP) USING A DESIGN/ BUILD RFP PROCESS OR THE CONSTRUCTION OF TEMPORARY FACILITIES TO REDUCE THE AMOUNT OF PRIVATE LEASED SPACE.					
		PLANS			498		
		DESIGN			1		
		CONSTRUCTION			1		
		TOTAL FUNDING	AGS		500C		C
25.	E105	CAPITOL CENTER BUILDING FEE PURCHASE, OAHU					
		LAND ACQUISITION TO PURCHASE THE LEASED FEE INTEREST IN THE CAPITOL CENTER BUILDING LOCATED AT 1177 ALAKEA STREET, HONOLULU, HAWAII.					
		LAND			2,100		
		TOTAL FUNDING	AGS		2,100C		C
26.	E109	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS			6,662		6,760
		LAND			1		
		DESIGN			1		
		CONSTRUCTION			1		
		EQUIPMENT			1		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	AGS	6,666C		6,760C	
27.	F109	AIR CONDITIONING SYSTEM UPGRADES, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE UPGRADE OF AIR CONDITIONING SYSTEMS IN STATE BUILDINGS AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		65		50	
		CONSTRUCTION		575		490	
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	641C		540C	
28.	G101	LIHUE STATE OFFICE BUILDING COMPLEX, ADA COMPLIANCE, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE LIHUE STATE OFFICE BUILDING, LIHUE COURTHOUSE, AND LIHUE HEALTH CENTER AND ANNEX TO REMOVE ARCHITECTURAL BARRIERS AND PROVIDE ACCESSIBILITY AND INCREASED SAFETY FOR PERSONS WITH DISABILITIES IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES.					
		DESIGN		30			
		CONSTRUCTION		170			
		TOTAL FUNDING	AGS	200C			C
29.	G103	LILIUOKALANI BUILDING, UPGRADE ELECTRICAL POWER FOR USERS, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL POWER SUPPLY AND PROVIDE PROPERLY GROUNDED THREE-PRONG ELECTRICAL OUTLETS THROUGHOUT THE BUILDING.					
		DESIGN		30			
		CONSTRUCTION		175			
		TOTAL FUNDING	AGS	205C			C
30.	G104	HILO STATE OFFICE BUILDING, SECURITY IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION TO PROVIDE CHANGES AND ADDITIONS TO FACILITY TO MEET CURRENT NEEDS AND CRITERIA FOR PHYSICAL SECURITY.					
		DESIGN		15			
		CONSTRUCTION		100			
		TOTAL FUNDING	AGS	115C			C
31.	G105	HILO STATE OFFICE BUILDING, ADA COMPLIANCE, HAWAII					
		DESIGN AND CONSTRUCTION TO RENOVATE THE HILO STATE OFFICE BUILDING TO REMOVE ARCHITECTURAL BARRIERS AND PROVIDE ACCESSIBILITY AND INCREASED SAFETY FOR PERSONS WITH DISABILITIES IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES.					
		DESIGN		35			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION			200		
		TOTAL FUNDING	AGS		235C		C
32.	B101M	HEALTH AND SAFETY REQUIREMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE MITIGATION OF HAZARDOUS MATERIALS AND/OR PHYSICAL CONDITIONS FROM STATE FACILITIES TO MEET CURRENT CODE REQUIREMENTS, STATEWIDE.					
		DESIGN			75		80
		CONSTRUCTION			500		525
		EQUIPMENT			5		5
		TOTAL FUNDING	AGS		580C		610C
33.	G102	LIHUE STATE OFFICE BUILDING, ASBESTOS REMOVAL, KAUAI					
		DESIGN AND CONSTRUCTION FOR CLEAN UP, REMOVAL AND DISPOSAL OF ASBESTOS CONTAINING CEILING TILES AND THEIR REPLACEMENT WITH NON-ASBESTOS CONTAINING CEILING TILES. WORK MAY INCLUDE THE TEMPORARY RELOCATION OF VARIOUS OFFICES.					
		DESIGN			25		
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		275C		C
34.	G106	HILO STATE OFFICE BUILDING, HAZARDOUS MATERIALS REMOVAL PROJECT, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE MITIGATION OF HAZARDOUS MATERIALS IN THE HILO STATE OFFICE BUILDING.					
		DESIGN			80		
		CONSTRUCTION			650		
		TOTAL FUNDING	AGS		730C		C
35.		KONA COFFEE LIVING HISTORY FARM, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE KONA COFFEE LIVING HISTORY FARM. PROJECT TO INCLUDE DEVELOPMENT OF AN ACCESS ROAD AND AN EXHIBIT BUILDING.					
		DESIGN			24		
		CONSTRUCTION			276		
		TOTAL FUNDING	AGS		300C		C
36.		STATE SPORTS RECREATIONAL COMPLEX, OAHU					



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A STATE SPORTS RECREATIONAL COMPLEX ON OAHU. SITE TO BE SELECTED BY DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. THE USE OF STATE LANDS FOR THE COMPLEX SHALL TAKE PRECEDENCE OVER THE ACQUISITION OF PRIVATE LANDS. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER. THIS PROJECT SHALL BE A PRIVATE-PUBLIC PARTNERSHIP TO BE DETERMINED BY DAGS.					
		PLANS		100		1,000	
		LAND		1,000		500	
		DESIGN		400		3,000	
		CONSTRUCTION		5,000		11,750	
		EQUIPMENT				5,000	
		TOTAL FUNDING	AGS	6,500C		21,250C	
37.		WAHIAWA CIVIC CENTER, OAHU					
		PLANS AND DESIGN FOR THE WAHIAWA CIVIC CENTER.					
		PLANS			50		
		DESIGN			200		
		TOTAL FUNDING	AGS		250C		C
<b>AGS233 - BUILDING REPAIRS AND ALTERATIONS</b>							
38.	CSD01	LUMP SUM CIP, PUBLIC BUILDING IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC OFFICE BUILDINGS INCLUDING LIBRARIES AND HEALTH CENTERS, STATEWIDE. PROJECT MAY INCLUDE ROOFING, AIR CONDITIONING, OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC FACILITIES MAINTAINED BY THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES.					
		DESIGN			249		
		CONSTRUCTION			2,023		
		TOTAL FUNDING	AGS		2,272C		C
<b>SUB201 - CITY AND COUNTY OF HONOLULU</b>							
39.		HOOKIEKIE STREET ROAD IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR ROAD IMPROVEMENTS TO HOOKIEKIE STREET TO BRING UP TO CITY AND COUNTY STANDARDS.					
		DESIGN			12		
		CONSTRUCTION			66		
		TOTAL FUNDING	CCH		78C		C
40.		PAUOA ROAD SIDEWALK IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR SIDEWALK IMPROVEMENTS ALONG PAUOA ROAD FRONTING PAUOA ELEMENTARY SCHOOL IN THE VICINITY OF TMK 2-2-16:20.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN				35	
		CONSTRUCTION				324	
		TOTAL FUNDING	CCH			359C	C
<b>SUB301 - COUNTY OF HAWAII</b>							
41.		WATERLINE EXTENSION, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A WATERLINE EXTENSION, FROM PARADISE DRIVE TO PAHOA, HAWAII.					
		DESIGN				120	
		CONSTRUCTION				1,379	
		EQUIPMENT				1	
		TOTAL FUNDING	COH			1,500C	C
42.		KEAUKAHA GYMNASIUM, HAWAII					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE KEAUKAHA GYMNASIUM.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				997	
		EQUIPMENT				1	
		TOTAL FUNDING	COH			1,000C	C
43.		KALOPA SAND GULCH ROAD, HAWAII					
		PLANS, DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS TO KALOPA SAND GULCH ROAD.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				598	
		TOTAL FUNDING	COH			600C	C
44.		PALANI ROAD IMPROVEMENTS, HAWAII					
		PLANS AND DESIGN FOR THE SAFETY ROAD IMPROVEMENTS TO PALANI ROAD.					
		PLANS				50	
		DESIGN				100	
		TOTAL FUNDING	COH			150C	C
45.		KONAWAENA SWIMMING POOL, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE KONAWAENA SWIMMING POOL.					
		DESIGN				1	
		CONSTRUCTION				83	
		EQUIPMENT				1	
		TOTAL FUNDING	COH			85C	C
46.		PAHALA EXPLORATORY WELL, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF PAHALA EXPLORATORY WELL.					
		DESIGN				65	
		CONSTRUCTION				600	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		TOTAL FUNDING	COH		665C		C
47.		HIENALOLI-KAHALUI WATERLINE, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A 8 INCH WATERLINE FROM HIENALOLI TO KAHULUI.					
		DESIGN			20		
		CONSTRUCTION			230		
		TOTAL FUNDING	COH		250C		C
48.		NORTH GLENWOOD ROAD WELL, HAWAII					
		DESIGN FOR THE DEVELOPMENT OF THE NORTH GLENWOOD ROAD WELL.					
		DESIGN			150		
		TOTAL FUNDING	COH		150C		C
49.		BIKEWAY DEVELOPMENT, HILO AIRPORT TO KALOLI STREET, HAWAII					
		DESIGN FOR THE BIKEWAY DEVELOPMENT FROM HILO AIRPORT TO KALOLI STREET.					
		DESIGN			100		
		TOTAL FUNDING	COH		100C		C
<b>SUB401 - COUNTY OF MAUI</b>							
50.		BINHI AT-ANI COMMUNITY CENTER, MAUI					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE BINHI AT-ANI COMMUNITY CENTER.					
		DESIGN			80		
		CONSTRUCTION			919		
		EQUIPMENT			1		
		TOTAL FUNDING	COM		1,000C		C
51.		WATER DEVELOPMENT AND INFRASTRUCTURE IMPROVEMENT PROJECTS, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR WATER DEVELOPMENT, INFRASTRUCTURE IMPROVEMENTS INCLUDING SEWAGE AND ROADS, HEALTH AND PUBLIC SAFETY PROJECTS AS MAY BE DEEMED NECESSARY BY THE COUNTY OF MAUI. STATE FUNDS SHALL BE MATCHED BY COUNTY, FEDERAL AND/OR PRIVATE FUNDS.					
		PLANS			1		
		LAND			1		
		DESIGN			1		
		CONSTRUCTION			2,996		
		EQUIPMENT			1		
		TOTAL FUNDING	COM		3,000C		C
52.		WAILUKU AIKIDO DOJO, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT AND/OR RENOVATION OF THE WAILUKU AIKIDO DOJO.					
		DESIGN				35	
		CONSTRUCTION				315	
		TOTAL FUNDING	COM			350C	C
<b>SUB501 - COUNTY OF KAUAI</b>							
53.		KAUAI POLICE/CIVIL DEFENSE EMERGENCY OPERATING CENTER, KAUAI					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW POLICE/CIVIL DEFENSE EMERGENCY OPERATING CENTER.					
		PLANS				300	
		DESIGN				5	
		CONSTRUCTION				449	
		EQUIPMENT				1	
		TOTAL FUNDING	COK			755C	C
54.		RICE STREET ROAD IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR ROAD IMPROVEMENTS TO RICE STREET TO BRING UP TO COUNTY STANDARDS.					
		DESIGN				30	
		CONSTRUCTION				300	
		TOTAL FUNDING	COK			330C	C
55.		WAIMEA SEWER SYSTEM, KAUAI					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE WAIMEA SEWER SYSTEM.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				347	
		EQUIPMENT				1	
		TOTAL FUNDING	COK			350C	C
56.		WAILUA/KAPAA SEWER SYSTEM, KAUAI					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE WAILUA/KAPAA SEWER SYSTEM.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				247	
		EQUIPMENT				1	
		TOTAL FUNDING	COK			250C	C
57.		ANTONE K. VIDINHA MULTI-PURPOSE COMPLEX, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW ANTONE K. VIDINHA MULTI-PURPOSE COMPLEX AND OTHER NECESSARY FACILITIES.					
		PLANS				250	
		LAND				1	
		DESIGN				1	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1997-98	M O F	FISCAL YEAR 1998-99	M O F
		CONSTRUCTION EQUIPMENT		447			
		TOTAL FUNDING	COK	700C			C
58.		KAPAA FIRE STATION, KAUAI					
		PLANS, DESIGN AND CONSTRUCTION FOR THE KAPAA FIRE STATION.					
		PLANS DESIGN		1			
		CONSTRUCTION		1			
		TOTAL FUNDING	COK	248			
		TOTAL FUNDING	COK	250C			C
59.		ANAHOLA WATER SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR A 0.5 MILLION GALLON (MG) STORAGE TANK AND CONNECTING PIPELINE AND RELATED APPURTENANCES.					
		DESIGN		10			
		CONSTRUCTION		750			
		TOTAL FUNDING	COK	760C			
		TOTAL FUNDING	COK	760C			C
60.		LIHUE WATER SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR PUMP, ELECTRICAL CONTROLS, CONNECTING PIPELINE AND APPURTENANCES FOR HANAMAULU WELL NO. 4.					
		DESIGN		45			
		CONSTRUCTION		400			
		TOTAL FUNDING	COK	445C			
		TOTAL FUNDING	COK	445C			C
61.		WAILUA/KAPAA WATER SYSTEM, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR PUMP, ELECTRICAL CONTROLS, CONNECTING PIPELINE AND RELATED APPURTENANCES FOR WAILUA HOMESTEADS WELL NO. 3.					
		PLANS		1			
		LAND		60			
		DESIGN		1			
		CONSTRUCTION		98			
		TOTAL FUNDING	COK	160C			
		TOTAL FUNDING	COK	160C			C

## PART V. CAPITAL IMPROVEMENT PROJECTS PROGRAM PROVISIONS

SECTION 141. Provided that of the special funds appropriation for airports administration (TRN 195), the sum of \$3,500,000 for fiscal biennium 1997-1999 shall be used for airports division capital improvements program staff costs, state-wide; provided further that the airports division shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the

details for non-permanent capital improvements program related positions; and provided further that the airports division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 142. Provided that of the special funds appropriation for harbors administration (TRN 395), the sum of \$1,600,000 for fiscal biennium 1997-1999 shall be used for harbors division capital improvements program staff costs, statewide; provided further that the harbors division shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; and provided further that the harbors division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 143. Provided that of the other federal funds appropriation for Oahu highways (TRN 501), the sum of \$700,000 for fiscal year 1997-1998 shall be used for construction for Kunia road widening, south Kupuna loop to Anonui street, Oahu; provided further that no funds shall be expended unless the state's pro rata matching share for the federal funds are paid with developer's contributions; and provided further that no funds shall be expended unless the developer enters into an agreement with the state to reimburse the state highway fund for all federal funds used for the project.

SECTION 144. Provided that of the special funds, revenue bond funds and other federal funds appropriations for highways administration (TRN 595), the sum of \$38,000,000 for fiscal biennium 1997-1999 shall be used for highways division capital improvements program staff costs, statewide; provided further that the highways division shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; and provided further that the highways division shall submit the budget report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 145. Provided that the general obligation bond fund appropriation for child and adolescent mental health program (HTH 460), the sum of \$500,000 for fiscal year 1997-1998 shall be used for design, construction, and equipment of trailer portables for the implementation of the comprehensive student support system to comply with the Felix consent decree implementation plan; provided further that upon completion of the comprehensive student support services plan, the department of education and the department of health shall determine the exact number of trailer portables required and the specific school facilities selected for trailer portable implementation; provided further that the department of health initiate the capital improvements request for the required number of trailer portables with the department of accounting and general services; provided further that, after the capital improvements request is submitted to the department of accounting and general services, the department of health may transfer any further responsibility to the department of education; provided further that all administrative authority concerning the logistical placement and set-up of the trailer portables shall be the responsi-

bility of the department of education; and provided further that the department of education shall fund all operating costs of the trailer portables.

SECTION 146. Provided that of the special funds appropriation for school-based budgeting (EDN 100), the sum of \$500,000 for fiscal biennium 1997-1999 shall be used for department of education capital improvements program staff costs, statewide; provided further that the department of education shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; and provided further that the department of education shall submit the budget report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 147. Provided that in the implementation of capital improvements program 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 improvements special fund appropriation.

SECTION 148. Provided that of the special funds appropriation for school-based budgeting (EDN 100), the sum of \$1,000,000 for fiscal year 1997-1998 and the sum of \$1,000,000 for fiscal year 1998-1999 shall be used for electrical upgrades, statewide; provided further that no funds shall be expended without prior consultation between the facilities branch of the department of education and the district superintendent.

SECTION 149. After the objectives of appropriations made in this Act for capital investment purposes from the state educational facilities improvement special fund have been met, any unrequired balances shall be transferred to the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV, and shall be considered a supplementary appropriation thereto.

SECTION 150. In the event that currently authorized appropriations specified for capital investment 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 funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV; provided further 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, and may only be made to supplement currently authorized capital investment project cost elements; and provided further that the governor shall submit a report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 151. Provided that any amount appropriated for any capital improvements program project authorized in part II and listed in formal education, part G of part IV of this Act and funded from the state educational facilities improvement special fund and is in excess of the amount required to complete the

project, such excess funds may be expended with the approval of the governor for any or all the following projects and purposes:

- (1) Royal elementary school, Oahu  
Design, construction, and equipment for administration/library facility; equipment and appurtenances, ground and site improvements; renovate existing facilities to classrooms.
- (2) Nanakuli elementary school, Oahu  
Design and construction for classroom building; ground and site improvements; equipment and appurtenances.
- (3) Nanakuli IV elementary school, Oahu  
Master plans and design for first increment; ground and site improvements; equipment and appurtenances; renovation of existing facilities.
- (4) Waiakea elementary school, Hawaii  
Design and construction for administration and library building(s); ground and site improvements; equipment and appurtenances; renovation of existing facilities.
- (5) Keaau high school, Hawaii  
Construction for the second increment and/or design of the third increment; equipment and appurtenances.
- (6) Waipahu elementary school, Oahu  
Design and construction for a retaining wall/drainage system, ground and site improvements, and appurtenances.

SECTION 152. Provided that of the general obligation bonds funds appropriated for university of Hawaii, Manoa (UOH 100), the sum of \$5,652,000 for fiscal year 1997-1998 shall be used for design, construction and equipment for the special event arena and athletics support facilities, Oahu; and provided further that the university of Hawaii is authorized to use funds from the university of Hawaii intercollegiate athletics revolving fund and seek private contributions to equip the facilities.

SECTION 153. Provided that of the general obligation bond fund appropriation for land and natural resources - natural physical environment (LNR 906), the sum of \$3,120,000 for fiscal biennium 1997-1999 shall be used for department of land and natural resources capital improvements program staff costs, statewide; provided further that the department of land and natural resources shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; and provided further that the department of land and natural resources shall submit the budget report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 154. Provided that of the general obligation bond fund appropriation for the department of public safety, general administration (PSD 900), the sum of \$500,000 for fiscal year 1997-1998 shall be used for master planning of a new 1,500 bed minimum prison facility; provided further that the department of public safety shall develop and implement a community partnering process to be incorporated into the site selection process; provided further that this partnering process shall include community hearings and solicit community input in regards to site selection; provided further that a community benefit and enhancement package may be developed by the department and the affected community to mitigate the negative aspects of building a prison facility in the community; provided further that



the benefit and enhancement package may include, but not limited to, infrastructure improvements, job training programs or improvements to schools within the community; and provided further that any benefit and enhancement package shall be presented to the legislature for approval twenty days prior to the convening of the 1998 regular session.

SECTION 155. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 104), the sum of \$3,600,000 for fiscal biennium 1997-1999 shall be used for Hawaii community development authority capital improvements program staff costs, statewide; provided further that the Hawaii community development authority shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; and provided further that the Hawaii community development authority shall submit the budget report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 156. Provided that of the general obligation bond fund appropriation for construction (AGS 221), the sum of \$13,426,000 for fiscal biennium 1997-1999 shall be used for department of accounting and general services capital improvements program staff costs, statewide; provided further that the department of accounting and general services shall prepare a project-funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for all non-permanent capital improvements program related positions; and provided further that the department of accounting and general services shall submit the budget report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 157. Act 218, Session Laws of Hawaii 1995, Part V, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 6, is amended as follows:

By amending section 111.1 to read:

“Section 111.1. Provided that of the other federal funds appropriation for Oahu highways (TRN 501), the sum of \$6,480,000 for fiscal year 1996-1997 shall be used for construction for interstate H-1, Makakilo interchange improvements, Oahu; provided further that no funds shall be expended unless the state’s pro rata matching share for the federal funds are paid with [private] developer contributions; and provided further that no funds shall be expended unless the [private] developers enter[s] into an agreement with the state to reimburse the state highway fund for all federal funds used for this project. For purposes of this section, “developer” includes both private and public developers or agencies.”

SECTION 158. Act 218, Session Laws of Hawaii 1995, part V, as amended and renumbered by Act 287, Session Laws of Hawaii, section 6, is amended: By repealing section 125.1.

SECTION 159. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amounts

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indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
AGR 192-5	\$ 35,000 C
LNR 141-8	1,000 C
TRN 531-62	10,000,000 B
TRN 531-62	40,000,000 N
TRN 595-85B	1,900,000 C
TRN 595-85B	10,000,000 N
HHL 602-12	21,149 C
EDN 100-19A	1,000,000 B
EDN 100-19B	1,350,000 B
EDN 100-93	539,110 B
UOH 210-94A	1,230,000 R
UOH 100-83	8,312,000 R
UOH 100-84	248,000 B
UOH 210-94	100,000 C
AGS 221-18	500,000 C”

SECTION 160. Any law to the contrary notwithstanding, the appropriations under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
EDN 100-2	\$ 21,862 B
EDN 100-3	115,481 B
EDN 100-8	174,895 B
EDN 100-12	96,132 B
EDN 100-15	67,771 B
EDN 100-18	19,009 B
EDN 100-19	14,721 B
EDN 100-28	26,047 B
EDN 100-34A	55,146 B
EDN 100-34B	52,178 B
EDN 100-35A	317,544 B
EDN 100-36	14,730 B
EDN 100-40	30,686 B
EDN 100-44C	238,166 B
EDN 100-49	238,166 B
EDN 100-55	863,081 B
EDN 100-56	115,000 B
EDN 100-57	12,261 B
EDN 100-58A	27,594 B
EDN 100-59	48,509 B
EDN 100-63	87,687 B
EDN 100-64	20,043 B
EDN 100-65A	170,000 B
EDN 100-73	5,559 B
EDN 100-77	92,125 C
EDN 100-77A	17,448 C
EDN 100-79	21,939 C

<u>Item No.</u>	<u>Amount (MOF)</u>
EDN 100-80A	302,442 C
EDN 100-81	11,700 C
EDN 100-81A	26,603 C
EDN 100-89	83,591 C
EDN 100-91	91,944 C
EDN 100-92	52,953 C
EDN 100-95	655 C
EDN 100-96	28,253 C
EDN 100-97C	40,562 C
EDN 100-102	9,548 C
EDN 100-104	388 C
EDN 100-104A	18,708 C''

SECTION 161. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
BED 102-3	\$ 27,890 C
BED 120-18	120,000 C
EDN 100-40	22,862 B
EDN 100-49	17,196 B''

SECTION 162. 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 balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
BED 120-14	\$ 96,000 C
TRN 531-64	75,000 K
TRN 595-79	272,503 N
LNR 806-14	5,391 C
LNR 806-17	5,000 C''

SECTION 163. Any law to the contrary notwithstanding, the appropriations under Act 216, Session Laws of Hawaii 1987, section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
BED 102-2	\$ 491,308 C
TRN 501-38	8,876,610 J
TRN 501-49	10,470 N
TRN 595-90	1,719,632 N''

SECTION 164. Any law to the contrary notwithstanding, the appropriations under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 5, in the amounts

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indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
PED 120-10	\$ 29,490 C
TRN 501-30	2,501,161 J
TRN 501-36	1,625,359 K
TRN 511-43	20,082 N
TRN 531-50	1,480,000 K
TRN 561-58	4,389,783 K
TRN 595-63	1,465,832 N
TRN 595-64	2,369,537 N
LNR 806-41	44,520 C
LNR 806-53	8,726 C”

SECTION 165. Any law to the contrary notwithstanding, the appropriations under Act 301, Session Laws of Hawaii 1983, section 80, as amended and re-numbered by Act 285, Session Laws of Hawaii 1984, section 7, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
TRN 102-9	\$ 45,641 N
TRN 501-36	8,790,344 J
TRN 501-39	115,000 K
TRN 501-40	63,728 N
TRN 501-41	773,886 K
TRN 501-42	874,213 K
TRN 531-49	2,606,447 K
TRN 541-53	284,990 L
TRN 561-54	742,000 N
TRN 561-56	85,000 N
TRN 595-58	355,693 N
TRN 595-59	502,121 N
LNR 806-18	100,033 C”

SECTION 166. Any law to the contrary notwithstanding, the appropriations under Act 287, Session Laws of Hawaii 1984, section 2, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
TRN 511-I-D5	\$ 95,063 N
TRN 511-I-D6	2,459 N
TRN 511-I-D7	693 N
TRN 511-I-D9	3,822 N
TRN 511-I-D10	8,225 N
TRN 511-I-D14	13,078 N
TRN 531-II-D1	39,683 N
TRN 501-III-D4	453,904 N
TRN 501-III-D17	29,413 N”

SECTION 167. Any law to the contrary notwithstanding, the appropriations under Act 283, Session Laws of Hawaii 1983, section 2, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
TRN 511-I-D1	\$ 20,547 N
TRN 511-I-D4	633,288 N
TRN 501-III-D6	5,336 N
TRN 501-III-D12	18,342 N”

SECTION 168. Any law to the contrary notwithstanding, the appropriations under Act 1, First Special Session Laws of Hawaii 1981, Part II, section 3, as amended and renumbered by Act 264, Session Laws of Hawaii 1982, section 92, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
TRN 102-3A	\$ 224,725 N
TRN 501-38	56,023,154 J
TRN 501-39	1,192,746 J
TRN 511-46A	90,629 N
TRN 511-46B	65,094 K
TRN 511-47	58,203 K
TRN 561-54A	177,316 K
TRN 595-57	2,584,011 N
TRN 595-58	1,131,599 N”

SECTION 169. Any law to the contrary notwithstanding, the appropriations under Act 263, Session Laws of Hawaii 1982, section 2, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
TRN 531-II-V3	\$ 435 N
TRN 501-III-D2	14,159 N”

SECTION 170. Any law to the contrary notwithstanding, the appropriations under Act 1, First Special Session Laws of Hawaii 1981, Part VIA, section 104, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
TRN 531-II-V1	\$ 23,333 N
TRN 501-III-D8	1,203 N
TRN 501-III-D9	1,165 N”

SECTION 171. Act 218, Session Laws of 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5 is amended to read as follows:

- (1) By amending Item C-49M to read:

“49M. INTERSTATE H-1, MAKAKILO INTERCHANGE IMPROVEMENTS, OAHU

CONSTRUCTION FOR THE INTERSTATE H-1, MAKAKILO INTERCHANGE IMPROVEMENTS INCLUDING MODIFICATIONS TO THE WESTBOUND OFF-RAMP AND THE NORTHBOUND TO EASTBOUND ON-RAMP. THE EXPENDITURE OF FUNDS WOULD BE SUBJECT TO THE AVAILABILITY OF FUNDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION				8,100
TOTAL FUNDING	TRN			6,480N
	TRN		N	892R
	TRN		R [1,620]	<u>728W</u>
			W	

(2) By amending Item G-99A to read:

“99A. UHWO, INTERIM CAMPUS DEVELOPMENT, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RELOCATION AND RENOVATION OF NOT LESS THAN NINETEEN TEMPORARY FACILITIES FROM THE KAPIOLANI COMMUNITY COLLEGE TO LEEWARD COMMUNITY COLLEGE TO ADDRESS ACCREDITATION REQUIREMENTS FOR THE INTERIM CAMPUS OF THE UNIVERSITY OF HAWAII - WEST OAHU. PROJECT MAY INCLUDE GROUND AND SITE IMPROVEMENTS AT KAPIOLANI COMMUNITY COLLEGE.

DESIGN				280
CONSTRUCTION				2,717
EQUIPMENT				95
TOTAL FUNDING	AGS		C	3,092C”

(3) By amending Item H-0A to read:

“0A. WAIPAHU COMMUNITY FOUNDATION MONUMENT, OAHU

DESIGN AND CONSTRUCTION FOR A MONUMENT RECOGNIZING THE ONE HUNDRED YEARS OF SERVICE IN CONJUNCTION WITH THE ACTIVITIES OF THE WAIPAHU CENTENNIAL CELEBRATION ADVISORY COMMISSION AND THE WAIPAHU CENTENNIAL ANNIVERSARY. THIS PROJECT IS TO BE LOCATED IN FRONT OF WAIPAHU INTERMEDIATE SCHOOL. THIS PROJECT [QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS] SHALL BE EXPENDED BY THE OFFICE OF VETERAN SERVICES, DEPARTMENT OF DEFENSE.

DESIGN				20
CONSTRUCTION				200
TOTAL FUNDING	[AGS]	DEF	C	220C”

(4) By amending Item K-27A to read:

“27A. IMPROVEMENTS IN THE VICINITY OF THE CONVENTION CENTER, OAHU

PLANS FOR IMPROVEMENTS IN THE VICINITY OF THE HONOLULU CONVENTION CENTER, INCLUDING KONA STREET KEEAUMOKU STREET AND PIIKOI STREET.

PLANS

TOTAL FUNDING

(CCH) TRN

C

250

250C”

PART VI. ISSUANCE OF BONDS

SECTION 172. GOVERNOR’S DISCRETIONARY POWERS. When it is deemed in the public interest of the State, the governor, in his 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 173. AIRPORT REVENUE BONDS. The department of transportation is authorized to issue airport revenue bonds for airport capital improvement program 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 program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such airport revenue bonds during the estimated period of construction of the capital improvements program project for which such airport revenue bonds are issued, to establish, maintain, or 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 of and interest on 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 shall to the extent not paid from the proceeds of such bonds shall be paid from the airport revenue fund.

The governor, in his 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 174. HARBOR REVENUE BONDS. The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement

program 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 improvement program projects, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the estimated construction period of the capital improvement project for which such harbor revenue bonds are issued, to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and 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 of and interest on 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 derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, and pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

The governor, in his discretion, is authorized to use the harbor revenue fund to finance those projects 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 175. HIGHWAY REVENUE BONDS.** The department of transportation is authorized to issue highway revenue bonds for highway 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 the 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 improvement projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such highway revenue bonds during the estimated period of construction of the capital improvement project for which such highway revenue bonds are issued, to establish, maintain, or increase reserves for such highway revenue bonds or highway revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of such highway revenue bonds. The aforementioned highway 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 of and interest on such highway revenue bonds, to the extent not paid from the proceeds of such highway revenue bonds, shall be payable from and secured by the revenues derived from highways and related facilities under the ownership of the State or operated and managed by the department, from the highway fuel taxes, vehicle weight taxes, and vehicle registration fees, levied and paid pursuant to sections 243-4, 248-8, 249-31, and 249-33, Hawaii Revised Statutes, and federal moneys received by the State or any department thereof which are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof as the department may determine, and other user taxes, fees, or charges currently or hereafter derived from or arising through the ownership, operation, and management of highways and related facilities and the furnishing and supplying of the services thereof. The



expenses related to the issuance of such highway revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the state highway fund.

The governor, in his discretion, is authorized to use moneys in the State highway fund to finance those highway capital improvement projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by revenue bond funds.

**SECTION 176. SMALL BOAT HARBOR REVENUE BONDS.** The department of land and natural resources is authorized to issue small boat harbor revenue bonds for small boat 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. The principal amount of such bonds shall be sufficient 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 pay interest on such revenue bonds during the construction period of the capital improvement project for which such small boat harbor revenue bonds are issued, to establish, maintain, or increase reserves for the small boat harbor revenue bonds, and to pay the expenses for the issuance of such bonds. The aforementioned small boat 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 of and interest on the small boat 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 small boat harbors and related facilities under the ownership of the State or operated and managed by the department. The revenues shall include rents, mooring, wharfage, dockage, and permit fees, and other fees or charges presently or hereafter derived from or arising through the ownership and operation of small boating activities and the furnishing and supplying of the services thereof. The expenses of the issuance of such small boat harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

**SECTION 177. PUBLIC FACILITY REVENUE BONDS.** The Hawaii Community Development Authority is authorized to issue revenue bonds for public facility 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 the debt service cost to be paid from special funds. The principal amount of such bonds shall be sufficient to yield the amounts appropriated to construct, acquire, remodel, furnish, and equip any public facility, including acquisition of the site thereof. Additionally, if so determined by the authority and approved by the governor, the principal amount of such bonds shall be in an additional amount deemed necessary by the Authority to pay interest on such revenue bonds during the estimated period of construction of the capital improvement project for which such public facility revenue bonds are issued, to establish, maintain, or increase reserves for such public facility revenue bonds, and to pay all or any part of the expenses related to the issuance of such public facility revenue bonds. The aforementioned public facility 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 of and interest on such public facility revenue bonds, to the extent not paid from the proceeds of such public facility revenue bonds, shall be payable from and secured by the revenues derived from the public facility for which the revenue bonds are issued, including revenue derived from insurance proceeds and reserve accounts and earnings thereon.

SECTION 178. CONVENTION CENTER REVENUE BONDS. The Convention Center Authority is authorized to issue convention center revenue bonds for 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 the 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 improvement projects, and, if so determined by the authority and approved by the governor, such additional principal amount as may be deemed necessary by the authority to pay interest on such convention center revenue bonds during the estimated period of construction of the capital improvement project for which such convention center revenue bonds are issued, to establish, maintain, or increase reserves for such convention center revenue bonds, and to pay all or any part of the expenses related to the issuance of such convention center revenue bonds. The aforementioned convention center 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 of and interest on such convention center revenue bonds, to the extent not paid from the proceeds of such convention center revenue bonds, shall be payable from and secured by revenues available pursuant to section 237D-6.5, Hawaii Revised Statutes, by the revenues derived from a convention center facility or facilities and related facilities under the ownership of the State or operated and managed by the authority, and other rates, rents, fees, or charges currently or hereafter derived from or arising through the ownership, operation, and management of convention center facilities and related facilities and the furnishing and supplying of the services thereof.

SECTION 179. 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 of and interest on 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 180. 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 of and interest on 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 181.** Provided that to the extent that the sums appropriated for the payment of principal and interest on general obligation bonds are insufficient to meet and pay all such obligations 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; and provided further that the legislature, under procedures established in section 10 of article III of the Hawaii State Constitution, shall 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 182.** All general obligation bond funds used for a public undertaking, improvement, or system, designated by the letter (D), shall have the bond principal and interest reimbursed from the special fund in which the net revenue, or net user tax receipts, or combination of both, of such public undertaking, improvement, or system, are deposited or credited. 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, the economic development special fund, or other appropriate special fund, to finance the respective public undertaking, improvement, or system described above and authorized in this Act, where the method of financing is designated to be by general obligation bond fund with debt service cost to be paid from the funds; provided that the governor shall submit a report to the legislature on such changes in the method of financing of such projects.

**SECTION 183.** Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized under this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all general funded, general obligation and reimbursable general obligation bond funded appropriations made to be expended in fiscal biennium 1998-99 which are unencumbered as of June 30, 2000, shall lapse as

of that date; provided further that this lapsing date shall not apply to appropriations for projects described in section 140A of this Act where the means of funding is designated to be the state educational facilities improvement special fund, and where such appropriations have been authorized for more than three years for the construction or acquisition of public school facilities.

**SECTION 184.** 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 funds appropriated for other cost elements of the same project, by this Act or by any other prior or future Act which has not lapsed; and provided further that the total expenditure of funds for all cost elements shall not exceed the total appropriations for that project.

**SECTION 185.** After the objectives of appropriations made in this Act from the general obligation bond fund or the general fund for capital improvement projects 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, 2000, as provided in section 183 of this Act.

**SECTION 186.** In the event that authorized appropriations specified for capital improvement 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 to supplement any currently authorized capital investment cost elements; and provided further that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project; and provided that the governor shall submit a report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

**SECTION 187.** In the event that the authorized appropriations specified for a capital improvement 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 un-lapsed 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 and provided further that the governor shall submit a report to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

**SECTION 188.** 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 improvement project described in this Act, the governor may authorize such reduction of project scope.

SECTION 189. In releasing funds for capital improvement 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 190. With the approval of the governor, designated expending agencies for capital improvement projects authorized in this Act may delegate to other state or county agencies the implementation of such projects when it is determined by all involved agencies and parties that it is advantageous to do so; provided that a summary report shall be submitted to the legislature detailing all designated projects as of December 31 and June 30 for each fiscal year.

SECTION 191. 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 192. The governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects of recession, unemployment, natural disasters, unforeseen emergencies, and for any federal aid portion of any capital improvement project described in this Act where application for such aid has been made and approval has been unexpectedly denied; provided that the effects of recession, unemployment, natural disaster, emergencies, or denial of federal aid create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the governor shall use the project adjustment fund authorized in part II and described in part IV to accomplish the purposes of this section.

SECTION 193. No appropriation authorized in this Act for expenditure by a political subdivision of this State shall be considered to be a mandate to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act constitutes such a mandate 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 bond authorized for such projects shall be correspondingly decreased.

SECTION 194. 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 shall transfer the necessary funds and positions to the proper expending agency; provided that the governor shall submit a report of all such transfers to the legislature no later than twenty days prior to the 1998 and 1999 regular sessions.

SECTION 195. 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, 1997, to June 30, 1999. 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 196.** 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 197.** 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.

**SECTION 198.** 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.

**SECTION 199.** 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 the transfers were made.

**SECTION 200.** Unless otherwise provided in this Act, the governor is authorized to transfer operating funds between appropriations with the same means of funding, within an expending agency for operating purposes; provided that the governor shall submit a report on all such transfers no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

**SECTION 201.** 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, and shall be consistent with appropriations provided in this Act, and with provisions of part II of chapter 37 of the Hawaii Revised Statutes.

**SECTION 202.** In the event that unanticipated federal funding cutbacks diminish or curtail essential, federally-funded state programs, 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 203. The governor is authorized to establish five permanent positions during each year of the fiscal biennium 1997-1999 to be allocated by the governor to any of the program areas included in this Act as deemed proper; and provided further that the governor shall submit a report to the legislature on the creation of all such positions no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 204. 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 205. Except as otherwise provided by general law, negotiations 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, or other appropriate agency. 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 project specifically authorized by this Act.

SECTION 206. The governor is authorized to transfer savings as may be available from the appropriated funds of any programs in this Act to supplement the appropriation for any other program in this Act to cope with the effects of recession, unemployment, natural disasters, and other unforeseen emergencies; provided that the effects of recession, unemployment, natural disaster, or such emergencies create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the legislature shall be notified in writing of such transfer of funding no later than fourteen days after the transfer is made.

SECTION 207. Except as otherwise provided, or except as prohibited by specific grant conditions, all federal fund reimbursements received by state programs shall be returned to the general fund, or other appropriate program fund; and provided further that a report shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 208. Provided that, of the respective appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$2,500 in fiscal year 1997-1998 and the sum of \$2,500 in fiscal year 1998-1999 shall be made available in each department to be established as a separate account for a protocol fund to be expended at the discretion of the executive heads of such departments which are respectively known as its directors, chairpersons, comptroller, adjutant-general, superintendent, president, and attorney general.

SECTION 209. Provided that the departments of health, education, and human services and the office of youth services may create an interdepartmental decategorization program for the development of pilot projects to demonstrate more effective ways to deliver mental health, educational, and protective services to multi-problem, multi-service children and adolescents who are clients of more than one program or agency; provided further that the departments of health, education, and human services, and the office of youth services may transfer funds into, and may expend funds from, decategorized service accounts established to meet the individual needs of multi-service children and adolescents; provided further that these

agencies shall submit a joint report to the legislature on the status of the pilot projects developed under this decategorization demonstration program no later than ten days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 210. Provided that to facilitate better fiscal accountability for the executive branch, the department of budget and finance shall be the lead agency in coordinating the following:

- (1) Providing the legislature electronic access to executive budget data including, but not limited to, on-line read only access to the state of Hawaii's fiscal accounting and management system (FAMIS);
- (2) Coordinating with the department of accounting and general services to integrate the budget journal (BJ) tables with the fiscal accounting and management information system, so that actual expenditure data for prior fiscal years can be displayed in the BJ tables;

provided further that adequate training in the use of this system shall be provided for the appropriate staff of both the Hawaii State senate ways and means and the house of representatives finance committees; and provided further that for paragraph (2) of this section, a report on the status of efforts to integrate the respective systems, and a projection of the cost of implementation of this integration, shall be submitted to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 211. Provided that for all federal funds received subsequent to the convening of the 1998 and 1999 regular sessions, each department shall submit a report to the legislature detailing the receipt of such funds no later than ten days upon notification of the receipt of such funds; provided further that this report shall detail the amount of funds received, the anticipated duration of the funds being received, a brief narrative of the purposes for such funds, and a summary of any state matching requirements; provided further that the governor may allow for an increase in the federal fund ceiling for the department to accommodate the expenditure of such funds; and provided further that the governor shall submit to the legislature a summary of all such funds received no later than twenty days prior to the convening of the 1998 and 1999 regular sessions.

SECTION 212. Provided that in order to determine the most cost effective use of telecommunications and information technology the department of accounting and general services shall report to the legislature by January 15, 1998 for all departments in the executive branch, and the UH and DOE:

- (1) A description of all existing computer and information systems, and an assessment as to whether they are year 2000 compliant, the cost and resources to upgrade to be year 2000 compliant, and a project timeline to ensure timely completion.
- (2) Identify all positions that are currently dedicated to operate and maintain computer application systems, including the type of position (permanent, temporary, exempt, or excluded) and whether it is filled or vacant.
- (3) Identify all positions that provide planning, design, operations, and support services for information technology infrastructure, local area networks, wide-area networks, and communication systems that are not dedicated to a specific application system, including the type of position (permanent, temporary, exempt, or excluded) and whether it is filled or vacant.
- (4) A description of all information and computer systems projects included in the FY 1997-1998, and FY 1998-1999 biennium costing



\$100,000 or more, including scope of the project, source of funding, the project schedule, the proposed date of implementation, the number of positions and resources required for initial implementation, and the number of positions and resources required for on-going maintenance and technical support; and

- (5) An action plan implement a statewide strategy on information technology that ensures integration and maximum synergy of systems in all departments, including identifying requirements of the public records law.

Provided further that the department of accounting and general services shall provide in their report to the legislature a work plan, potential strategies and approaches to be considered, timetable and schedules, report outline, and a list of departments and their representatives contributing to the project.

SECTION 213. Provided that the governor, through the director of finance, shall appoint two persons from the department of budget and finance, two persons from the department of accounting and general services, and two persons from the department of human resources development to serve on a computer integration committee; provided further that the integration committee shall conduct a comprehensive study of developing and implementing an integrated personnel, payroll, and health and retirement benefits computer system; provided further that such review shall include, but not be limited to, a benefit analysis of operational costs, operational efficiencies, interdepartmental coordination, and employee productivity; provided further that this report shall include a development and implementation plan for an integrated computer system; and provided further that the department of budget and finance shall submit this report to the legislature no later than twenty days prior to the convening of the 1998 regular session.

SECTION 214. Provided further that of the capital improvements program projects authorized in part II and listed in part IV of this Act, all projects that have been denied allotment by the governor and/or the department of budget and finance shall be identified in a report; provided further that this report shall include a justification/rationale for the denial of allotment for each project; provided further that the department of budget and finance shall prepare this report on a quarterly basis; and provided further that this report shall be submitted to the legislature no later than three weeks following the close of each fiscal quarter.

SECTION 215. Provided that of the general obligation bond funded capital improvements program projects authorized in part II and listed in part IV of this Act, all projects that have been initiated by the governor and/or the department of budget and finance shall be identified in a report; provided further that this report shall for each project include the amount of funds allotted, encumbered and expended; provided further that the department of budget and finance shall prepare this report on a quarterly basis; and provided further that this report shall be submitted to the legislature no later than three weeks following the close of each fiscal quarter.

## **PART VIII. MISCELLANEOUS AND EFFECTIVE DATE**

SECTION 216. 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 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 217. 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 218. Material to be repealed is bracketed. New material in prior enacted laws is underscored.

SECTION 219. EFFECTIVE DATE. This Act shall take effect on July 1, 1997.

(Approved June 30, 1997.)

**ACT 329**

H.B. NO. 2207

A Bill for an Act Relating to the Public Land Trust.

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

SECTION 1. The legislature finds that the events of history relating to Hawaii and Native Hawaiians, including those set forth in Public Law 103-150 (November 23, 1993), continue to contribute today to a deep sense of injustice among many Native Hawaiians and others. The legislature recognizes that the lasting reconciliation so desired by all people of Hawaii is possible only if it fairly acknowledges the past while moving into Hawaii's future.

The legislature further finds that over the last few decades, the people of Hawaii, through amendments to their state constitution, the acts of their legislature, and other means, have moved substantially toward this permanent reconciliation. Foremost among these achievements have been the creation of the office of Hawaiian affairs and the allocation by legislative action to the office of Hawaiian affairs of substantial funds out of a portion of the public land trust established by section 5(f) of the Admission Act. The overriding purpose of this Act is to continue this momentum, through further executive and legislative action in conjunction with the people of Hawaii, toward a comprehensive, just, and lasting resolution.

The legislature finds, however, that despite its many efforts to provide for and clarify the proper management and disposition of the lands subject to the public land trust and the proceeds and income therefrom, and to effectuate article XII, section 6 of the Hawaii Constitution, there remains substantial controversy with respect to such matters. Existing and foreseeable areas of controversy include but are not limited to:

- (A) Exactly which lands currently comprise the public land trust;
- (B) What constitutes a pro rata portion of the trust;
- (C) The legislature's intent in defining "revenue" and the "public land trust" for purposes of effectuating article XII, section 6; and
- (D) The composition and amount of "revenue", if any, payable to the office of Hawaiian affairs.

These controversies have been reflected in several instances. In one lawsuit, for example, denoted Office of Hawaiian Affairs v. State of Hawaii, Circuit Court of the First Circuit, State of Hawaii Civil No. 94-0205-01, the office of Hawaiian affairs claimed entitlement to additional revenues from the public land trust. As more fully discussed in the accompanying conference committee report, which is specifically incorporated into this Act by reference, the court, in pretrial rulings, specifically misinterpreted the scope and applicability of the legislature's statutory definition of "revenue" under section 10-2, Hawaii Revised Statutes, in part by:

- (A) Failing to adopt the legislative differentiation between proceeds arising from the actual use of public trust lands and proceeds from the use of nontrust lands or from improvements located on lands;
- (B) Failing to adopt the legislative differentiation between improvements constructed with public trust land proceeds and income and improvements constructed with other moneys;
- (C) Failing to give proper effectuation to the legislature's distinction between: (1) "sovereign" functions benefitting not only native Hawaiians, but also the other beneficiary of the public trust, the "general public," such as state affordable housing development and rental projects, and community hospitals and health care systems; and (2) "proprietary" functions; and
- (D) Failing to recognize that the list of sovereign functions in the definition of revenue is exemplary rather than exclusive.

The results of these ongoing controversies include but are not limited to:

- (A) Presently unasserted and unliquidated claims, or both, against the state for past amounts due which by some estimates could exceed one billion dollars;
- (B) As a result of judicial interpretations of chapter 10, Hawaii Revised Statutes, which have created uncertainty as to the application of chapter 10, serious deterioration in the confidence of the bond markets in state government financing inclusive of a downgrading in the state's bond rating with attendant lower bond marketability and the risk of higher interest expenses; and
- (C) Substantial difficulty encountered by the executive and legislative branches, particularly in this difficult economic period, in adequately balancing competing claims to scarce state resources and in responsibly planning for future obligations.

It is in the public interest that existing ambiguities be clarified, legislative intent be reiterated, immediate threats to the state's overall financial condition be mitigated, the ability of the state to carry out its sovereign functions be preserved, a responsible and comprehensive state budget process be assured, and a mechanism be established for the resolution of all outstanding issues between the executive and legislative branches and the office of Hawaiian affairs outside of the litigation process and which involves representatives of each.

It is in the public interest that, during the period in which the state and the office of Hawaiian affairs are utilizing in good faith an established mechanism for the non-litigation resolution of outstanding issues and as part of that mechanism:

- (A) An inventory of the public trust lands describing those lands with sufficient specificity be undertaken and completed; and
- (B) The office of Hawaiian affairs be assured an adequate level of funding with which to accomplish its goals.

It is in the public interest that the relevant issues relating to the global resolution described in the initial paragraphs of this section, including but not limited to issues currently under litigation between the state and the office of Hawaiian affairs, be addressed within and remain under the control of the executive and legislative branches of state government as essentially political questions within the spirit of the Supreme Court of Hawaii's opinion in Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154 (1987).

The specific purposes of this Act are to address the above findings and implement the above public interests by, among other actions:

- (1) Dispelling uncertainty of legislative intent as to revenue from the public land trust by reiterating legislative purpose with respect to:

- (A) The definition of “revenue” in section 10-2, Hawaii Revised Statutes, specifically, the differentiation between proceeds, and fees, charges, rents, or other income, derived from proprietary activities occurring on or resulting from the actual use of lands in the public trust and therefore subject to the requirement of section 10-13.5, Hawaii Revised Statutes, and proceeds, and fees, charges, rents, or other income, derived from the exercise of sovereign functions and powers on those lands and therefore excluded from that requirement;
  - (B) The distinction between proceeds, and fees, charges, rents, or other income, derived from activities actually located on public land trust lands, and proceeds, and fees, charges, rents, or other income, derived from activities actually located on non-public land trust lands;
  - (C) The fact that the list of sovereign function exclusions at the end of the definition of revenue in section 10-2, Hawaii Revised Statutes, is non-exclusive; and
  - (D) Other issues currently under dispute in Office of Hawaiian Affairs v. State of Hawaii, Circuit Court of the First Circuit, State of Hawaii, Civil No. 94-0205-01;
- (2) Establishing a process to gather information, facilitate discussion, and secure recommendations to more clearly address within the executive and legislative branches specific issues as to which clarification of legislative intent may be beneficial as well as broader issues relating to the public land trust;
  - (3) Providing interim measures to ensure that adequate income and proceeds from a pro rata portion of the public trust continue to be available to the office of Hawaiian affairs for the betterment of native Hawaiians while the contemplated process to address issues relating to the public trust is underway;
  - (4) Facilitating the identification of the public trust lands by requiring that a comprehensive inventory and mapping of such lands be completed, maintained, and used to guide implementation of the public trust requirements and a global resolution of all related issues; and
  - (5) Taking such other actions as are necessary to effectuate fully the legislature’s intent.

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§10- Interim revenue.** Notwithstanding the definition of revenue contained in this chapter and the provisions of section 10-13.5, and notwithstanding any claimed invalidity of Act 304, Session Laws of Hawaii 1990, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6 of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each of fiscal year 1997-1998 and fiscal year 1998-1999 shall be \$15,100,000.”

SECTION 3. (a) There is established a joint committee to study and make recommendations on all outstanding and anticipated issues identified by the joint committee as currently or potentially relating to the public land trust, including whether lands should be transferred to the office of Hawaiian affairs in partial or full satisfaction of any past or future obligations under article XII, section 6 of the Hawaii Constitution.

(b) The joint committee shall consist of eight members, of which the senate president, the speaker of the house of representatives, the office of Hawaiian affairs,

and the governor shall each appoint two members. All members of the committee shall be appointed by no later than thirty days after the effective date of this Act, and the joint committee shall convene its initial meeting within thirty days after appointment of the last member. The committee shall conduct public hearings throughout the State to facilitate discussions and formulate recommendations on issues within the joint committee's purview. The committee shall be subject to the requirements of part I of chapter 92, Hawaii Revised Statutes, only when such public hearings are being scheduled or conducted.

(c) The joint committee shall:

- (1) Submit a progress report to the legislature no later than twenty days prior to the convening of the regular session of 1998;
- (2) Submit a final report to the legislature no later than twenty days prior to the convening of the regular session of 1999; and
- (3) Cease to exist on June 30, 1999.

SECTION 4. (a) By December 31, 1998, the department of land and natural resources, with the cooperation as requested by the department of land and natural resources of the office of Hawaiian affairs and any other state department and agency that uses or manages public lands, shall complete a comprehensive inventory and map database of all lands currently subject to section 5(f) of the Admission Act. The inventory shall include but not be limited to:

- (1) Identification of fast land parcels by tax map key number;
- (2) Identification of submerged lands;
- (3) Identification of the agency that has legal jurisdiction of each parcel;
- (4) Land use and zoning designations;
- (5) Program uses;
- (6) Terms of any leases or other dispositions; and
- (7) Revenues generated by amount, category, and source.

(b) In undertaking the inventory and mapping provided in subsection (a), the department of land and natural resources shall coordinate with the joint committee referenced in section 3 and, to the extent feasible, shall comply with the joint committee's requests.

(c) In complying with the requirements of this section, the department shall be exempt from the provisions of chapters 76, 77, and 103D, Hawaii Revised Statutes.

(d) The department of land and natural resources shall submit:

- (1) A progress report to the legislature no later than twenty days prior to the convening of the regular session of 1998; and
- (2) A final report to the legislature with copies of the inventory and maps by December 31, 1998.

SECTION 5. 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 1997-1998 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 1998-1999 to carry out the following purposes:

- (1) The sum of \$75,000 in each fiscal year shall be used for the operating purposes of the joint committee as specified in section 3; and
- (2) The sum of \$425,000 in each fiscal year shall be used to conduct the public lands inventory as specified in section 4;

provided that no funds shall be released unless funds are matched dollar-for-dollar by the office of Hawaiian affairs to conduct the inventory as specified in section 4; provided further that to the extent any lands subject to inventory and mapping under section 4 are under the control of the department of Hawaiian home lands, the department of Hawaiian home lands shall provide out of the Hawaiian home

## ACT 330

administration account, up to but not exceeding the amounts appropriated under section 6, a pro rata portion of the total amounts required to accomplish the purposes of section 4. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 6. There is appropriated out of the Hawaiian home administration account the sum of \$100,000 or so much thereof as may be necessary for fiscal year 1997-1998 and the sum of \$100,000 or so much thereof as may be necessary for fiscal year 1998-1999 to enable the department of Hawaiian home lands to provide its pro rata portion of the total amounts required, if any, to accomplish the purposes of section 4. The sums appropriated shall be expended by the department of Hawaiian home lands for the purposes of this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$15,100,000 or so much thereof as may be necessary for fiscal year 1997-1998 and \$15,100,000 or so much thereof as may be necessary for fiscal year 1998-1999 to be transferred to and expended by the office of Hawaiian affairs for the purposes of section 2 of this Act.

SECTION 8. This Act's expression of the purpose, objective, and intent of the legislature in enacting section 3 of Act 304, Session Laws of Hawaii 1990, shall guide the proper interpretation of section 3 of Act 304 as originally enacted.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect upon its approval; provided that sections 5, 6, and 7 shall take effect on July 1, 1997.

(Approved June 30, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 330

S.B. NO. 1197

A Bill for an Act Relating to Drivers' Licenses.

*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 be appropriately designated and to read as follows:

**“§286- Reactivation of expired license; fees; road test waived.** (a) Unless revoked or suspended, and except as provided in subsection (b), all drivers' licenses expired under section 286-106 may be reactivated by the licensee in accordance with the requirements and procedures set forth for the renewal of licenses under section 286-107(b). No person seeking reactivation of an expired license under this subsection shall be required to undergo reexamination of the person's driving skills under section 286-108. The examiner of drivers shall require the holder of an expired license to pay a reactivation fee of \$5 for each thirty-day period, or fraction thereof, that has elapsed after the ninety-day grace period.

(b) Any driver's license not reactivated under subsection (a) within one year of the indicated date of expiration shall be invalid. The examiner of drivers shall

examine all applicants whose licenses have been declared invalid under this subsection in accordance with the licensing procedures established under sections 286-108 and 286-110.”

SECTION 2. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

“**§286-104 What persons shall not be licensed.** The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of driving while drunk;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
- (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;
- (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; or
- (5) To any person who is under [seventeen] eighteen years of age; provided that a person who is fifteen [or sixteen] to seventeen years of age may be granted a [special] license upon satisfying the requirements of sections 286-108 and 286-109, which license shall be valid for four years and may be suspended or revoked by a judge having jurisdiction over the holder of the [special] license. Upon revocation of the [special] license, the person shall not be eligible to operate a motor vehicle on the highway until the person is [seventeen] eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109.

Any person denied a license under this or any other section of this part shall have a right of appeal as [hereinafter] provided[.] in section 286-129.”

SECTION 3. Section 286-106, Hawaii Revised Statutes, is amended to read as follows:

“**§286-106 Expiration of licenses.** Every driver’s license issued under this part, whether an original issuance or a renewal, shall expire on the first birthday of the licensee occurring not less than [four] six years after the date of the issuance of the license, unless sooner revoked or suspended; provided that the license shall expire on the first birthday of the licensee occurring not less than four years after the date of issuance of the license if the licensee is fifteen to seventeen years of age and two years after the date of the issuance of the license if at that time the licensee:

- (1) Is [sixty-five] seventy-two years of age or older;
- (2) Has been convicted of violations of the traffic laws of the State and of county traffic ordinances in the previous two years which, under the provisions of section 286-128, total nine points;
- [(3) Is twenty-four years of age or younger;] or
- [(4)] (3) Exhibits a physical condition or conditions which the examiner of drivers reasonably believes has impaired the driver’s ability to drive, unless the licensee:

- (A) Obtains a certificate from a licensed physician that the licensee's physical condition or conditions do not impair the licensee's ability to drive; or
- (B) Is able to correct the physical impairment, or by using a vehicle adapted to overcome the physical impairment is to the satisfaction of the examiner of drivers able to drive safely."

SECTION 4. Section 286-107, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) Except as otherwise provided in subsection (c), an applicant for a renewal of a driver's license under this section, or the reactivation of an expired license under section 286- (a), shall appear in person before the examiner of drivers and the examiner of drivers shall administer such physical examinations [and tests of the applicant's knowledge of the rules of the road] as the state director of transportation deems necessary to determine the applicant's fitness to continue to operate a motor vehicle[]; provided that an applicant for renewal who is sixty-five years of age or older need not be tested as to the applicant's knowledge of the rules of the road more than once every four years]."

2. By amending subsection (e) to read:

"(e) No driver's license shall be renewed by the examiner of drivers unless the examiner of drivers is satisfied of the applicant's fitness to continue to operate a motor vehicle [and has demonstrated the applicant's knowledge of the rules of the road through examinations as may be required by rules adopted by the state director of transportation,] and unless the fee required by subsection (d) is tendered together with the application for renewal[]; provided that an applicant for renewal who is sixty-five years of age or older need not demonstrate knowledge of the rules of the road more than once every four years]."

SECTION 5. Section 286-108, Hawaii Revised Statutes, is amended to read as follows:

**"§286-108 Examination of applicants.** (a) [The] Except as provided in section 286- (a), the examiner of drivers shall examine every applicant for a driver's license, except as otherwise provided in this part. [[]The examination[[]] shall include a test of the applicant's eyesight and such further physical examination as the examiner of drivers finds necessary to determine [the]:

- (1) The applicant's fitness to operate a motor vehicle safely upon the highways; [the]
- (2) The applicant's ability to understand highway signs regulating, warning, and directing traffic; [the]
- (3) 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]
- (4) 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[.] for a driver's license.



For the purposes of this section, the term "applicant" does not include any person reactivating a license under section 286- (a).

(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] sections 431:10C-107 and [section] 431:10G-106, when the applicant demonstrates the ability to 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 6. This Act does not affect licenses which were issued or renewed before its effective date, which shall expire on the date indicated on the face of the license.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 30, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 331**

S.B. NO. 927

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 245-3, Hawaii Revised Statutes, is amended to read as follows:

**“§245-3 Taxes; limitations.** (a) Every wholesaler or dealer, in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the State an:

(1) Excise tax equal to [3.00]:

(A) 4.00 cents for each cigarette sold, used, or possessed by the wholesaler or dealer, after [June 30, 1993,] August 31, 1997; and

(B) 5.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 1998,

whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; [such excise tax to increase to 3.50 cents per cigarette on the first day of the month one hundred eighty days after a United States congressional act is signed into law which requires military installations to purchase cigarettes in Hawaii in a manner similar to that required of alcoholic beverages under 10 United

States Code, section 2488 (nonappropriated fund instrumentalities, purchase of alcoholic beverages);] and

- (2) Excise tax equal to forty per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Where the tax imposed has been paid on cigarettes or tobacco products which thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. In applying the tax, the tax shall be applied against the latest of the activities of selling, using, or possessing. The tax shall be imposed at the time of the last of the following activities to occur: the sale; the use; or the possession of cigarettes or tobacco products.

(b) The taxes, however, are subject to the following limitations:

- (1) The measure of the taxes shall not include any cigarettes or tobacco products exempted, and so long as the same are exempted, from the imposition of taxes by the Constitution or laws of the United States; and
- (2) The taxes shall be paid only once in respect of the same cigarettes or tobacco product. This limitation shall not prohibit the imposition of the excise tax on receipts from sales of tobacco products under subsection (a)(2); provided that the amount subject to the tax on each sale shall not include amounts previously taxed under this chapter.”

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 on September 1, 1997.

(Approved July 2, 1997.)

**ACT 332**

H.B. NO. 631

A Bill for an Act Relating to Health Care Decisions.

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

SECTION 1. The legislature finds that there continues to be dynamic changes in the health care environment. Past legislation on advance health care directives has helped to maintain the autonomy of health care decision-making, but current law does not adequately address the needs of an individual who becomes incapacitated and unable to make health care decisions but who never executed a valid durable power of attorney for health care decisions or designated a guardian prior to the person’s incapacity.

Historically, health care professionals have turned to family members for consent in these situations. This approach has been an accepted community practice for decades; it is the culturally accepted way of “caring for our own.” However, there is a growing sense that this community practice is no longer legally adequate. Federal regulations, the increasing numbers of elderly citizens, and others who have

chronic conditions that are often complicated by dementia and the inability to make reasoned, medical decisions, now compel the legislature to further consider the most appropriate ways in which health care decisions should be made.

Guardianship is a judicial process that can transfer the decision-making responsibility from a person who previously had the capacity for decision-making to another individual when the person has been declared to be incapable of handling the person's own affairs. Guardianship is being pursued with increasing frequency in those situations where persons do not have the capacity for decision making and are in need of medical attention.

Guardianship of a person for health care decision making is increasing in Hawaii for several reasons. For example, federal regulations for long-term care nursing facilities require any resident of the facility adjudged or determined to be incompetent under the laws of a state to have the resident's rights exercised by a person appointed to act on the resident's behalf. In cases where a resident has not been judged or determined to be incompetent by a state court, any legal surrogate designated by the resident may exercise the resident's rights to the extent provided by state law. Since Hawaii does not have a statute that provides for some form of surrogate decision making in the absence of a prior health care directive, guardianship of the person must be sought. This can be expensive and time-consuming.

The purpose of this Act is to create a two-year demonstration project that protects the health and safety of a person who:

- (1) Previously had the ability, but who no longer has the ability, to understand the significant benefits, risks, and alternatives to proposed health care, and to make and communicate health care decisions;
- (2) Resides in a skilled nursing or intermediate care facility; and
- (3) Has not executed a health care directive for health care decisions which addresses the specific health care decisions presented, at that time, by or to the facility or health care provider; or whose agent is unavailable and whose whereabouts cannot be ascertained within a reasonable period of time.

SECTION 2. Chapter 327D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . HEALTH CARE DECISIONS BY LEGAL SURROGATE**

**§327D-A Definitions.** Whenever used in this part, unless the context otherwise requires:

“Advance health care directive” means individual instruction or a durable power of attorney for health care decisions.

“Agent” means an individual who is designated in a durable power of attorney to make health care decisions for the individual pursuant to chapter 551D.

“Capacity” means the ability to understand the significant benefits, burdens, risks, and alternatives to proposed health care, and to make and communicate a health care decision.

“Close personal friend” means any person who is twenty-one years of age or older, who has exhibited special care and concern for the resident, and who presents an affidavit to a health care institution or an attending or treating physician stating that the person:

- (1) Is a close, personal friend of the resident;
- (2) Is willing and able to become involved in the resident's health care; and
- (3) Has maintained such regular contact with the resident so as to be familiar with the resident's personal values.

“Guardian” means a court-appointed guardian who has the authority to make health care decisions for an individual.

“Health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual’s physical or mental condition; or admission, transfer, or discharge to effect the foregoing.

“Health care decision” means a decision made by a legal surrogate under this part, regarding the individual’s health care, including:

- (1) The selection and discharge of health care providers;
- (2) The giving, withholding, or withdrawal of diagnostic tests, surgical procedures, and programs of medication to the extent not otherwise prohibited by this chapter; and
- (3) Decisions to apply for private, public, government, or veterans’ benefits to defray the cost of health care.

“Health care institution” means a skilled nursing or intermediate care facility that is licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

“Individual instruction” means an individual’s directions concerning health care decisions for the individual.

“Legal surrogate” means the individual designated as such in accordance with this chapter.

“Life partner” means a person who is currently in a spousal-type relationship with a resident regardless of legal recognition at the time of the resident’s lack of capacity.

“Members of a resident’s family” includes a spouse, a life partner, adult children, parents, adult brothers or sisters, and close personal friends who can obtain and provide information concerning the desires of a resident concerning health care.

“Power of attorney” means the designation of an agent to make health care decisions for an individual granting the durable power of attorney for health care decisions within the meaning of chapter 551D.

“Primary physician” means a physician designated by a resident or the resident’s agent, guardian, or legal surrogate, to have primary responsibility for the individual’s health care or, in the absence of a designation or if the designated physician is not available, a physician who undertakes the foregoing responsibility.

“Resident” means a person who is receiving care in a skilled nursing or intermediate care facility.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

“Supervising health care professional” means a primary physician, or designee, or a state recognized advanced practice registered nurse, or designee, who has undertaken primary responsibility for a person’s health care.

**§327D-B Selection of a legal surrogate.** (a) A resident who has capacity may designate another adult to act as a legal surrogate by personally informing the supervising health care professional in writing, or if writing is impossible, by other means of communication, to the supervising health care professional and at least one other competent adult.

(b) In the absence of a designation and when the resident is determined to lack capacity, the following persons in the following order of priority, have priority to designate himself, herself or another adult person who consents to the designation as the legal surrogate for the resident:

- (1) The spouse or life partner of the resident who has reached the age of eighteen;
- (2) Any child of the resident who has reached the age of twenty-one;

- (3) Any parent of the patient who has reached the age of eighteen;
- (4) Any brother or sister of the patient who has reached the age of twenty-one;
- (5) Any grandchild of the patient who has reached the age of twenty-one.

If there is no person with priority under paragraphs (1) to (5) of this subsection available, a close personal friend who has reached the age of twenty-one and who is capable of representing the opinions of the patient may volunteer to assume the authority of legal surrogate; provided that the authority to act shall end if a family member objects in writing and communicates the objection to the supervising health care professional or the facility.

(c) A legal surrogate shall not be an owner, operator, or employee of a health care institution at which the resident is receiving care.

(d) A supervising health care professional shall require an individual who is claiming the right to act as a legal surrogate for a resident to provide a written declaration under penalty of perjury stating such facts and circumstances that may be reasonably sufficient to establish authority as a legal surrogate. This written declaration shall be dated and signed by the surrogate and a witness.

**§327D-C Decisions by the legal surrogate.** (a) A legal surrogate may make health care decisions for a resident if the resident has been determined to lack capacity by the supervising health care professional and that incapacity is confirmed by a second opinion of a physician who is not affiliated with the facility caring for the resident at that time.

(b) A legal surrogate shall make a health care decision in accordance with a resident's individual instructions, if any, and other wishes to the extent known to the legal surrogate. Otherwise, the legal surrogate shall make the decision the legal surrogate reasonably believes the resident would have made under the circumstances.

(c) A health care decision made by a legal surrogate for a resident shall take effect without judicial approval.

**§327D-D Responsibilities of the legal surrogate.** (a) The legal surrogate shall:

- (1) Act for the resident and make all day-to-day health care decisions for the resident in matters regarding health care during the period of incapacity of the resident in accordance with the resident's instructions, best interests, wishes, or values unless that authority has been expressly limited by the resident;
- (2) Provide health care decisions based on informed consent and the decisions the legal surrogate reasonably believes the resident would have made under the circumstances;
- (3) Provide written consent using an appropriate form whenever such a form is required; and
- (4) As appropriate, apply for public benefits, such as medicare and medicaid, for the resident, and have access to information regarding the resident's income, assets, banking, and financial records to the extent required to make the foregoing applications. A health care provider or health care institution shall not make such an application a condition of continued care of the resident.

(b) A legal surrogate may authorize the release of information and clinical records as appropriate to ensure continuity in health care of the resident, and may authorize the admission, transfer, and discharge of the resident to or from a health care institution.

(c) If a court appoints a guardian solely for a resident's estate, or appoints any other fiduciary charged with the management of the principal's property, the legal surrogate shall continue to make health care decisions for the resident. The legal surrogate may report the health care status of the resident to the guardian.

(d) Under no circumstances shall physician-assisted death be ordered by the legal surrogate.

(e) No legal surrogate under this part shall have the power to consent to or order the withdrawal of either natural or artificial hydration and nutrition or to consent to or order actions or inaction which would eliminate the provision of ordinary and usual medical care or treatment.

(f) Under no circumstances shall the legal surrogate make any decisions that would abrogate rights established under chapter 334 or section 327D-21.

(g) Surrogate decision making authority ends at the point of discharge of the surrogate.

**§327D-E Review of legal surrogate's decision.** A member of a resident's family, a health care institution, or a supervising health care professional may seek expedited judicial intervention if that person believes:

- (1) The legal surrogate's decisions are not in accord with the resident's known wishes or values;
- (2) The legal surrogate was improperly designated or appointed; or
- (3) The designation of the legal surrogate is no longer effective.

**§327D-F Obligations of health care providers.** (a) Before implementing a health care decision made by a legal surrogate for a patient, a supervising health care professional shall, if appropriate, promptly communicate to the resident the decision made and the identity of the person making the decision.

(b) A supervising health care professional who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation, termination, or disqualification of a legal surrogate, shall promptly record its existence in the health care record of the resident and, if any of the foregoing are in writing, shall request a copy. If a copy is furnished, it shall be placed in the health care record.

(c) A supervising health care professional who makes, or is informed of, a determination that a resident lacks capacity or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, guardian, or legal surrogate, shall promptly record the determination in the health care record of the resident and, if appropriate, communicate the determination to the resident, and to any person then authorized to make health care decisions for the resident.

(d) A health care provider or health care institution providing care to a resident shall comply with:

- (1) An individual instruction by the resident and the reasonable interpretation of that instruction made by a person who is then authorized to make health care decisions for the resident; and
- (2) A health care decision for the resident made by a person who is then authorized to make health care decisions for the resident to the same extent as if the decision had been made by the resident while having capacity.

(e) A health care provider or health care institution may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.

(f) A health care provider who, because of personal beliefs or conscience, refuses or is unable to comply with the terms of a legal surrogate's decision, without

delay, shall make the necessary arrangements to effect the transfer of the resident and the appropriate medical records to another health care provider or facility. A health care provider who transfers the resident without unreasonable delay, or who makes a good faith attempt to do so, shall not be subject to criminal prosecution or civil liability, or found to have committed an act of unprofessional conduct, for refusal to comply with the terms of the legal surrogate's decision. Transfer under these circumstances shall not constitute abandonment.

**§327D-G Immunities.** (a) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or health care institution, shall not be subject to civil or criminal liability, or to discipline for unprofessional conduct for:

- (1) Complying with a health care decision made by a legal surrogate;
- (2) Declining to comply with a health care decision based on conscience;  
or
- (3) Complying with an advance health care directive and assuming that the directive was valid when the directive was made, and had not been revoked or terminated.

(b) An individual acting as a legal surrogate under this part shall not be subject to civil or criminal liability, or to discipline for unprofessional conduct, for health care decisions made in good faith.

(c) The immunities provided for in this section shall not apply to any action taken which is prohibited by this chapter.

**§327D-H Capacity.** (a) This part shall not affect the right of an individual to make informed health care decisions while the individual has the capacity to make such decisions.

(b) An individual shall be presumed to have the capacity to make health care decisions, to give or revoke an advance health care directive, and to designate, terminate, disqualify, or re-designate a legal surrogate.

**§327D-I Advance health care directive.** (a) This part shall not supersede or invalidate any other written advance health care directive a resident has made.

(b) A copy of any written advance health care directive, revocation of health care directive, or designation, termination, or disqualification of a legal surrogate, shall have the same effect as the original document.

**§327D-J Judicial relief.** On the petition of:

- (1) A resident;
- (2) The resident's agent, guardian, or legal surrogate;
- (3) A health care provider or health care institution involved with the resident's care; or
- (4) A member of the resident's family;

the family court may enjoin or direct a health care decision, or order other equitable relief. A proceeding under this section shall be governed by the provisions in chapter 560, relating to expedited proceedings and proceedings affecting incapacitated persons.

**§327D-K Application of part.** Except in cases where the surrogate is selected as provided for in section 327D-B(a), this part shall be applicable only if no person has the authority to make appropriate medical decisions for the resident pursuant to a guardianship under chapter 551, 551A, or 560, living will or declaration under chapter 327D, part I, or durable power of attorney under 551D, or if the

person given the authority to make those medical decisions under the living will, durable power of attorney, or guardianship is unavailable.”

SECTION 3. Chapter 327D, Hawaii Revised Statutes, is amended by designating sections 327D-1 to 327D-27 as:

**“PART I. GENERAL PROVISIONS”**

SECTION 4. (a) This Act shall be monitored by a surrogate decision-making committee which shall be appointed by the governor and staffed by the executive office on aging. The committee shall consist of not less than five and no more than nine members, at least one of which should be a resident advocate. In making the appointments, the governor shall consider appointing representatives from the following:

- (1) Hawaii Medical Association;
- (2) Hawaii Nurses Association;
- (3) Hawaii Chapter of the National Association of Social Workers;
- (4) Commission on Persons with Disabilities;
- (5) Executive Office on Aging;
- (6) American Association of Retired Persons;
- (7) A biomedical ethics committee;
- (8) The clergy; and
- (9) An attorney or law school professor who practices in health care law or advocacy.

(b) The committee shall review and evaluate the effect of this Act on health care decisions, and review the guardianship statutes and seek to reform those statutes to simplify the guardianship appointment process, provide greater protections to incapacitated adults, and incorporate surrogate decision-making provisions.

(c) The committee shall submit a report no later than twenty days prior to the 1999 regular session of the legislature, setting forth its findings and recommendations regarding the efficacy of this Act and its legislative proposals for guardianship reform. The report shall include, but not be limited to, discussion related to:

- (1) Whether individuals with legal surrogate decision makers received care in a timely fashion;
- (2) Whether the care received pursuant to decisions by legal surrogates was in the best interests of the individuals;
- (3) How the guardianship appointment process can be improved and simplified while ensuring greater protections for incapacitated persons and incorporating surrogate decision-making; and
- (4) The appropriateness of allowing end of life decisions by surrogate decision makers, including the withdrawal of artificial nutrition and hydration.

(d) The surrogate decision-making committee shall cease to exist on June 30, 1999.

SECTION 5. In codifying the new part added to chapter 327D, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of the new sections in this Act.

SECTION 6. New statutory material is underscored.



SECTION 7. This Act shall take effect upon its approval and shall be repealed on June 30, 1999.

(Approved July 2, 1997.)

## ACT 333

H.B. NO. 167

A Bill for an Act Relating to Traumatic Brain Injury.

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

SECTION 1. The legislature finds that every year 1.9 million Americans experience traumatic brain injury. About half of these cases result in short-term disability, and approximately fifty-two thousand people die as a result of these injuries. Of those who survive, seventy thousand to ninety thousand endure lifelong debilitating losses of function. An additional two thousand will exist in a persistent vegetative state.

Traumatic brain injury is the leading cause of death and the leading cause of disability in children and young adults. Motor vehicle accidents cause one-half of all traumatic brain injuries; falls account for twenty-one per cent; assaults and violence, twelve per cent; and sports and recreation, ten per cent. Further, child abuse accounts for sixty-four per cent of infant head injuries.

The legislature further finds that the physical consequences of brain injury include impairment of speech, vision and hearing loss, headaches, muscle spasticity, paralysis, and seizure disorders. The cognitive consequences of brain injury include memory deficits, limited concentration, impaired perception and communication, and difficulties with reading, writing, planning, and judgment. The psycho-social-behavioral-emotional consequences of brain injury include fatigue, mood swings, denial, anxiety, depression, lack of motivation, and problems with interpersonal skills.

A survivor of a severe brain injury typically faces five to ten years of intensive treatment, with estimated lifetime costs exceeding \$4,000,000. Nationally, the direct medical costs for treatment of traumatic brain injury have been estimated at more than \$4,000,000,000 per year. The total economic costs of brain injury have been estimated to approach \$25,000,000,000 per year.

The purpose of this Act is to increase public awareness of the consequences of brain injury to not only prevent such injuries, but to enhance the recovery process for all brain injury survivors by establishing a traumatic brain injury advisory board within the department of health to develop and implement a comprehensive plan by encouraging public and private partnerships and private sector responses.

SECTION 2. Chapter 324, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§324- **Advisory board.** (a)<sup>1</sup> There is established within the department of health the traumatic brain injury advisory board. The advisory board shall advise the department in the development and implementation of a comprehensive plan to address the needs of persons affected by disorders and disabilities that involve the brain. Further, the advisory board shall advise the department of the feasibility of establishing agreements with private sector agencies to develop services for persons with brain injuries.

The advisory board shall consist of nine members who shall be appointed by the director of health in accordance with section 26-35. The director of health shall

designate a member to be the chairperson of the advisory board. The director of health or a designee shall serve as an ex officio nonvoting member of the advisory board. The members shall serve for a term of four years; provided that upon the initial appointment of the members, two shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and three for a term of four years. In establishing the advisory board, the director of health shall appoint at least:

- (1) Two members representing private sector businesses that provide services for brain injured persons;
- (2) Two survivors of traumatic brain injury; and
- (3) One member representing trauma centers that provide services for brain injured persons.

The members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, that are necessary for the performance of their duties.”

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 1997-1998 to the department of health to be used as matching funds for the federal traumatic brain injury or other matching national and local grant funds from the private sector; provided that \$15,000 shall be used to hire a consultant to write and edit the comprehensive plan.

SECTION 4. The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved July 2, 1997.)

Notes

- 1. No subsection (b).
- 2. Edited pursuant to HRS §23G-16.5.

ACT 334

S.B. NO. 1794

A Bill for an Act Relating to Sanitation Permits.

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

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§321- Sanitation permits; transfer. Sanitation permits that have not expired as of the effective date of this Act shall be transferable upon the sale of a food establishment; provided that such transfers are subject to the new owner agreeing to abide by the compliance schedule of the department of health.

§321- Inspection of food establishments. Inspections of food establishments may be performed only by a registered sanitarian or a food and drug inspector.

**§321- Audit of sanitation branch.** The department shall perform annual audits of the sanitation branch to be completed by November 30 of each year, and shall include an audit of:

- (1) Fees collected;
- (2) The number and results of sanitation inspections;
- (3) The number of training seminars held; and
- (4) The cost of training personnel in the sanitation branch.

**§321- Advisory council on food protection practices; created.** (a) There is created within the department for administrative purposes only, an advisory council on food protection practices, whose members shall be appointed by the director of health, consisting of one representative from at least the following:

- (1) An organization representing the restaurant industry;
- (2) An organization representing the hotel industry;
- (3) An organization representing the food manufacturing industry;
- (4) An organization representing the food service industry;
- (5) A registered sanitarian from the department of health;
- (6) The University of Hawaii, food technology department;
- (7) The community college food service program;
- (8) A corporate chain restaurant doing business in Hawaii; and
- (9) A member of the general public.

(b) Each member shall serve for a term of three years; provided that the director shall initially appoint three members to serve for one year, three members to serve for two years, and three members to serve for three years. No member shall serve for more than two consecutive three-year terms.

(c) Vacancies occurring before the expiration of a member's term shall be filled by election of the council. Individuals elected to fill a vacancy shall serve only for the remainder of the unexpired term.

(d) The council shall appoint from its members a chairperson, vice chairperson, secretary, treasurer, and any other officers that the council may deem necessary or desirable to carry out its functions.

(e) Members shall serve without compensation, but may be reimbursed for the necessary expenses, including travel expenses, incurred in the performance of their duties.

(f) The council shall:

- (1) Advise the department on sanitation issues and food protection practices;
- (2) Review and advise the department, in consultation with the department of the attorney general, regarding the adoption of rules relating to sanitation and food protection practices; and
- (3) Advise the department on the incorporation of salient provisions of the most recent version of the United States Food and Drug Administration's Model Food Code into the department's food sanitation rules."

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved July 2, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Optometry.

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

SECTION 1. Section 459-1.5, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Surgery” means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means.”

SECTION 2. Section 459-1, Hawaii Revised Statutes, is amended to read as follows:

**“§459-1 Optometry; practice of, defined.** The practice of optometry, for the purpose of this chapter, is defined to be [the recognition and analysis]:

- (1) The examination, diagnosis, treatment, and management of [visual dysfunction] diseases and disorders of the human [eye; the] visual system, the eye, and the eyelids;
- (2) The employment of trial frame or trial lenses, and any objective or subjective means or methods, other than the use of [medicine or] surgery, including refractive or therapeutic laser surgery, but including the use and prescription of topically applied pharmaceutical agents [known as topical anesthetics, cycloplegics, and mydriatics, for non-therapeutic purposes only], and the performance of non-invasive diagnostic procedures or ordering of laboratory tests related to the use of topically applied pharmaceutical agents for the purpose of [determining the refractive powers,] examining, diagnosing, treating, and managing visual, muscular, or other [anomalies] diseases and disorders of the human [eyes;<sup>1</sup> the] visual system, the eye, and the eyelids; or<sup>2</sup>
- (3) The prescribing, fitting, or adaptation of any ophthalmic lenses, contact lenses, prisms, frames, mountings, or orthoptic exercises for the correction or relief of the visual or muscular anomalies of the human [eyes.] eye.

Superficial foreign bodies may be removed from the human eye and eyelids, including the removal of corneal superficial foreign bodies above Bowman’s Layer.

Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or claims to be able to do so, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked and unsuspended license as provided in this chapter; provided that an orthoptist may give visual training, including exercises, under the supervision of a physician or optometrist. The use and prescription of topically applied pharmaceutical agents and the removal of superficial foreign bodies from the human eye and eyelid shall be granted to an optometrist licensed under this chapter who has met the requirements under section 459-7.

If while examining or treating a patient a licensed optometrist finds, by history or examination, any ocular abnormality or any evidence of systemic disease requiring further diagnosis and possible treatment [by a licensed physician,] beyond the scope of practice as defined in this section, the optometrist shall refer that patient to an appropriate licensed physician.”

SECTION 3. Section 459-15, Hawaii Revised Statutes, is repealed.

SECTION 4. Act 292, Session Laws of Hawaii 1996, section 1, is amended by amending subsections (b) and (c) to read as follows:

“(b) The board shall grant recognition as a therapeutically certified optometrist; provided the optometrist has:

- (1) A current, unencumbered license as an optometrist in this State;
- (2) Completed a [one-hundred] one hundred hour board-approved course in the treatment and management of ocular diseases;
- (3) Passed the National Board of Examiners in Optometry Treatment and Management of Ocular Disease examination;
- (4) Completed [one-hundred] one hundred hours of [practical therapeutic pharmaceutical agents use] preceptorship under the supervision of an ophthalmologist [licensed under chapter 453. The ophthalmologist]. The supervising ophthalmologist shall certify completion of the [one-hundred] one hundred hours of hands-on experience and the competency of the optometrist to prescribe, dispense, and administer therapeutic pharmaceutical agents on a form and format prescribed by the board; provided that the preceptorship shall include training in diagnosis, treatment, and management of ocular disease; and
- (5) The therapeutically certified optometrist shall renew the certification with the biennial renewal of license and submit proof of satisfying [eight] thirty-six hours of continuing education in the diagnosis, treatment, and management of ocular, and systemic diseases. Completion of the thirty-six hours in the diagnosis, treatment, and management of ocular and systemic diseases shall fulfill the continuing education requirements pursuant to section 459-7 and this section.

(c) The department of commerce and consumer affairs shall establish a joint formulary advisory committee composed of [two]:

- (1) Two persons licensed as optometrists[, two];
- (2) Two persons licensed as pharmacists[.]; and [two]
- (3) Two persons licensed in [ophthalmology by the board of medical examiners.] medicine by the board of medical examiners and board certified in ophthalmology.

The joint formulary advisory committee shall recommend the applicable formulary for persons certified under this section. The board of optometry shall adopt the formulary as established by the joint formulary advisory committee in its rules.”

SECTION 5. Act 292, Session Laws of Hawaii 1996, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect on July 1, 1999[.]; provided that section 459- (c) of section 1 shall take effect on July 1, 1997.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 7. This Act shall take effect on July 1, 1997; provided that the board of optometry shall:

- (1) Have the authority to adopt rules to implement section 459- (b)(2) and (b)(4) of section 1 of Act 292, Session Laws of Hawaii 1996; and
- (2) Establish and operate the joint formulary advisory committee; effective July 1, 1997.

(Approved July 2, 1997.)

## Notes

1. Prior to amendment "or" appeared here.
2. "Or" should be underscored.
3. Edited pursuant to HRS §23G-16.5.

## ACT 336

H.B. NO. 1841

A Bill for an Act Relating to Health Planning.

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

SECTION 1. Section 323D-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read:

““Primary care clinic” means a clinic for outpatient services providing all preventive and routine health care services, management of chronic diseases, consultation with specialists when necessary, and coordination of care across health care settings or multiple providers or both. Primary care clinic providers include:

- (1) General or family practice physicians;
- (2) General internal medicine physicians;
- (3) Pediatricians;
- (4) Obstetricians and gynecologists;
- (5) Physician assistants; and
- (6) Advanced practice registered nurses.”

SECTION 2. Section 323D-2, Hawaii Revised Statutes, is amended by amending the definition of “organized ambulatory health care facility” to read:

““Organized ambulatory health care facility” means a facility not part of a hospital, which is organized and operated to provide health services to outpatients. [This term includes the following facilities: clinical health centers; diagnostic centers; treatment centers; family planning clinics; family health centers; neighborhood health centers; ambulatory surgical facilities; cosmetic surgery centers; optometric clinics; community mental health and mental retardation centers; outpatient mental health facilities; prenatal or abortion clinics; drug abuse or alcoholism treatment centers; facilities for the provision of outpatient physical therapy services including speech pathology; rehabilitation facilities; any provision of medical or health services by a provider of medical or health services organized as a not-for-profit or business corporation other than a professional corporation; and any provider of nonbed services as defined in the agency’s rules of standard categories of health care services.] The state agency may adopt rules to establish further criteria for differentiating between the private practice of medicine and organized ambulatory health care facilities.”

SECTION 3. Section 323D-2, Hawaii Revised Statutes, is amended by deleting the definition “annual implementation plan.”

[““Annual implementation plan” means the annual program plan pursuant to section 323D-16.“”]

SECTION 4. Section 323D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The state agency shall:

- (1) Have as a principal function the responsibility for [controlling increases in health care costs.] promoting accessibility for all the people of the State to quality health care services at reasonable cost. The state agency shall conduct such studies and investigations as may be necessary as to the causes of health care costs including inflation. The state agency may contract for services to implement this paragraph. The certificate of need program mandated under part V shall serve this function. The state agency shall promote the sharing of facilities or services by health care providers whenever possible to achieve economies and shall restrict unusual or unusually costly services to individual facilities or providers where appropriate[.];
- (2) Serve as staff to and provide technical assistance and advice to the statewide council and the subarea councils in the preparation, review, and revision of the state health services and facilities plan[.];
- (3) Conduct the health planning activities of the State in coordination with the subarea councils, implement the state health services and facilities plan, and determine the statewide health needs of the State after consulting with the statewide council[.]; and
- (4) Administer the state certificate of need program pursuant to part V.’’

SECTION 5. Section 323D-14, Hawaii Revised Statutes, is amended to read as follows:

“**§323D-14 Functions; statewide health coordinating council.** The statewide council shall:

- (1) Prepare and revise as necessary the state health services and facilities plan[.];
- (2) Advise the state agency on actions under section 323D-12[.];
- (3) Appoint the review panel pursuant to section 323D-42[.]; and
- (4) Review and comment upon the following actions by the state agency before such actions are made final:
  - [(A)] The establishment, annual review, and amendment of the annual implementation plan.
  - [(B)] The development and publication of specific plans and programs for achieving the objectives established in the annual implementation plan.
  - [(C)] [(A)] The making of findings as to applications for certificate of need[.]; and
  - [(D)] [(B)] The making of findings as to the appropriateness of those institutional and noninstitutional health services offered in the State.’’

SECTION 6. Section 323D-18, Hawaii Revised Statutes, is amended to read as follows:

“**§323D-18 Information required of providers.** Providers of health care doing business in the State shall submit such statistical and other reports of information related to health and health care as the state agency finds necessary to the performance of its functions. The information deemed necessary includes but is not limited to:

- (1) Information regarding changes in the class of usage of the bed complement of a health care facility under section 323D-54(9);
- (2) Implementation of services under section 323D-54;

- (3) Projects that are wholly dedicated to meeting the State's obligations under court orders, including consent decrees, under section 323D-54(10);
- (4) Replacement of existing equipment with an updated equivalent under section 323D-54(11);
- (5) Primary care clinics under the expenditure thresholds under section 323D-54(12); and
- (6) Equipment and services related to that equipment, that are primarily intended for research purposes as opposed to usual and customary diagnostic and therapeutic care."

SECTION 7. Section 323D-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each subarea health planning council shall review, seek public input, and make recommendations relating to health planning for the geographical subarea it serves. In addition, the subarea health planning councils shall:

- (1) Identify and recommend to the state agency and the council the data needs and special concerns of the respective subareas with respect to the preparation of the state plan.
- (2) Provide specific recommendations to the state agency and the council regarding the highest priorities for health services and resources development.
- (3) Review the state health services and facilities plan [and the annual implementation plan] as [they relate] it relates to the respective subareas and make recommendations to the state agency and the council.
- (4) Advise the state agency in the administration of the certificate of need program for their respective subareas.
- (5) Advise the state agency on the cost of reimbursable expenses incurred in the performance of their functions for inclusion in the state agency budget.
- (6) Advise the state agency in the performance of its specific functions.
- (7) Perform other such functions as agreed upon by the state agency and the respective subarea councils.
- (8) Each subarea health planning council shall recommend for gubernatorial appointment at least one person from its membership to be on the statewide council.”

SECTION 8. Section 323D-43, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) No person, public or private, nonprofit or for profit, shall:
- (1) Construct, expand, alter, convert, develop, initiate, or modify a health care facility or health care services in the State [which] that requires a total capital expenditure in excess of the expenditure minimum; or
  - (2) Substantially modify[, decrease,] or increase the scope or type of health service rendered; or
  - (3) Increase, decrease, or change the class of usage of the bed complement of a health care facility, or relocate beds from one physical facility or site to another,

unless a certificate of need therefor has first been issued by the state agency.”



SECTION 9. Section 323D-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An applicant for a certificate of need shall file an application with the state agency. The state agency shall provide technical assistance to the applicant in the preparation and filing of the application.

Each application shall include a statement evaluating the facility’s or service’s probable impact on health care costs[. The statement shall include, in addition to an estimate of the total cost, a projection of the effect the facility or service will have on the following: total patient care budget; total number of admissions; total number of patient days; total number of outpatient visits; and such other information as the state agency may request.] and providing additional data as required by rule. The statement shall include cost projections for at least the first and [fifth] third years after its approval.

The state agency shall not accept an application for review until the application is complete and includes all necessary information required by the state agency. The state agency shall determine if the application is complete within thirty days of receipt of the application. If the state agency determines that the application is incomplete, the state agency shall inform the applicant of the additional information that is required to complete the application. When the state agency determines that the application is complete, the period for agency review described in subsection (b) shall begin, and the state agency shall transmit the completed application to the appropriate subarea councils, the review panel, the statewide council, appropriate individuals, and appropriate public agencies. The state agency may require the applicant to provide copies of the application to the state agency, the appropriate subarea councils, the review panel, the statewide council, appropriate individuals, and appropriate public agencies. If, during the period for agency review, the state agency requires the applicant to submit information respecting the subject of the review, the period for agency review shall, at the request of the applicant, be extended fifteen days.”

SECTION 10. Section 323D-44.5, Hawaii Revised Statutes, is amended to read as follows:

“**§323D-44.5 Administrative review of certain applications for certificate of need.** The state agency shall adopt rules in conformity with chapter 91 providing for administrative review and decision on certain applications for certificate of need [without referring the applications to the subarea council, review panel, or statewide council for recommendation as provided under section 323D-45]. Each application reviewed under this section [shall] may be subject to a public information meeting before the state agency makes its decision[, which public information meeting may be at a meeting of the subarea council, review panel, or statewide council]. The agency shall publish in a newspaper of general circulation in the State and in a newspaper that is printed and issued at least twice weekly in the county affected, a legal notice of applications for administrative review received by the agency. Interested persons may request in writing a public meeting before the agency renders a decision on the administrative application. If a request for a public meeting is received, the administrator will preside over the meeting. If no request is received by the agency within seven days of the legal notice publication date, no public meeting need be scheduled. Applications subject to administrative review and decision under this section shall include[,] but are not limited to[,] applications [which] that are:

- (1) Inconsistent with or contrary to the state health services and facilities plan under section 323D-15;

- (2) Determined not to have a significant impact on the health care system; or
- (3) Involve capital or annual operating expenses below a significant level.”

SECTION 11. Section 323D-47, Hawaii Revised Statutes, is amended to read as follows:

**“§323D-47 Request for reconsideration.** The state agency may provide by rules adopted in conformity with chapter 91 for a procedure by which any person may, for good cause shown, request in writing a public hearing before a reconsideration committee for purposes of reconsideration of the agency’s decision. The reconsideration committee shall consist of the administrator of the state agency and the chairpersons of the statewide council, the review panel, the plan development committee of the statewide council, and the appropriate subarea health planning council. The administrator shall be the chairperson of the reconsideration committee. A request for a public hearing shall be deemed by the reconsideration committee to have shown good cause, if:

- (1) It presents significant, relevant information not previously considered by the state agency;
- (2) It demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;
- (3) It demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision;
- (4) It provides such other bases for a public hearing as the state agency determines constitutes good causes; or
- (5) The decision of the administrator differs from the recommendation of the statewide council.

To be effective a request for such a hearing shall be received within [thirty] ten working days of the state agency decision. A decision of the reconsideration committee following a public hearing under this section shall be considered a decision of the state agency for purposes of section 323D-44.”

SECTION 12. Section 323D-50, Hawaii Revised Statutes, is amended to read as follows:

**“§323D-50 Certificates of need, penalties.** (a) Any person who violates any provision of this part, or rules thereunder, with respect to the requirement for certificate of need shall be guilty of a misdemeanor for each seven-day period or fraction thereof that the violation continues. Each subsequent seven-day period shall constitute a separate offense.

(b) Any license to operate a health facility may be revoked or suspended by the department of health at any time in a proceeding before the department for any person proceeding with an action covered under section 323D-43 without a certificate of need. If any such license is revoked or suspended by the department, the holder of the license shall be notified in writing by the department of the revocation or suspension. Any license to operate a health facility [which] that has been revoked under this section shall not be restored except by action of the department.

(c) Any person who violates any provision of this chapter or rules adopted under this chapter, with respect to the agency’s requests for reporting, may be subject to an administrative penalty not to exceed \$2,000 for each seven-day period or fraction thereof that the violation continues. The administrator of the state agency may impose the administrative penalty specified in this section by order; provided that no penalty shall be assessed unless the person charged shall have been given

notice and an opportunity for a hearing pursuant to chapter 91. The administrative penalty contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person charged makes a written request for a hearing. For any judicial proceeding to recover the administrative penalty imposed, the administrator need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and that the penalty remains unpaid.”

SECTION 13. Section 323D-54, Hawaii Revised Statutes, is amended to read as follows:

**“§323D-54 Exemptions from certificate of need requirements.** Nothing in this part or rules thereunder with respect to the requirement for certificates of need applies to:

- (1) Offices of physicians, dentists, or other practitioners of the healing arts in private practice as distinguished from organized ambulatory health care facilities, except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision therefor for any private office or clinic involving a total expenditure in excess of the expenditure minimum;
- (2) Laboratories, as defined in section 321-11(12), except in any case of purchase or acquisition of equipment attendant to the delivery of health care service and the instruction or supervision therefor for any laboratory involving a total expenditure in excess of the expenditure minimum;
- (3) Dispensaries and first aid stations located within business or industrial establishments and maintained solely for the use of employees; provided such facilities do not regularly provide inpatient or resident beds for patients or employees on a daily twenty-four-hour basis;
- (4) Dispensaries or infirmaries in correctional or educational facilities;
- (5) Dwelling establishments, such as hotels, motels, and rooming or boarding houses that do not regularly provide health care facilities or health care services;
- (6) Any home or institution conducted only for those who, pursuant to the teachings, faith, or belief of any group, depend for healing upon prayer or other spiritual means;
- (7) Dental clinics; [or]
- (8) Nonpatient areas of care facilities such as parking garages and administrative offices;
- (9) Bed changes that involve ten per cent or ten beds of existing licensed bed types, whichever is less, of a facility’s total existing licensed beds within a two-year period;
- (10) Projects that are wholly dedicated to meeting the State’s obligations under court orders, including consent decrees, that have already determined that need for the projects exists;
- (11) Replacement of existing equipment with its modern-day equivalent;
- (12) Primary care clinics under the expenditure thresholds referenced in section 323D-2;
- (13) Equipment and services related to that equipment, that are primarily invented and used for research purposes as opposed to usual and customary diagnostic and therapeutic care;
- (14) Capital expenditures that are required;

- (A) To eliminate or prevent imminent safety hazards as defined by federal, state, or county fire, building, or life safety codes or regulations;
  - (B) To comply with state licensure standards;
  - (C) To comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such Act; or
- [(8)] (15) Other facilities or services [which] that the agency through the statewide council chooses to exempt, by rules pursuant to section 323D-62.’’

SECTION 14. Section 323D-16, Hawaii Revised Statutes, is repealed.

SECTION 15. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved July 2, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 337**

S.B. NO. 165

A Bill for an Act Relating to Donation of Pharmaceuticals and Health Care Supplies.  
*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 extend to the donation of pharmaceuticals and health care supplies protections currently extended to the donation of food under chapter 145D, Hawaii Revised Statutes. This so-called “good samaritan” law has provided defined protection from liability on donated foods for such well-known Hawaii organizations as the Hawaii Food Bank, which works very hard as a nonprofit institution to help feed Hawaii’s hungry.

The State now finds that there is a significant number of medically needy persons in Hawaii who do not have access to required medications, including the uninsured, and others whose health insurance does not cover pharmaceuticals or health care supplies, or who simply are unable to afford the cost of these items. QUEST, Hawaii’s medicaid managed care waiver demonstration plan, covers needed medications. However, due to local financial conditions and recently passed federal legislation, the State has been forced to tighten eligibility requirements. An estimated 30,000 low-income people have lost their QUEST coverage.

A survey conducted by the Hawaii State Primary Care Association in September 1996, underscored the urgent need for more sources of free or very low-cost pharmaceutical supplies. Medicines associated with diabetes, asthma, and heart conditions were noted as needed for patients with these chronic conditions. But the medical directors at the community health centers also reported needs for antibiotics, topical cortisone skin creams for children and adults, and other more basic pharmaceuticals and health care supplies. All cited severe shortages of crucial medicines for patients unable to buy their own. Without health coverage and without needed medicines, community health centers see many of their patients failing to make

successful recoveries from their illnesses. Too often, without therapeutic medicines, their conditions worsen, threatening their health and that of others, as well as requiring much more costly hospitalization.

Presently, the Hawaii State Primary Care Association, a not-for-profit organization, is seeking to establish a new donated pharmaceuticals and health care supplies project, titled "La'au Makana" (Gift Medicines). The Hawaii State Primary Care Association is the organization which represents and advocates for Hawaii Qualified Health Centers. The project would collect donated pharmaceuticals and health care supplies and distribute them to the Hawaii Qualified Health Centers for dispensing by a physician. Hawaii Qualified Health Centers are not-for-profit community health centers, which are located in underserved areas, serve medically underserved populations including the homeless, are community-oriented, are accessible to all in need of care regardless of ability to pay, are culturally acceptable, and provide the full range of primary and preventive health care. They are uniquely capable of serving this needy population.

Like the FoodBank which is protected from liability with respect to the donation of food, the Hawaii State Primary Care Association, as the organization responsible for the La'au Makana project, seeks relief from liability for itself and other similar organizations regarding the collection and distribution of donated pharmaceuticals and health care supplies. Accordingly, the purpose of this Act is to promote the donation of pharmaceuticals and health care supplies by providing an exception to liability for charitable, religious, and nonprofit organizations that distribute these donated supplies.

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

**“CHAPTER  
DONATION OF PHARMACEUTICALS AND HEALTH CARE  
SUPPLIES**

§ -1 **Definitions.** Whenever used in this chapter unless the context otherwise requires:

“Charitable, religious, or nonprofit organization” means any organization which was organized and is operating in the State for charitable or religious purposes or to promote social welfare, which is exempt from income taxation under chapter 235, and which distributes pharmaceuticals and health care supplies at no cost to needy persons.

“Needy person” means any natural person who lacks the means to obtain adequate or proper pharmaceuticals or health care supplies, as determined by a practitioner at a Hawaii qualified health center, established under section 346-41.5, to be in need of service.

“Pharmaceuticals and health care supplies” means any medicine (prescription or nonprescription, excluding all controlled substances listed in chapter 329) or health care supplies such as soap, personal sanitary products, baby formula, dietary supplement, health care aids such as thermometers, surgical gloves, or bandages, or any other item which is customarily fit for human consumption or external use, before the expiration date stamped on the product, if any.

§ -2 **Exceptions to liability.** (a) A charitable, religious, or nonprofit organization which in good faith receives pharmaceuticals or health care supplies, apparently fit for human consumption or external use, and distributes them to needy persons at no charge, shall not be liable for any civil damages or criminal penalties resulting from the use of the pharmaceuticals or health care supplies donated to

needy persons unless an injury or illness results to those needy persons as a result of that organization's gross negligence or wanton acts or omissions.

(b) This section shall not relieve any organization from any other duty imposed upon it by law for the inspection of donated pharmaceuticals or health care supplies or for any provisions regarding the handling of those products, nor relieve any health care provider from liability arising out of the prescription of such pharmaceuticals or health care supplies.

**§ -3 Sale of donated pharmaceuticals or health care supplies, prohibited; fines.** (a) No person or organization shall sell, or offer for sale, any pharmaceutical or health care supply donated or distributed under this chapter.

(b) Any violation of this section is punishable by a fine not to exceed \$1,000.

**§ -4 Labeling of donated pharmaceuticals or health care supplies.** Any charitable, religious, or nonprofit organization which receives and distributes donated pharmaceuticals or health care supplies pursuant to this chapter shall affix a label upon those items stating that the items are donated and are not for resale and stating that they were fit for human consumption or use on the date that they left control of the charitable, religious, or nonprofit organization.

**§ -5 Reserving the State's authority to regulate, inspect, or ban the use of donated pharmaceuticals or health care supplies.** Nothing in this chapter is intended to restrict the authority of any state department to regulate, inspect, or ban the use of donated pharmaceuticals or health care supplies for human consumption or use. Pharmaceuticals and health care supplies that are distributed by a charitable, religious, or nonprofit organization, and the activities associated with that distribution, shall comply with the applicable provisions of chapter 328, including part VII, which relates to prescription drug wholesalers. Any provisions to the contrary notwithstanding, all activities conducted by an organization under this chapter involving the distribution of prescription drugs to persons other than a consumer or patient shall be included within the definition of "wholesale distribution" as defined by section 328-112."

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

(Approved July 2, 1997.)

**ACT 338**

H.B. NO. 120

A Bill for an Act Relating to Elderly Care.

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

SECTION 1. The legislature finds that the chronically ill and disabled elderly are often in need of a variety of long-term care services including medical, rehabilitation therapy, psycho-social, transportation, meal, personal care, and grooming services. In addition, the frail elderly and their families are often caught in a labyrinth of application forms, endless phone calls, and inquiries to obtain appropriate services that can meet the different health and social needs of the frail elderly. Dealing with multiple agencies and deciphering their costs and eligibility requirements are formidable tasks and add to family stress and frustration.

The outcome of such a fragmented long-term care system and limited scope of services is that the frail individual usually must make do with what can be

obtained in the community or be prematurely placed in an institution such as a nursing home. Both the State as well as families find this to be not only costly and inadequate, but also undesirable. Moreover, nursing home placements are expensive due to the high costs of constructing and operating such facilities.

The 1991 legislature recognized the need for an alternative community-based program that is comprehensive, prevents institutionalization, and contains long-term care costs. Specifically, the legislature appropriated over \$2,000,000 for a demonstration project at Maluhia hospital known as the program for all-inclusive care for the elderly (PACE).

The legislature finds that PACE provides a complete package of services that enhances the quality of life for the program's elderly participants. In addition, PACE addresses the problems of fragmented and costly long-term care by meeting the needs of Hawaii's families who are struggling to maintain frail elderly individuals in their own homes to avoid institutionalization. The legislature further finds that PACE costs less than what medicare, medicaid, and private individuals currently pay for long-term care.

Through the demonstration of PACE at Maluhia hospital, the viability of a cost-effective statewide program offering quality, community-based long-term care can be evaluated.

The purpose of this Act is to extend the PACE demonstration project in the department of health's Maluhia long-term care health center.

SECTION 2. Act 211, Session Laws of Hawaii 1992, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect on July 1, 1992, and shall be repealed on June 30, [1997.] 2002.”

SECTION 3. (a) The PACE program shall submit a program description and a financial and management report to the legislature.

The program description and the financial and management report shall contain:

- (1) A description of the scope of services;
- (2) Eligibility criteria for provided services;
- (3) An evaluation documenting the quality of care and health outcomes as measured by standards upheld by the department of health's hospital and medical facilities branch, and as defined by medicare or medicaid licensing requirements under the department of human services's community long term care branch and by the National PACE standards, which include data on hospitalization and nursing homes placement rates, activities on daily living, and satisfaction rates of patients and families;
- (4) An assessment of the State's exposure to liability including:
  - (i) A financial measurement of the State's obligation to provide care to all participants through the termination of all care contracts;
  - (ii) A comparison of the amount computed in (i) to the charge to clients approved or estimated to be approved by the Health Care Financing Administration; and
  - (iii) An explanation of all assumptions used to develop the assessment.

The assessment is an extension of paragraph (9) for the evaluation of the future viability of this project by consideration of all relevant costs, including overhead, facilities and housing costs, fringe benefits and

payroll taxes, financing, and the cost of pass through services from other sectors of government;

- (5) Census data from PACE's inception covering:
  - (A) Number of patients enrolled for the past five years;
  - (B) Average number of patients enrolled per month; and
  - (C) Expected growth;
- (6) Costs to:
  - (A) Participants; and
  - (B) Medicaid;
- (7) A description of the financing structure for the program, including an analysis of the adequacy of the reserve for future care costs;
- (8) Documentation of the number of full time equivalent employees and the patient-staff ratio; and
- (9) The total cost of the PACE program including:
  - (A) The State's total contribution on an annual basis;
  - (B) Expenditures by cost categories;
  - (C) Cost per patient per month based on all state and medicaid funding; and
  - (D) Presentation of revenue and expenses, including disclosure of the provision for future care costs by year.

(b) The PACE program shall address these issues and report its findings to the legislature no later than twenty days before the convening of the regular session of 1998, 1999, 2000, 2001, 2002, and 2003.

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

SECTION 5. This Act shall take effect on June 29, 1997.

(Approved July 2, 1997.)

**ACT 339**

H.B. NO. 147

A Bill for an Act Relating to Long-Term Care.

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

SECTION 1. The legislature finds that the need for long-term care, which is already significant, will continue to grow as Hawaii's population ages. Due to the high costs associated with long-term care, more and more families can be expected to endure financial hardships, and even impoverishment, unless a better method of financing long-term care is developed soon.

While the majority of persons receiving long-term care are older adults, entire families are affected by the financial, psychological, and social costs of long-term care provided to those who are limited in the activities of daily living. To accommodate the demands of caregiving that grows as dependency increases over the years, caregivers reduce work hours, adjust or abandon career and personal goals, and retire earlier than intended, as a consequence, lowering their own pension and retirement benefit levels. More apt to be in poorer health than members of the general population, caregivers often find that they place their own advanced years at risk.

When nursing home care is necessary, Hawaii's families confront average annual nursing home charges that exceed their ability to pay. In the case of elderly



families, these charges are twice their average annual disposable income, threatening those who are otherwise self-sufficient, with impoverishment. Thus, it is not surprising that approximately eighty per cent of all nursing home residents are dependent on medicaid, an entitlement program for persons with limited income and assets.

As overwhelming as current needs may appear, they are far less dramatic than the somber realities which lie ahead. Persons sixty years of age and older presently account for almost one-fifth of the adult population in the state. By 2020, they will constitute more than one-fourth of Hawaii's adult population. Nearly one-third of this segment alone is expected to have functional disabilities. Although families have expressed a preference for home and community-based care, existing supplies of these services and nursing home beds are already below requisite levels. However, even if additional services and beds are developed, many families will not be able to afford long-term care under existing conditions. A steep rise by the year 2020 of more than one thousand one hundred per cent in annual cash outlays for nursing home care for older members by Hawaii's families has been projected, with the average cost for one year of nursing home care reaching more than \$200,000 per person.

Nursing home care is but one component of the array of long-term care services that have been developed. Due to cost factors, it is likely that home and community-based services will become more predominant. These services are provided in and out of the home and are appropriate to those who do not need to be institutionalized. In fact, an important function of home and community-based services is to prevent institutionalization. Home and community-based services consist of a number of different modalities, some or all of which may be used by the individual. These services include adult day health services, case management services, environmental modifications, homemaker services, personal care services, personal emergency response systems, respite care services, skilled nursing services, transportation services, and similar services.

While home and community-based services can provide care that is less costly than institutional care, it is still expensive. Since more and more people will need long-term care services, the need to create a new method of financing long-term care is undeniable. The State cannot continue to fund the long-term care "safety net" of medicaid at its current increasing demand which is costing the State over \$192,000,000 in fiscal year 1996-1997, and therefore, the State must look to alternative financing. Our citizens must take on a more responsible role through a financing program. Clearly, government must play a major role in establishing a long-term care financial plan, which will define the state government's fiscal and social responsibilities for long-term care. Although the legislature believes in a free market economy, the private sector has not been able to develop adequate financing mechanisms that appeal to the general population.

The purpose of this Act is to create a joint legislative committee to develop a sound financial plan to address a problem of compelling state interest, the current and future long-term care needs of the people of Hawaii.

**SECTION 2.** There is established a joint legislative committee to carry out the purposes of this Act. The committee shall be composed of eight members as follows:

- (1) Four members of the house of representatives, three members from the democratic party, and one member from the republican party, who shall all be appointed by the speaker of the house of representatives; and
- (2) Four members of the senate, three members from the democratic party, and one member from the republican party, who shall all be appointed by the president of the senate.

**ACT 340**

SECTION 3. The joint legislative committee shall address the needs of elderly individuals and those who have a disability. The joint legislative committee shall seek input from the department of human services, the department of health, and the elderly and disability communities.

SECTION 4. The joint legislative committee shall submit a report of its findings and recommendations to the legislature by December 1, 1998. The joint legislative committee shall cease to exist on June 30, 1999.

SECTION 5. 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 fiscal year 1997-1998 for expenses related to the joint legislative committee:

House of representatives	\$25,000
Senate	\$25,000

The sums appropriated shall be expended by the house of representatives and the senate respectively, for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved July 2, 1997.)

**ACT 340**

H.B. NO. 1463

A Bill for an Act Relating to Adult Residential Care Homes.

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

SECTION 1. The legislature finds that adult residential care home operators provide a multitude of living accommodations and assistance to Hawaii's elderly and disabled adults in the activities of daily living. Besides providing room, board, and care services to their residents, adult residential care home operators must also assist and supervise residents who are physically and mentally challenged and emotionally distraught. Despite the immense responsibilities of these care home operators, the legislature also finds that a significant number of adult residential care home operators are not being properly compensated for the daily services that they provide to their residents, such as personal care assistance, food preparation, and housekeeping services.

The legislature also notes a 1992 report by the legislative reference bureau entitled, "Hawaii's Adult Residential Care Program: An Evaluation of Selected Concerns", which includes a recommendation by the office of the auditor that state supplements to adult residential care home operators be consolidated and increased for type I and type II care homes, and for all levels of care.

The legislature recognizes that the reimbursements to Hawaii's adult residential care home operators have not kept up with cost of living increases and other costs.

The purpose of this Act is to increase the reimbursements to operators of adult residential care homes.

SECTION 2. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director, pursuant to chapter 91, shall determine the rate of payment for [the different levels of] domiciliary care provided to recipients eligible either for

Federal Supplementary Security Income, or public assistance in accordance with state standards, or both. The director shall provide for level of care [payments] payment as follows:

- [(1) For those adult residential care homes classified as facility type I and type II the state supplemental payments shall be: not less than \$79.90 for level of care (LOC) I; not less than \$129.90 for LOC II; and not less than \$191.90 for LOC III; and
- (2)] (1) For those adult residential care homes classified as facility type I, the state supplemental payment shall not exceed [\$284.90 for LOC I; \$369.90 for LOC II; and \$471.90 for LOC III;] \$521.90; and
- [(3) (2) For those adult residential care homes classified as facility type II, the state supplementary payment shall not exceed [\$338.90 for LOC I; \$477.90 for LOC II; and \$579.90 for LOC III.] \$629.90.

[The rate of payment at which level a recipient enters an adult residential care home licensed pursuant to section 321-15.6 shall remain the same for as long as the recipient resides in that adult residential care home. The rate of payment may be raised if the recipient's condition so requires, or by rule of the department in accordance with this subsection; provided that:

- (1) Notwithstanding the rate of payment at the time of entry, the department shall ensure that the recipient shall receive the quality of care consistent with the level of care as determined by the department; and
- (2) If the operator does not provide the quality of care consistent with the needs of the individual [as determined by and] to the satisfaction of the department, the department may [reduce the rate of payment, or adjust the level of care, or] remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection shall allow the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator thereof is agreeable to the recipient remaining therein, except where the recipient requires a higher level of care than provided thereby, or where the recipient no longer requires any domiciliary care.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,365,888 or so much as may be necessary for fiscal year 1997-1998 and the sum of \$1,380,888 or so much as may be necessary for fiscal year 1998-1999 for the implementation of the payment schedule for the current residents.

SECTION 4. The sums appropriated shall be expended by the department of human services for the purpose of this Act.

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

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved July 2, 1997.)

A Bill for an Act Relating to Adult Residential Care Homes.

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

PART I.

SECTION 1. The legislature finds that:

- (1) Adult residential care homes (ARCH) provide needed care and services to hundreds of elderly and disabled residents of Hawaii who might otherwise be institutionalized;
- (2) The protection of the health, safety, and well-being of ARCH residents is an important function of the department of health (DOH); and
- (3) Consistent interpretation, application, and enforcement of regulatory standards is necessary and desirable for the protection of ARCH residents.

The legislature further finds that Hawaii's rapidly aging population, coupled with the increasingly high costs of long-term nursing home care, make it imperative that alternative forms of long-term care for our elderly residents, such as ARCH and community care, need to be more fully utilized to provide more affordable care for individuals who otherwise would require much more expensive institutional long-term care in nursing homes. In 1993, the population of persons in Hawaii aged sixty-five and over was about one hundred fifty thousand or 12.5 per cent of the general population. By the year 2020, persons aged sixty-five and over will constitute over one-fourth of Hawaii's general population. This year's medicaid budget is estimated at \$657,000,000. It is projected that the elderly in institutional-type nursing homes will take up approximately forty per cent of the medicaid budget, with the taxpayers shouldering approximately \$262,800,000 to care for Hawaii's elderly.

The legislature further finds that one of the primary reasons for the high cost of elderly care is DOH's requirement that individuals who are incontinent, have a colostomy, are diabetic and require insulin injections, need oxygen occasionally, are tube-fed, or are catheterized are required to be institutionalized in a long-term care facility and are not allowed to live in an ARCH even if they are mentally intact and express a desire to stay in a care home.

One of the most successful community-based long-term care models in the United States is found in Oregon. The Oregon legislature instituted, and has refined, a thirteen-year-old system that has reduced Oregon's Medicaid costs by two-thirds. Oregon currently has sixteen thousand elderly and disabled in community-based care, and seven thousand in institutional type settings.

SECTION 2. Section 321-15.6, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

**“§321-15.6 Adult residential care homes[.]; licensing.** (a) All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein; provided that the department may issue a temporary permit to operate an adult residential care home if an operator or applying operator is temporarily unable to conform to all minimum licensing standards. A temporary permit shall be valid for not more than six months].

(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 which shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;

- (2) Provide for the licensing of adult residential care homes; provided that the rules shall allow group living in two categories of adult residential care homes as licensed by the department of health: [type]
- (A) Type I allowing group living by five or fewer unrelated persons[.]; and [type]
- (B) Type II allowing six or more persons including[.], but not limited to[.], the mentally ill, elders, the handicapped, the developmentally disabled, or totally disabled persons who are not related to the home operator or facility staff.
- For purposes of this section:
- “Mentally ill person” means a mentally ill person as defined under section 334-1.
- “Elder” means an elder as defined under section 201E-2.
- “Handicapped person” means an individual with a physical handicap as defined under section 515-2.
- “Developmentally disabled person” means a person with developmental disabilities as defined under section [333F-2.] 333F-1.
- “Totally disabled person” means a person totally disabled as defined under section 235-1;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.”

## PART II.

SECTION 3. The purpose of this part is to extend the Maluhia wait-list demonstration project, expand its admissions criteria, and specify the following rules for its implementation as the State’s demonstration.

SECTION 4. Act 165, Session Laws of Hawaii 1994, is amended by amending section 4 to read as follows:

“SECTION 4. The department of health shall adopt rules in accordance with chapter 91 to establish a new category of adult residential care home or community-based residence [which] that is qualified to serve nursing facility level clients in the State. In order to qualify for this new category of adult residential care home or community-based residence, an individual shall[:.] reside in the individual’s own home, a hospital, or other care setting, and either:

- (1) [Be determined] Be an individual who is:
- (A) Determined by the department of human services to require care that meets the LOC III care, supervision, and assistance that are needed by dependent individuals at the LOC III level who require extensive services and [supervisions] supervision to manage their physical, mental, and social functions;
- [2] (B) [Be certified] Certified for nursing facility (NF) level of care; and
- [3] (C) [Be admitted] Admitted to a medicaid waiver program[.];
- or
- (2) Be a private paying individual certified by a physician as needing NF level of care; provided that a type I home shall have no more than two individuals at the nursing home level or intermediate level of care.

The department of health shall adopt rules in accordance with chapter 91 to establish licensing regulations for this new category of adult residential care [homes] home or community-based [residences which] residence that is qualified to serve nursing facility level clients.

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The department of health shall adopt rules in accordance with chapter 91 to define the standards of care that shall be required to be provided to residents qualifying for this new category of adult residential care home or community-based [residents] residence.”

SECTION 5. Act 165, Session Laws of Hawaii 1994, as amended by Act 65, Session Laws of Hawaii 1995, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 1994, and shall be repealed on [June 30, 1998;] June 30, 1999; provided that this Act shall be repealed upon the termination of federal matching assistance or the provision of long-term care services under the State’s [Medicaid] medicaid waiver for the health QUEST demonstration project granted through Section 1115 of the Social Security Act, whichever is sooner.”

### PART III.

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 July 2, 1997.)

## ACT 342

H.B. NO. 1006

A Bill for an Act Relating to the University of Hawaii Board of Regents.

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

SECTION 1. Section 26-11, Hawaii Revised Statutes, is amended to read as follows:

“**§26-11 University of Hawaii.** (a) The University of Hawaii shall be headed by an executive board to be known as the board of regents.

The board shall consist of [eleven] twelve members. No more than six of the members shall be members of the same political party and at least part of the membership of the board shall represent geographic subdivisions of the State. At least one member shall be a University of Hawaii student at the time of the initial appointment. This member may be reappointed for one additional term even though the member may no longer be a student at the time of reappointment.

The board shall have power, in accordance with the Constitution of the State and with law, to formulate policy, and to exercise control over the university through its executive officer, the president of the university. The board shall have exclusive jurisdiction over the internal organization and management of the university.

(b) The board of regents shall appoint and may remove[:

- (1) An] an executive officer to be known as the president of the University of Hawaii[; and
- (2) An ex officio student member as a representative to each of its standing committees except the committee on personnel relations; provided that the board may appoint the same student member to each of its standing committees or may appoint more than one student member to any one standing committee. The student member shall be a nonvoting member

of the standing committee and shall be excluded from executive sessions. For the purposes of this section, the student member's presence shall not count toward a quorum as defined in section 92-15].

The University of Hawaii as heretofore constituted as a body corporate is continued as the University of Hawaii established by this chapter.”

SECTION 2. Section 304-3, Hawaii Revised Statutes, is amended to read as follows:

“**§304-3 Regents; appointment; tenure; qualifications; meetings.** The affairs of the university shall be under the general management and control of the board of regents consisting of [eleven] twelve members who shall be appointed and may be removed by the governor. [After April 18, 1984, the] The term of each member shall be for four years[.]; provided that the term of the student member shall be for two years. Except as otherwise provided by statute, state officers shall be eligible to appointment and membership. Every member may serve beyond the expiration date of the member's term of appointment until the member's successor has been appointed and has qualified. The board shall at its first meeting after June 30, elect a chairperson and vice-chairperson, who shall serve until adjournment of its first meeting after June 30 of the next year or thereafter until their successors are appointed and have qualified and whose election shall be immediately certified by the board to the [lieutenant governor.] chief election officer. The board shall appoint a secretary, who shall not be a member of the board. The president of the university shall act as executive officer of the board. The board shall meet not less often than ten times annually, and may from time to time meet in each of the counties of Hawaii, Maui, and Kauai.

The members of the board shall serve without pay but shall be entitled to their traveling expenses within the State when attending meetings of the board or when actually engaged in business relating to the work of the board.”

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 July 2, 1997.)

## ACT 343

H.B. NO. 2032

A Bill for an Act Relating to School-to-Work Opportunities.

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

SECTION 1. The legislature finds that Hawaii and the rest of the states are undertaking a major initiative that involves reforming education, developing its workforce, and stimulating economic development. The states are attempting to create a school-to-work system that all major industrialized countries have in place except for the United States. To help accomplish this, Congress enacted the School-to-Work Opportunities Act of 1994, P.L. 103-239. Hawaii will receive \$10,200,000 over a five-year period to build a school-to-work system.

Building a school-to-work opportunities system is a difficult and enormous undertaking. It requires systemic change and involvement of all segments of the community in the effort, particularly business, industry, and labor. Moreover, it must

involve all of education from kindergarten to postsecondary education, all academic and vocational disciplines, and all students.

The purpose of this Act is to establish a school-to-work opportunities system in Hawaii, including the mechanism for governance, management, and distribution of federal and state resources.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . SCHOOL TO WORK OPPORTUNITIES PILOT PROJECT**

**§302A- Hawaii school-to-work opportunities executive council; establishment; composition.** (a) There is established a Hawaii school-to-work opportunities executive council. The members of the council shall be appointed by the governor. The council shall consist of up to, but not more than, twenty-one members. Council membership shall consist of six executive heads of state agencies, the superintendent of the department of education, the president of the University of Hawaii, the state director of vocational education, and the directors of the departments of business, economic development and tourism, human services, and labor and industrial relations, serving as ex officio voting members. Representatives from local or regional partnerships, a student member, and a voting majority representing business, industry, labor, and community organizations which include regional representations from all counties shall be appointed pursuant to section 26-34.

The length of service for the directors of departments of the State represented on the council shall be limited to the terms of their cabinet appointments. The terms of all non-state agency head members shall be for three years, commencing on July 1 of the first year and ending on June 30, of the third year. Terms shall be staggered with one-third of the members being appointed in each fiscal year.

(b) Vacancies shall be filled by the governor for the unexpired term. The governor shall appoint as chairperson of the council a member other than a state agency head who shall be recommended by the council.

(c) The council members shall serve without pay but shall be entitled to their traveling expenses within the State when attending meetings of the council or when actually engaged in business relating to the work of the council.

**§302A- Powers of the council.** The powers of the Hawaii school-to-work opportunities executive council shall include, but not be limited to:

- (1) Establishing and setting the general directions and policy for the Hawaii school-to-work opportunities system, its council, and executive director;
- (2) Appointing, supervising, and if necessary, discharging the executive director, not subject to chapters 76 and 77;
- (3) Establishing rules and procedures regarding its membership and operations;
- (4) Approving expenditure plans and award grants/contracts;
- (5) Ratifying the establishment of all necessary standing and ad hoc committees; and
- (6) Engaging in such activities as may be necessary or desirable to implement the functions of the School-to-Work Opportunities Act of 1994, and of the council or through delegation to the executive director.

**§302A- Staff.** The Hawaii school-to-work opportunities executive council may appoint such staff as deemed necessary, not subject to chapters 76 and 77, to



carry out its functions and duties. The staff of the council shall report to the executive director.

**§302A- Contracts.** The Hawaii school-to-work opportunities executive council or its executive director may make, execute, enter into, amend, supplement, and carry out contracts, and all other instruments the council finds are necessary or convenient for the fulfillment of its functions and duties.

**§302A- Organizational relationships.** The Hawaii school-to-work opportunities executive council shall act as the governing board for the school-to-work system. The Hawaii school-to-work opportunities council and staff shall be placed within the department of education for administrative purposes.”

SECTION 3. 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 1997-1998 and the sum of \$500,000 or so much thereof as may be necessary for fiscal year 1998-1999 to provide funds for the school-to-work opportunities pilot project. The funds may be used to establish positions to carry out the council’s responsibilities relating to school-based learning, work-based learning, evaluation, and fiscal accounting and administration.

SECTION 4. The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved July 2, 1997.)

## ACT 344

H.B. NO. 133

A Bill for an Act Relating to Technical and Vocational Training.

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

SECTION 1. The legislature finds that public educational institutions, when attempting to expand work-based learning opportunities, are constrained by employers’ concerns about liability for students in work sites. During the regular session of 1995, the legislature partially addressed this concern by enacting Act 231, Session Laws of Hawaii 1995. Hawaii and all other states are presently committed to a major educational reform movement that involves establishing statewide, comprehensive school-to-work transition systems. It is an enormous undertaking since it involves providing work-based learning opportunities for all students. Hawaii is expected to receive \$10,200,000 of federal assistance over a five-year period under the School-To-Work Opportunities Act, P.L. 103-239, to carry out this reform.

The legislature further finds that certain provisions of Act 231, Session Laws of Hawaii 1995, as amended by Act 89, Session Laws of Hawaii 1996, need to be clarified so that these provisions clearly refer to paid employment. It is only when students in work-based learning are paid that almost all federal and state labor laws, such as workers’ compensation, are in force.

The purpose of this Act is to clarify the coverage of workers’ compensation for students in work-based learning situations.

## ACT 344

SECTION 2. Section 302A-429, Hawaii Revised Statutes, is amended to read as follows:

“[[§302A-429]] Vocational student internship **School-to-work work-based learning program authorized.** To provide students with opportunities to apply knowledge and skills acquired in the classroom to real life work experiences, the department may establish and regulate a program of [vocational student internship] school-to-work work-based learning under conditions determined by the department[.] and the University of Hawaii.”

SECTION 3. Section 302A-430, Hawaii Revised Statutes, is amended to read as follows:

“[[§302A-430]] Coverage for workers' compensation. Whenever a student participating in [the department's vocational student internship] an approved school-to-work program sponsored by the department of education or the University of Hawaii undertakes to perform work for a private employer as part of the student's [internship] work-based learning program, whether paid or unpaid, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage, which shall be the student's exclusive remedy to the same extent as provided for in chapter 386 as against the State and the private employer participating in the program.”

SECTION 4. Section 302A-431, Hawaii Revised Statutes, is amended to read as follows:

“[[§302A-431]] Rules[.]; reporting. (a) The board and the board of regents of the University of Hawaii may adopt necessary rules under chapter 91 to administer and implement sections 302A-429 to 302A-431, including the adoption of safety guidelines and safety inspection procedures of facilities where students are placed. The department and the University of Hawaii shall inspect each facility annually prior to the placement of students with these facilities.

(b) The department and the University of Hawaii shall submit a biennial report to the governor and the legislature prior to the convening of each regular session in the first year of each biennium that identifies the cost impacts to the State of providing workers' compensation coverage for students under sections 302A-430 and 302A-440.”

SECTION 5. Section 302A-440, Hawaii Revised Statutes, is amended to read as follows:

“[[§302A-440]] Coverage for workers' compensation. Whenever an exceptional child as defined in section 302A-101 undertakes to perform work for a private employer as part of [the child's instructional program,] an approved school-to-work work-based learning program, whether paid or unpaid, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage.”

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 July 2, 1997.)

## ACT 345

H.B. NO. 2214

A Bill for an Act Relating to Coffee Certification.

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

SECTION 1. Coffee grown in the Hawaiian islands has unique qualities valued around the globe. The world famous Kona coffee, and the coffees grown in other districts throughout Hawaii, at their best, can match the best coffees grown anywhere. However, not all the coffee grown in Hawaii meets this high standard. In order for Hawaii's coffee industry to maintain its quality image, there must be a system to guarantee that high standards are met on all coffee leaving its point of origin.

Currently, coffee farmers and processors have the option of having the department of agriculture perform grade certification of their green coffee beans. If all coffee is certified as meeting State of Hawaii standards for grades of green coffee, the industry can have better control over the quality of coffee going into the marketplace.

The purpose of this Act is to make this voluntary certification program mandatory for all coffee grown in the State, with the aim of assuring the quality and origin to the buyers of Hawaii-grown green coffee and improving and protecting the standards of the Hawaii coffee industry.

SECTION 2. Section 147-7, Hawaii Revised Statutes, is amended to read as follows:

**“§147-7 Inspection and classification of agricultural commodities; fees.**

(a) The department [of agriculture] may contract with the United States Department of Agriculture for obtaining the services of a supervising inspector employed by the federal department and the establishment of a cooperative inspection service with the United States government. The [board of agriculture,] department, or the supervising inspector, with the approval of the [board,] department, may designate any competent employee or agent of the department as an inspector to inspect or classify agricultural commodities in accordance with rules [as] of the department [may make], and at the time and places [as may be] designated by the supervising inspector or the [board. In addition, the] department.

(b) The inspectors shall be authorized to inspect or classify agricultural commodities at the request of persons having a financial interest in the commodities, or as mandated by subsection (d), and to ascertain and certify to the persons the grade, classification, quality, [or] condition [thereof], or origin of them and other pertinent facts.

(c) The department may fix, assess, and collect or cause to be collected fees for the services when they are performed by employees of the department. The fees shall be on a uniform basis and in an amount reasonably necessary to cover the cost of inspection and the administration of this part; provided that the department may prescribe a reasonable charge for traveling expenses and extraordinary services when the performance of the services involves unusual cost in their performance. No fee shall be charged for an inspection unless the inspection was requested by a person having a financial interest in the inspected commodity[.] or the inspection was mandated by subsection (d).

(d) All Hawaii-grown green coffee beans shall be inspected and certified by the department for grade and origin unless otherwise specified by rules of the department.

(e) The department may adopt rules establishing the requirements, procedures, restrictions, and other criteria necessary for establishing a program of self inspection and certification of agricultural commodities.”

SECTION 3. Section 147-8, Hawaii Revised Statutes, is amended to read as follows:

**“§147-8 Appeal for classification; fee.** Whenever any quantity of any agricultural commodity has been inspected [at the request of a person having a financial interest in the inspected commodity] under section 147-7 and a question arises as to whether the certificate issued with respect to the inspection shows true grade, class, quality, [or] condition, or origin of the product, any person having a financial interest in the inspected commodity, subject to [such regulations as the department of agriculture may prescribe,] any rules adopted by the department, may appeal to the [board of agriculture and the board] department for a reinspection and the department may [cause such inspection to be made and such] reinspect and conduct appropriate tests to [be applied as it may deem necessary and] determine and issue a written [finding as to] certificate of the true grade [or], class [of the product, and the], quality [or], condition [thereof.], or origin of the product.

Whenever any appeal is made to the [board] department under this section it shall charge and collect or cause to be collected a reasonable fee. The amount of the fee shall be fixed by [the board] rule and shall be refunded if the appeal is sustained.”

SECTION 4. Section 147-23, Hawaii Revised Statutes, is amended to read as follows:

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

(b) No Hawaii-grown green coffee beans shall be shipped outside the area of their geographic origin to any point within the State or outside the State unless they have been inspected and certified as required in section 147-7(d) or by rules adopted under section 147-7(d). Areas of geographic origin shall be defined by rules of the department.”

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000, or so much thereof as may be necessary for fiscal year 1997-1998, to be paid into the coffee inspection revolving fund established under section 147-7.5, Hawaii Revised Statutes, for the purpose of training new coffee inspectors for the purposes of this Act. The sum of \$10,000 shall be repaid to the general fund of the State of Hawaii by June 30, 1999, from the revenues collected in the coffee inspection revolving fund from users of the inspections services.

SECTION 6. The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

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

SECTION 8. This Act shall take effect on July 1, 1997.

(Approved July 3, 1997.)

## ACT 346

H.B. NO. 1625

A Bill for an Act Relating to Consolidating Employment and Training Advisory Bodies into a Workforce Development Council.

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

SECTION 1. The purpose of this Act is to convert the state advisory commission on employment and human resources into a workforce development council and consolidate the tourism training council, the job training coordinating council, and the job service employers committee into the workforce development council.

SECTION 2. Section 202-1, Hawaii Revised Statutes, is amended to read as follows:

**“§202-1 [Commission;] Council; appointment; tenure.** [The advisory commission on manpower and full employment, previously established by the governor in July 1963 as the state manpower advisory committee, is hereby constituted as the] The advisory commission on employment and human resources[.] is hereby constituted as the workforce development council. The [commissioners] council members shall be appointed for four-year staggered terms as provided for in section 26-34[; except that the terms of appointment shall be for three years and shall commence July 1 and end June 30]. The governor shall appoint the chairperson of the [commission.] council. The [commission] council shall be composed of [thirteen] seventeen members. The members shall be selected on the basis of their interest in and knowledge of [the interrelations amongst the technological, economic, and social systems and on the basis of their ability to contribute to solution of difficulties arising from the new techniques and the proliferation of employment problems including the problems of the hard to employ. The members of the advisory commission shall represent labor, management, agriculture, education, training, and the public in general. The commission shall also fulfill the advisory functions specified by federal laws relating to vocational education and shall be constituted so it shall comply in all respects with<sup>1</sup> membership provisions for the state council on vocational education required by the Federal Vocational Act of 1963, as amended by Public Law 98-524 and as it may be further amended from time to time.] workforce development programs in the State and how they can support economic development. The council shall be composed of the following representatives of which the majority shall be from the private sector:

- (1) The directors of labor and industrial relations, human services, and business, economic development, and tourism; the superintendent of education; and the president of the University of Hawaii; as ex officio voting members;
- (2) Ten private sector representatives from business, labor, and each of the four county workforce development boards; and
- (3) Two representatives from community-based organizations including one from a native Hawaiian organization that operates workforce development programs.

The members shall serve without compensation but shall be [paid per diem and] entitled to travel expenses when [attending meetings of the commission.] actually engaged in business relating to the work of the council.”

SECTION 3. Section 202-2, Hawaii Revised Statutes, is amended to read as follows:

“§202-2 Duties of [commission.] council. The [advisory commission on employment and human resources] workforce development council shall:

- (1) [Identify and assess the past effects and the current and prospective role and pace of technological change;] Prepare and update periodically a comprehensive state plan for workforce development with measurable outcomes;
- (2) Review and assess the coordination between the State’s workforce development programs, including programs of the federal government operating in the State, and economic development and diversification; and consider:
  - (A) The State’s employment and training requirements and resources;
  - (B) Practices of employers and unions that impede or facilitate the mobility of workers; and
  - (C) The special problems of untrained and inexperienced youth, immigrants, persons with disabilities, welfare clients, single parents, disadvantaged minorities, and other groups facing barriers in the labor force;
- (3) Serve as an information clearinghouse for all workforce development programs in the State, including workforce training and education programs;
- (2) Identify and describe the impact of technological and economic change on production and employment, including new job requirements and the major types of worker displacement, both technological and economic,]
- (4) Analyze and interpret workforce information, particularly changes which are likely to occur during the next ten years; the specific industries, occupations, and geographic areas which are most likely to be involved; and the social and economic effects of these developments on the State’s economy, labor force, communities, families, social structure, and human values;
- (3) (5) Define those areas of unmet [community and human] workforce and economic development needs [toward which application of new technologies might most effectively be directed;] and describe how private and public agencies can coordinate their efforts and collaborate with each other to address those needs;
- (4) (6) Recommend [specific administrative and legislative steps which] to the governor and the legislature, state policies and funding priorities based on local community input that it believes should be [taken] adopted by the state government in meeting its workforce development responsibilities to:
  - (A) [to promote occupational training and skill development programs appropriate to the State’s needs and resources,] Establish a workforce development system in the State in which resources are pooled and programs are coordinated and streamlined;
  - (B) [to encourage] Encourage a program of useful research into the State’s [labor force] workforce requirements, development, and utilization[.]; and
  - (C) [to support and promote technological change in the interest of continued] Support recommended workforce policies that promote economic [growth and improved] development, diversification, and well-being of the people in this State[, (D) to continue and adopt measures which will facilitate occupational adjustment and geographical mobility, and insure full employment, and (E)

to explore and evaluate various methods of sharing the cost of preventing and alleviating the adverse impact of change on displaced workers];

provided that the duties and responsibilities of the workforce development council shall not impinge on the constitutional and statutory authority of the board of regents and the board of education, and the statutory authority of the state board for vocational education;

- (5) (7) Create public awareness and understanding of the [problems and potentials of the new technologies;] State's workforce development plans, policies, programs, and activities, and promoting them as economic investments;
- (6) (8) Submit [employment] reports [with] of its activities and recommendations to the governor and the legislature at least once a year;
- (7) Be the responsible body for planning, reviewing, and evaluating all state and federal employment training programs; and]
- (9) Evaluate the state workforce development plan in terms of how its purposes, goals, and objectives have been carried out throughout the State;
- (8) Prepare and submit to the governor plans and updates as appropriate in conjunction with the Hawaii state plan.]
- (10) Provide technical assistance to local workforce development boards and other similar organizations; and
- (11) Carry out required functions and duties related to workforce development of any advisory body required or made optional by federal legislation, including the Job Training Partnership Act of 1982, as amended, and the Wagner-Peyser Act of 1933, as amended."

SECTION 4. Section 202-3, Hawaii Revised Statutes, is amended to read as follows:

**"§202-3 Powers of [commission.] council.** (a) The [advisory commission on employment and human resources] workforce development council shall appoint and fix the compensation of an executive director, who shall be exempt from chapters 76 and 77, and may employ such other personnel as it deems advisable within [the provisions of] chapters 76 and 77.

(b) The [commission.] council, or on the authorization of the [commission,] council, any subcommittee or panel thereof, may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places as the [commission] council may deem advisable.

(c) The [commission] council may negotiate and enter into contracts with public agencies or private organizations to carry out [such] its studies and to prepare [such] reports [as] that the [commission] council determines to be necessary to the fulfillment of its duties.

(d) The [commission] council may secure through the governor's office, any information from any executive department, agency, or independent instrumentality of the State it deems necessary to carry out its functions.

(e) The [commission] council may convene such public conferences and forums as it [shall deem] deems useful to keep the public informed of [the needs of employment and the impact of the new technologies on the social and economic systems of the State.] workforce development needs, developments, and initiatives.

(f) The [commission] council may administer funds allocated for its work and may accept, disburse, and allocate funds which may become available from other governmental and private sources; provided that all the funds shall be

disbursed or allocated in compliance with the objectives set forth herein, and applicable laws.”

SECTION 5. Section 202-4, Hawaii Revised Statutes, is amended to read as follows:

“**§202-4 Duties of chairperson and executive director.** The chairperson of the [advisory commission on employment and human resources] workforce development council or the executive director, at the direction of the [commission] council shall:

- (1) Serve as consultant to the governor on [problems of the impact of the new technologies on the social and economic welfare of the people;] issues relating to workforce development and its relation to economic development and diversification;
- (2) Assist in coordinating the programs of all agencies dealing with [problems] issues of concern to the [commission;] council;
- (3) Arrange for statewide studies of the [problems] issues referred to in this chapter;
- (4) Secure [statistical] data and information from agencies concerned with the [problems] issues referred to in this chapter;
- (5) Arrange for the exchange of information, plans, and programs between public and private groups interested in the [problems] issues referred to in this chapter;
- (6) Prepare articles, reports, and bulletins for the use of the [commission,] council, concerned agencies, and for general publication;
- (7) Keep and maintain records and reports and conduct correspondence relative to the work of the [commission;] council; and
- [(8) Review and assess the coordination between the State’s employment and training programs, including any programs of the federal government operating in the State; and consider:
  - (A) The State’s employment and training requirements and resources;
  - (B) Practices of employers and unions that impede or facilitate the mobility of workers; and
  - (C) The special problems of untrained and inexperienced youth in the labor force; and
- (9)] ~~(8)~~ Develop recommendations and plans for action consistent with the purpose of this chapter.”

SECTION 6. Section 202-5, Hawaii Revised Statutes, is amended to read as follows:

“**§202-5 Organizational relationships.** The [advisory commission on employment and human resources] workforce development council is placed within the department of labor and industrial relations for administrative purposes and shall act in an advisory capacity to the governor.”

SECTION 7. Section 222-2, Hawaii Revised Statutes, is amended to read as follows:

“**§222-2 Duties of the center.** The center shall:

- (1) Serve as a research arm of the [advisory commission on employment and human resources,] workforce development council, and such other public agencies as may properly require its services and assistance in



locating research experts for particular studies and in working out the dimensions and contractual arrangements for such studies, the costs and final decisions of which shall be the responsibility of the requesting agencies;

- (2) Encourage and promote invention and experimentation in futures study, planning, and design;
- (3) Maintain an inventory of studies, research, and other information, including groups or persons concerned with futures study, planning, and design applicable to the State; and
- (4) Engage in the development and acquisition of models, techniques, and other tools, and capability for the effective monitoring, measuring, and forecasting of crucial aspects of Hawaii's socio-economic-environmental system over the immediate, intermediate, and long range future, including the design of systems to assist and stabilize the State's construction industry."

SECTION 8. Section 305A-4, Hawaii Revised Statutes, is amended to read as follows:

**"§305A-4 Vocational education coordinating advisory council.** There is established a vocational education coordinating advisory council which shall serve in an advisory capacity to the board of regents. The council shall consist of eleven members, nine appointed and two ex officio voting members. Of the nine appointed members[, three]:

- (1) Three shall be appointed from the board of regents of the University of Hawaii by the chairperson of that body[, three];
- (2) Three shall be appointed from the board of education by the chairperson of that body[.]; and
- (3) [three] Three shall be appointed from the [advisory commission on employment and human resources] workforce development council by [the chairperson of that body.] that council.

Of the three members appointed from the [advisory commission on employment and human resources,] workforce development council, one member shall represent management, one member shall represent labor, and the third shall represent the public. Of the two ex officio members one shall be the president of the University of Hawaii and the other shall be the superintendent of education.

Of the three members first appointed by each appointing authority, other than the chairperson of the board of education, one shall be appointed for two years, one shall be appointed for three years, and one shall be appointed for four years. In the case of the members appointed from the board of education, the terms of such members shall be for their remaining terms as members of the board of education. Upon the expiration of the terms of the first members, their successors shall serve for a term of four years. Vacancies shall be filled by the appropriate appointing authority for the unexpired term.

The council shall elect a chairperson and such other officers as it deems necessary. Section 92-15 shall apply. The members of the council shall serve without pay but shall be entitled to their traveling expenses within the State when attending meetings of the council or when actually engaged in business relating to the work of the council."

SECTION 9. Section 394-5, Hawaii Revised Statutes, is amended to read as follows:

“§394-5 Administration. The department of labor and industrial relations is authorized, with the advice of the [advisory commission on employment and human resources,] workforce development council, to plan and administer human resource development and training programs under this chapter. The department shall process the payment of weekly compensation as provided under this chapter.”

SECTION 10. Chapter 373F, Hawaii Revised Statutes, is repealed.

SECTION 11. Chapter 394A, Hawaii Revised Statutes, is repealed.

SECTION 12. All officers and employees of the advisory commission on employment and human resources whose functions are affected by this Act shall be transferred to the workforce development council to carry out the duties consistent with this chapter, 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.

SECTION 13. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the advisory commission on employment and human resources relating to the functions transferred to the workforce development council shall be transferred with the functions to which they relate.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved July 3, 1997.)

**Note**

1. Prior to amendment “the” appeared here.

**ACT 347**

H.B. NO. 1675

A Bill for an Act Relating to Hoisting Machine Operators.

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

SECTION 1. Section 396-3, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Hoisting machine” means a machine with a hoist line, sling, or hydraulic lifting mechanism used in construction, demolition, or excavation work.

“Hoisting machine operator” means any individual who operates a hoisting machine in the State.”

SECTION 2. Section 396-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Administration. The department shall be responsible for administering occupational safety and health standards throughout the State.

- (1) The department shall prescribe and enforce rules and regulations under chapter 91 as may be necessary for carrying out the purposes and provisions of this chapter. The department shall make such reports to the Secretary of Labor in such form and containing such information as the Secretary shall from time to time require pursuant to federal law;
- (2) The department shall adopt, amend, or repeal occupational safety and health standards in the manner prescribed by rules and regulations adopted hereunder. Emergency temporary standards may be promulgated without conforming to chapter 91 and without hearings to take immediate effect upon publication of a notice of such emergency temporary standard in a newspaper of general circulation in the State of Hawaii or upon such other date as may be specified in the notice. An emergency temporary standard may be adopted if the director determines:
  - (A) That employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
  - (B) That such emergency standard is necessary to protect employees from such danger.

[Said] The emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures set forth in chapter 91, but in any case shall be effective no longer than six months;
- (3) Variances from occupational safety and health standards promulgated under this chapter may be granted upon application of an employer or employers. Application for variances must correspond to procedures set forth in the rules and regulations of this chapter. The director may issue an order for variance if the director determines that the proponent of the variance has demonstrated that the conditions, practices, means, methods, operations, or processes used or proposed to be used by the employer will provide employment and places of employment to the employer's employees which are as safe and healthful as those which would prevail if the employer complied with the standard. The employer shall also notify the employer's employees upon each application for variance and [said] the employees shall be given an opportunity to request and participate in hearings or other proceedings relating to applications for variance. No inference of admission of violation of a standard shall be made against the employer by reason of the employer's application for variance;
- (4) The department may, upon the application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order. Any person affected by an order may petition the department for an extension of time, which may be granted if the department finds it necessary[.]; and
- (5) The department shall regulate hoisting machines and shall certify their operators."

SECTION 3. (a) The director of labor and industrial relations shall consult with affected labor organizations, labor/management organizations, and management organizations with expertise in local hoisting operation training and practical testing experience, and shall develop in consultation with the industry, recommendations for certification and a plan for implementing certification of hoisting machine operators.

The recommendations shall include:

- (1) Minimum qualifications for applicants for certification including any approved apprenticeship or other approved training program;
- (2) Minimum proficiency requirements for certification examinations, including weights to be given for the written and the practical portions;
- (3) Provisions for oral or reader assisted examinations in lieu of the written examinations where the applicant can demonstrate an inability to pass the written examination;
- (4) Qualifications of organizations that the department may contract with to perform or administer testing; provided that the department shall give priority to those qualified organizations with expertise and experience in Hawaii;
- (5) Requirements for any exemptions to certification;
- (6) Procedures for the issuance, renewal, revocation, and suspension of certification;
- (7) Classifications of certification;
- (8) Applicable definitions; and
- (9) Any other items the department and the various affected organizations determine to be relevant to the issue of certification.

(b) The director is requested to submit to the legislature no later than twenty days prior to the convening of the regular session of 1998, a report that shall include:

- (1) The recommendations for certification of hoisting machine operators;
- (2) A plan for implementation of certification procedures; and
- (3) Any additional concerns the various affected organizations may have, or that may have occurred as a result of developing the recommendations.

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; provided that section 2 shall take effect on July 1, 1998.

(Approved July 3, 1997.)

**ACT 348**

H.B. NO. 103

A Bill for an Act Relating to Business.

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

SECTION 1. The legislature finds that a strong and stable economy is the key to ensuring that the immediate and future needs of Hawaii residents are met. This is an environment that provides and creates jobs, facilitates job growth, and encourages economic diversification. It is an environment that is vital to ensuring a comfortable and secure lifestyle for Hawaii residents.

To ensure that Hawaii's economic health steadily improves, our economy depends on the strength and vitality of businesses in the State. In this regard, Hawaii's economy must move away from its dependence on a few industries, to an economy that is more broad-based to encompass a wider variety of products, crops,

services, and business ventures and investments. It is in the State's best interests to pursue initiatives that will help existing businesses become more productive and promote more business opportunities and ventures.

Last year, the eighteenth legislature passed H.B. No. 3208 to assist small businesses in Hawaii. Enacted as Act 272, Session Laws of Hawaii 1996, this legislation established a blue ribbon task force on small business (task force) to review all state and county laws that impede the formation, operation, and expansion of small businesses in Hawaii. In addition, Act 272 specified that the task force was to look at all existing administrative rules and proposed rules and amendments that affect small businesses. This review process was to take place over a two-year period, with a preliminary report of the task force's findings and recommendations to be submitted to the governor and the legislature prior to the 1997 regular session and a final report to be submitted to the governor and the legislature prior to the 1998 regular session.

Through this legislation, the legislature addressed a primary concern of businesses by establishing a means to minimize delays in the regulatory process and to facilitate greater coordination of regulatory procedures, thereby alleviating stress on business operations and allowing businesses "to do business." However, in its ongoing effort to support business activities and operations, the legislature recognizes that the assessment and determination of which governmental regulations are burdensome to businesses must be coupled with balance and fairness to ensure that there are appropriate safeguards to protect the interests of consumers, the environment, and businesses. Given Hawaii's complex, regulatory environment, this is no easy task.

The commitment to nurture a thriving and stable business community in our State is ongoing. The challenges ahead are an opportunity to ensure that the concerns of the business community are addressed and that initiatives are carried out to help existing businesses prosper and grow, create new businesses, and attract other businesses and firms to the State. The immense responsibilities of the task force require careful and thoughtful deliberation for a sound analysis and conclusion. The task force's preliminary report to the governor and the legislature is just the beginning of its complex and extensive responsibilities.

The purpose of this Act is to support business in the State and the ongoing efforts of the task force by amending Act 272, Session Laws of Hawaii 1996, to:

- (1) Change the name of the "blue ribbon task force on small business" to the "small business task force on regulatory relief"; and
- (2) Extend the duration of the task force by one year, to June 30, 1999.

SECTION 2. Act 272, Session Laws of Hawaii 1996, is amended by amending section 1 to read as follows:

"SECTION 1. The legislature finds that small businesses in Hawaii are vital to the State's economic development and growth and help the State to maintain a stable and diversified economy. The legislature finds, however, that small businesses in the State are over-regulated by state government. Many state laws, although seemingly equitable on their face, often impose intolerable burdens on small businesses. Among the laws hampering small businesses are numerous state and county taxes; mandated benefits, including workers' compensation, health care, and motor vehicle insurance benefits; unemployment insurance costs; payroll costs; lease costs; licensing and permit fees; and reporting requirements.

The purpose of this Act is to establish a [one-year blue ribbon task force on small business] three-year small business task force on regulatory relief within the department of business, economic development, and tourism to review:

**ACT 348**

- (1) All existing state administrative rules and proposed legislation relating to small businesses;
- (2) All state-originated proposed rules and proposed amendments to existing rules that affect small businesses prior to their adoption; and
- (3) All current and proposed state laws that act as barriers to the formation, operation, and expansion of small businesses in the State.”

SECTION 3. Act 272, Session Laws of Hawaii 1996, is amended by amending section 2 to read as follows:

“SECTION 2. There is established a [blue ribbon task force on] small business task force on regulatory relief within the department of business, economic development, and tourism for administrative purposes, to testify and represent the task force and the small business community at legislative hearings and to review:

- (1) All existing state administrative rules and proposed legislation relating to small businesses [as identified by the department of business, economic development, and tourism];
- (2) All state-originated proposed rules and proposed amendments to existing rules that affect small businesses prior to their adoption, concurrently with the department of business, economic development, and tourism; and
- (3) All current and proposed state laws that act as barriers to the formation, operation, and expansion of small businesses in the State.”

SECTION 4. Act 272, Session Laws of Hawaii 1996, is amended by amending section 4 to read as follows:

“SECTION 4. The [blue ribbon task force on] small business task force on regulatory relief shall submit:

- (1) A [preliminary] report of its findings and recommendations to the governor and the legislature no later than twenty days prior to the convening of the regular session of [1997;] 1998; and
- (2) A final report of its findings and recommendations to the governor and the legislature no later than twenty days prior to the convening of the regular session of [1998.] 1999.”

SECTION 5. Act 272, Session Laws of Hawaii 1996, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 1996, and shall be repealed on [June 30, 1998.] June 30, 1999.”

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 July 3, 1997.)

## ACT 349

H.B. NO. 1287

A Bill for an Act Relating to the Procurement Code.

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

SECTION 1. The purpose of this Act is to provide that if contractors, subcontractors, and materialmen who perform work or provide materials for state construction projects are not paid amounts due for their nondisputed, completed work, and delivered materials, they may immediately pursue the bond posted for that job. Current law requires that this action may not begin prior to sixty days after the completion of the project.

This Act tracks the federal Miller Act, which shall provide guidance in the application and interpretation of this Act.

SECTION 2. Section 103D-324, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) Every person who has furnished labor or material to the contractor for the work provided in the contract, in respect of which a payment bond or a performance and payment bond is furnished under this section, and who has not been paid [in full] amounts due therefor [after two months from the completion and final settlement of any contract.] before the expiration of a period of ninety days after the day on which the last of the labor was done or performed or material was furnished or supplied, for which such a claim is made, may institute an action against the amount, or balance thereof, unpaid at the time of the institution of the action against the contractor and its sureties, on the payment bond or the performance and payment bond, and have their rights and claims adjudicated in the action, and judgment rendered thereon; subject to the State’s priority on [its performance bond.] the bonds. If the full amount of the liability of the sureties on the payment bond is insufficient to pay the full amount of the claims, then, after paying the full amount due the State, the remainder shall be distributed pro rata among the claimants.

As a condition precedent to any such suit, written notice shall be given to contractor and surety, within ninety days from the date on which the person did or performed the last labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed.

The written notice shall be served by registered or certified mailing of the notice, to the contractor and surety, at any place they maintain an office or conduct their business, or in any manner authorized by law to serve summons.

(e) Every suit instituted [upon a payment bond] under subsection (d) shall be brought in the circuit court of the circuit in which the [contract was to be performed,] project is located, but no such suit shall be commenced after the expiration of one year after the [completion and final settlement of the contract.] day on which the last of the labor was performed or material was supplied for the work provided in the contract. The obligee named in the bond need not be joined as a party in any such suit.

The terms “labor” and “material” have the same meanings in this section as the terms are used in section 507-41.”

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

SECTION 4. This Act shall take effect on, and apply to all contracts awarded after, July 1, 1997.

(Approved July 3, 1997.)

**ACT 350**

H.B. NO. 143

A Bill for an Act Relating to Housing.

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

SECTION 1. The legislature finds that housing affordability and availability are two of the most critical issues facing the people of Hawaii. Despite efforts to remedy the crisis, large segments of our population are still unable to find safe, decent, and affordable housing.

The legislature recognizes that the home is the basic source of shelter and security in society and is the center of our society that provides the basis for developing our future citizens. Frustration in the inability to obtain the basic necessity of decent shelter and to provide a decent home for one's family, provokes unrest in our community that is harmful to the overall fiber of our society.

Studies have shown that the causes for the high-cost of housing are multiple. They include the cost and availability of land, the cost of development, the cost and availability of financing, the cost added by government regulation, the cost and availability of labor and materials, and the inflationary state of the economy that makes high-cost housing more profitable to produce and more attractive to "risk" capital. In the most elemental way, the housing shortage is caused by conflicting priorities in our pluralistic society. Additionally, the legislature is aware that the housing market is an all-encompassing market and that neglecting the interests of renters or potential homeowners would not be proper.

It is declared that as a result of the critical shortage of safe and sanitary housing units which are affordable to lower income residents of the State, many persons are forced to occupy overcrowded, unsafe, or unsanitary dwelling accommodations or become homeless. The legislature finds that:

- (1) These conditions cause an increase in discontent, despair, and crime and constitute a menace to the health, safety, morals, and welfare of the inhabitants of the State and impair economic values;
- (2) These conditions cannot be remedied by the ordinary operations of private enterprise;
- (3) The clearance, planning or replanning, financing, development, construction and reconstruction of units, and the providing of safe and sanitary dwelling accommodations are public uses and purposes for which public money may be spent and private property acquired;
- (4) It is in the public interest that work on such projects be instituted as soon as possible to relieve the burden of residents who are in need of shelter; and
- (5) The necessity for this Act is declared as a matter of legislative determination.

The legislature recognizes that the lack of decent housing affects the quality of life of our residents. Resolution of the housing problem is complex due to the interrelatedness of other social and economic issues such as poverty, crime, and unemployment. No problem can be successfully resolved without considering the others. The legislature acknowledges that an integrated, rather than a fragmented, effort is required to cope with these multitude of problems. Thus, efforts on the part



of the State to improve the quality of life of our citizens and to address the impacts of welfare reform should be a coordinated one, taking into account shelter and the social, economic, and physical needs of the people. Coordination should also occur among federal, state, and county agencies, as well as with private sector and nonprofit entities, with each drawing on their strengths and working together in an integrated manner.

The legislature finds that, according to modern management theory, similar major functions of any large organization should be placed in the same organizational unit. Due to historical reasons, the various housing functions of state government are distributed to several different agencies.

The purpose of this Act is to consolidate all state housing functions now under the Hawaii housing authority, the housing finance and development corporation, and the rental housing trust fund, and state housing employees into a single housing and community development corporation. The new housing corporation will subsume the housing functions presently administered by the Hawaii housing authority, the housing finance and development corporation, and the rental housing trust fund. The housing and community development corporation of Hawaii will be headed by a decision making board. The corporation shall also contain various administrative and support services to carry out the common administrative duties of the two housing entities. Effective July 1, 1998, the functions and employees of the State's Hawaii housing authority, the housing finance and development corporation, and the rental housing trust fund will be transferred to the new housing and community development corporation of Hawaii. Effective July 1, 1998, the rental housing trust fund commission will inform and advise the board of the housing and community development corporation of Hawaii on matters concerning the administration of the rental housing trust fund.

A transition period is provided for this substantial consolidation effort, with full implementation to take effect on July 1, 1998.

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

**“CHAPTER  
HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF  
HAWAII**

**PART I. GENERAL PROVISIONS**

§ **-1 Definitions.** The following terms, wherever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

“Board” means the board of directors of the housing and community development corporation of Hawaii.

“Bonds” means any bonds, interim certificates, notes, debentures, participation certificates, pass-through certificates, mortgage-backed obligations, or other evidences of indebtedness of the corporation issued pursuant to this chapter.

“Community facilities” includes real and personal property, and buildings, equipment, lands, and grounds for recreational or social assemblies, for educational, health, or welfare purposes and necessary or convenient utilities, when designed primarily for the benefit and use of the corporation or the occupants of the dwelling accommodations.

“Contract” means any agreement of the corporation with an obligee or a trustee for the obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

“Corporation” means the housing and community development corporation of Hawaii.

“Dwelling”, “dwelling unit”, or “unit” means any structure or room, for sale, lease, or rent, that provides shelter.

“Elder” means a person who is a resident of the State and has attained the age of sixty-two years.

“Executive director” means the executive director of the housing and community development corporation of Hawaii.

“Federal government” includes the United States and any agency or instrumentality, corporate or otherwise, of the United States.

“Government” includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

“Household member” means a person who:

- (1) Is a co-applicant; or
- (2) Will reside in the dwelling unit purchased from the corporation.

“Housing project” or “project” includes all real and personal property, buildings and improvements, commercial spaces, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project.

The term “housing project” or “project” may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

“Land” or “property” includes vacant land or land with site improvements whether partially or entirely finished in accordance with governmental subdivision standards, or with complete dwellings.

“Mortgage holder” includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture - Rural Development, or other federal or state agency engaged in housing activity, Administrator of Veterans Affairs, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees, and assigns.

“Mortgage lender” means any bank or trust company, savings bank, national banking association, savings and loan association maintaining an office in the State, any insurance company authorized to transact business in the State, or any mortgagee approved by the Federal Housing Administration and maintaining an office in the State.

“Nonprofit organization” means a corporation, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under either section 501(c)(3), section 501(c)(4), or so much of section 501(c)(2) as applies to title holding corporations that turn over their income to organizations that are exempt under either section 501(c)(3) or 501(c)(4), of the Internal Revenue Code of 1986, as amended.

“Obligee of the corporation” or “obligee” includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the corporation used in connection with a housing project, or any assignee or assignees of the lessor’s interest or any part thereof, and the United States, when it is a party to any contract with the corporation.

“Real property” includes lands, land under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right

therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

**§ -2 Housing and community development corporation of Hawaii; establishment, staff.** (a) There is established the housing and community development corporation of Hawaii to be placed within the department of business, economic development and tourism for administrative purposes only. The corporation shall be a public body and a body corporate and politic.

(b) The corporation shall employ, exempt from chapters 76 and 77 and section 26-35(4), an executive director and an executive assistant. Effective July 1, 1998, the salary of the executive director shall be set by the governor within the range from \$72,886 to \$77,966 a year. Effective July 1, 1998, the salary of the executive assistant shall be set by the governor within the range from \$65,597 to \$70,169 a year. The corporation may employ, subject to chapters 76 and 77, technical experts and officers, agents, and employees, permanent and temporary, as required. The corporation may also employ officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, not subject to chapters 76 and 77, when in the determination of the corporation, the services to be performed are unique and essential to the execution of the functions of the corporation. The corporation may call upon the attorney general for legal services as it may require. The corporation may delegate to one or more of its agents or employees the powers and duties as it deems proper.

**§ -3 Board; establishment, functions, duties.** (a) There is created a board consisting of nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. One public member shall be the chairperson of the rental housing trust fund advisory commission. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: two members to be appointed for four years; two members to be appointed for three years; and two members to be appointed for two years. The director of business, economic development, and tourism and the director of human services, or their designated representatives, and a representative of the governor's office, shall be ex officio voting members. The corporation shall be headed by the board.

(b) The board of directors shall select a chairperson and vice-chairperson from among its members. The director of finance or the director of human services shall be ineligible to serve as chairpersons of the board.

(c) Five members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the corporation. The members shall receive no compensation for services, but shall be entitled to necessary expenses, including travel expenses, incurred in the performance of their duties.

**§ -4 General powers.** (a) The corporation may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and
- (4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs.

(b) In addition to other powers conferred upon it, the corporation may do all things necessary and convenient to carry out the powers expressly provided in this chapter.

§ -5 **Fair housing law to apply.** Notwithstanding any law to the contrary, the provisions of chapter 515 shall apply in administering this chapter.

§ -6 **Housing advocacy and information system.** (a) The corporation, with the assistance of other agencies of the State and counties with related responsibilities, shall develop and maintain a housing advocacy and information system to aid the corporation in meeting the needs and demands of housing consumers.

(b) In establishing and maintaining the housing advocacy and information system, the corporation shall conduct market studies, engage in community outreach, and solicit recommendations from and statistics and research developed by agencies of the United States, the State, the counties, private research organizations, nonprofit community groups, trade associations, including those of the construction and real estate industries, departments, individuals at the University of Hawaii, and housing consumers.

(c) The corporation shall analyze the information received and make recommendations to appropriate agencies and developers.

(d) The corporation, through the housing advocacy and information system, shall act as a clearinghouse for information as to housing conditions, needs, supply, demand, characteristics, developments, trends, federal housing programs, and housing laws, ordinances, rules, and regulations.

(e) The housing advocacy and information system may be used by housing researchers, planners, administrators, and developers, and shall be coordinated with other housing research efforts. The corporation shall maintain a current supply of information, including means to gather new information through surveys, contracted research, and investigations.

§ -7 **Housing research.** (a) The corporation may study the plans of any government in relation to the problem of clearing, replanning, or reconstruction of an area in which unsafe or unsanitary dwelling or housing conditions exist.

(b) The corporation may purchase materials for the development of land and the construction of dwelling units in the manner it shall conclude to be most conducive to lower costs, including purchase from other states or from foreign countries for drop shipment in the State or on cost-plus contracts for materials with persons or firms doing business in the State, or otherwise.

(c) The corporation may conduct, or cause to be conducted, research on housing needs, materials, design, or technology, and apply the findings of the investigation to housing projects, including the following:

- (1) Sociocultural investigation of housing and community utilization, preferences, or needs of residents within the housing need classification of the housing functional plan;
- (2) Development of technology for the application of innovative building systems or materials, to provide energy or resource conservation or cost savings in the construction or operation of a housing project;
- (3) Investigation of the applicability of locally-produced building materials and systems to dwelling unit construction;
- (4) Investigation of new forms of project construction, maintenance, operation, financing, or ownership, involving tenants, homeowners, financing agencies, and others; or
- (5) Other necessary or appropriate research that may lower the long-term costs of housing, conserve resources, or create communities best suited to the needs of residents.

(d) In the development and construction of a housing project, the corporation may provide for an on-the-job training program or other projects as it may deem

justifiable including innovative projects to develop a larger qualified work force in the State.

§ **-8 Housing counseling.** (a)<sup>1</sup> The corporation may provide the following services for programs administered by the corporation:

- (1) Listing and referral services to tenants seeking to rent homes;
- (2) Counseling to tenants on matters such as financial management and budgeting, basic housekeeping, communicating effectively and getting along with others, and other matters as may be desirable or necessary;
- (3) Counseling to prospective homeowners on the rudiments of owning a home;
- (4) Assistance to any person or government agency regarding the nature and availability of federal assistance for housing development and community development or redevelopment;
- (5) Counseling and guidance services to aid any person or government agency in securing the financial aid or cooperation of the federal government in undertaking, constructing, maintaining, operating, or financing any housing designated for elders; persons displaced by governmental action; university and college students and faculty; and any other persons; and
- (6) Assistance to a county agency upon request from the agency in the development of programs to correct or eliminate blight and deterioration, and to effect community development.

§ **-9 Acquisition, use, disposition of property.** (a) The corporation may acquire any real or personal property or interest therein by purchase, exchange, gift, grant, lease, or other means from any person or government to provide housing. Exchange of real property shall be in accordance with section 171-50.

(b) The corporation may own or hold real property. All real property owned or held by the corporation shall be exempt from mechanics or materialmen's liens and also from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the corporation be a charge or lien upon its real property; provided that this subsection shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of the corporation or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the corporation on its rents, fees, or revenues. The corporation and its property shall be exempt from all taxes and assessments.

(c) The corporation may lease or rent all or a portion of any housing project and establish and revise the rents or charges therefor. The corporation may sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person or government.

(d) The corporation may insure or provide for the insurance of its property or operations against risks as it deems advisable.

§ **-10 Cooperative agreements with other governmental agencies.** (a) The corporation may:

- (1) Obtain the aid and cooperation of governments in the planning, construction, and operation of housing projects and enter into agreements and arrangements as it deems advisable to obtain aid and cooperation;
- (2) Arrange or enter into agreements with any government for the acquisition by the government of property, options, or property rights or for the furnishing, installing, opening, or closing of streets, roads, alleys, sidewalks, or other places, or for the furnishing of property, services,

parcs, sewage, water, and other facilities in connection with housing projects, or for the changing of the map of a political subdivision or the planning, replanning, zoning, or rezoning of any part of a political subdivision;

- (3) Procure insurance or guarantees from any government for the payment of any debts or parts thereof incurred by the corporation, including the power to pay premiums on any such insurance; and
- (4) Agree to make payments to the state or county government, if the government is authorized to accept payments, as the corporation deems consistent with the maintenance of the character of housing projects or the purposes of this chapter.

(b) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, the state or county government, upon those terms, with or without consideration, as it determines, may:

- (1) Dedicate, grant, sell, convey, or lease any of its property, or grant easements, licenses, or any other rights or privileges therein to the corporation or to the federal government;
- (2) To the extent that it is within the scope of each of their respective functions:
  - (A) Cause the services customarily provided by each of them to be rendered for the benefit of housing projects and the occupants thereof;
  - (B) Provide and maintain parks and sewage, water, lights, and other facilities adjacent to or in connection with housing projects;
  - (C) Open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other related facilities; and
  - (D) Change the map of a political subdivision or plan, replan, zone, or rezone any part of a political subdivision;
- (3) Enter into agreements with the corporation with respect to the exercise of their powers relating to the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings;
- (4) Employ, notwithstanding any other law as to what constitutes legal investments, any available funds belonging to them or within their control, including funds derived from the sale or furnishing of property or facilities to the corporation, in the purchase of the bonds or other obligations of the corporation to the extent provided by section -167; and exercise all the rights of any holder of the bonds or other obligations;
- (5) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, and construction of such housing projects; and
- (6) Enter into contracts with the corporation or the federal government for any period agreeing to exercise any of the powers conferred hereby or to take any other action in aid of such housing projects.

In connection with the exercise of this power, any political subdivision may incur the entire expense of any such public improvements located within its territorial boundaries without assessment against abutting property owners.

For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects, the department of land and natural resources, the Hawaiian homes commission, and any other agency of the State having power to manage or dispose of its public lands, may, with the approval of the governor and with or without consideration, grant, sell, convey, or lease for any period, any parts

of such public lands, without limit as to area, to the corporation or to the federal government.

Any law to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this section may be made by the state or county government without appraisal, public notice, advertisement, or public bidding.

If at any time title to, or possession of, any housing project is held by any government authorized by law to engage in the development or administration of low-rent housing or slum clearance projects, any agreement made under this chapter relating to the project shall inure to the benefit of and may be enforced by that government.

Insofar as this subsection is inconsistent with the provisions of any other law, this subsection shall be controlling.

(c) The government of any county in which a housing project is located or is about to be located may make donations or advances to the corporation in sums as the county in its discretion may determine. The advances or donations shall be made for the purpose of aiding or cooperating in the construction and operation of the housing project. The corporation, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it.

**§ -11 Agents, including corporations.** The corporation may exercise any or all of the powers conferred upon it, either generally or with respect to any specific housing project through an agent that it may designate, including any corporation that is formed under the laws of this State, and for such purposes the corporation may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation. Any corporate agent, all of the stock of which shall be owned by the corporation or its nominee, may to the extent permitted by law, exercise any of the powers conferred upon the corporation herein.

**§ -12 Development of property.** (a) The corporation, in its own behalf or on behalf of any government, may:

- (1) Clear, improve, and rehabilitate property;
- (2) Plan, develop, construct, and finance housing projects; and
- (3) In cooperation with the department of education and department of accounting and general services, plan educational facilities and related infrastructure as a necessary and integral part of its housing projects using all its innovative powers towards achieving that end expeditiously and economically; provided that the educational facilities comply with the department of education's educational specifications, timeliness, and siting requirements.

(b) The corporation may develop public land in an agricultural district subject to the prior approval of the land use commission, when developing lands greater than five acres in size, and public land in a conservation district subject to the prior approval of the board of land and natural resources. The corporation shall not develop state monuments or historical sites, or parks. When the corporation proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth such purpose. The petition shall be conclusive proof that the intended use is a public use superior to that which the land has been appropriated.

(c) The corporation may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

(d) The corporation shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any public body for a federal grant, prevent the participation of the federal government in any government program, or impair any covenant between the government and the holder of any bond issued by the government.

(e) The corporation may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration housing project designed to meet the needs of elders, disabled, displaced or homeless persons, low and moderate income persons, employees, teachers, or other government workers, or university and college students and faculty.

**§ -13 Development of property; additional powers.** Notwithstanding any provision to the contrary, whenever the bids submitted for any development or rehabilitation project authorized pursuant to part II.A, II.F, and II.G and chapter 359 exceed the amount of funds available for that project, the corporation, with the approval of the governor, may disregard the bids and enter into an agreement to carry out the project, or undertake the project or participate in the project under the agreement, without regard to chapter 103D; provided that the total cost of the agreement and the corporation's participation, if any, shall not exceed the amount of funds available for the project; provided further that if the agreement is with a nonbidder, the scope of the project under agreement shall remain the same as that for which bids were originally requested.

**§ -14 Administration of low-income housing credit allowed under section 235-110.8.** (a) The corporation is designated as the state housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to a project located in a state) of the Internal Revenue Code of 1986, as amended. As the state housing credit agency, the corporation shall determine the eligibility basis for a qualified low-income building, make the allocation of housing credit dollar amounts within the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations. The corporation shall file any certifications and annual reports required by section 42 (with respect to low-income housing credit) of the Internal Revenue Code of 1986, as amended.

(b) The state aggregate housing credit dollar amount shall be allocated annually as required by section 42 of the Internal Revenue Code of 1986, as amended by the corporation in an amount equal to \$1.25 multiplied by the state population in the calendar year or such greater or lesser amount as provided by section 42(h) of the Internal Revenue Code of 1986, as amended.

(c) The corporation shall adopt rules under chapter 91 necessary to comply with federal and state requirements for determining the amount of the tax credit allowed under section 42 of the Internal Revenue Code of 1986, as amended and section 235-110.8. The corporation may establish and collect reasonable fees for administrative expenses incurred in providing the services required by this section, including fees for processing developer applications for the credit. All fees collected for administering these provisions, including developer application fees, shall be deposited into the corporation's housing finance revolving fund to be used to cover the administrative expenses of the corporation.

(d) All claims for allocation of the low-income housing credit under section 235-110.8 shall be filed with the corporation. The corporation shall determine the amount of the credit allocation, if necessary, and return the claim to the taxpayer. The taxpayer shall file the credit allocation with the taxpayer's tax return with the department of taxation.

**§ -15 Administration of federal programs.** (a) The corporation may carry out federal programs designated to be carried out by a housing finance or housing development entity.



(b) The corporation shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the corporation, and may be used to cover the administrative expenses of the corporation.

**§ -16 Eminent domain, exchange or use of public property.** The corporation may acquire any real property, including fixtures and improvements, or interest therein, through voluntary negotiation; through exchange of land in accordance with section 171-50, provided that the public land to be exchanged need not be of like use to that of the private land; or by the exercise of the power of eminent domain which it deems necessary by the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and required for public use. The corporation shall exercise the power of eminent domain granted by this section in the same manner and procedure as is provided by chapter 101, and otherwise in accordance with all applicable provisions of the general laws of the State; provided that condemnation of parcels greater than fifteen acres shall be subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

The corporation may acquire by the exercise of the power of eminent domain property already devoted to a public use, provided that no property belonging to any government may be acquired without its consent, and that no property belonging to a public utility corporation may be acquired without the approval of the public utilities commission, and subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

**§ -17 Contracts with federal government.** (a) The corporation may:

- (1) Borrow money or accept grants from the federal government for or in aid of any housing project that the corporation is authorized to undertake;
- (2) Take over any land acquired by the federal government for the construction or operation of a housing project;
- (3) Take over, lease, or manage any housing project constructed or owned by the federal government, and to these ends, enter into contracts, mortgages, leases, or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance, and operation of the housing project;
- (4) Procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the corporation on any property included in any housing project;
- (5) Agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and include in any construction contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor; and

(6) Comply with any conditions required by the federal government in any contract for financial assistance.

(b) In any contract for annual contributions with the federal government, the corporation may obligate itself to convey to the federal government possession of or title to the project to which the contract relates, if a substantial default, as defined by contract, occurs. Notwithstanding any other law to the contrary, this obligation shall be specifically enforceable and shall not constitute a mortgage.

The contract may provide further that if a conveyance occurs, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of the contract; provided that the contract shall require that as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the corporation the project as then constituted.

(c) It is the purpose and intent of this part to authorize the corporation to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance, and operation of any housing project that the corporation is empowered to undertake.

§ -18 **Public works contracts.** The corporation may make, execute, and carry out contracts for, or in connection with, any housing project in the manner provided in chapter 103D and section 103-53; and, with regard to the contracts, the term “officers”, as used in chapter 103D, shall mean the corporation or officer authorized by the corporation to act as its contracting officer. Unless made and executed in the name of the State, each contract made and executed as authorized in this section shall state therein that it is so made and executed.

§ -19 **Remedies of an obligee: mandamus; injunction; possessory action; receiver; accounting; etc.** An obligee of the corporation shall have the right, in addition to all other rights that may be conferred on the obligee subject only to any contractual restrictions binding upon the obligee, and subject to the prior and superior rights of others:

- (1) By mandamus, suit, action, or proceeding in law or equity to compel the corporation, and the members, officers, agents, or employees thereof to perform each and every item, provision, and covenant contained in any contract of the corporation, and to require the carrying out of any or all covenants and agreements of the corporation and the fulfillment of all duties imposed upon the corporation by this chapter;
- (2) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of the obligee of the corporation;
- (3) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to possession pursuant to any contract of the corporation;
- (4) By suit, action, or proceeding in any court of competent jurisdiction, upon the happening of an event of default (as defined in a contract of the corporation), to obtain the appointment of a receiver of any housing project of the corporation or any part or parts thereof, and if the receiver is appointed, the receiver may enter and take possession of the housing project or any part or parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the corporation itself might do and shall keep the moneys in a separate account or accounts and apply

the same in accordance with the obligations of the corporation as the court shall direct; and

- (5) By suit, action, or proceeding in any court of competent jurisdiction to require the corporation and the members thereof to account as if it and they were the trustees of an express trust.

§ **-20 Subordination of mortgage to agreement with government.** The corporation may agree in any mortgage made by it that the mortgage shall be subordinate to a contract for the supervision by a government of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In that event, any purchaser or purchasers at a sale of the property of the corporation pursuant to a foreclosure of the mortgage or any other remedy in connection therewith shall obtain title subject to the contract.

§ **-21 Duty to make reports.** Except as otherwise provided by law, the corporation shall be responsible for the following reports:

- (1) The corporation shall file at least once a year with the governor a report of its activities for the preceding fiscal year;
- (2) The corporation shall report to the state comptroller on moneys deposited in depositories other than the state treasury under section 40-81, and rules adopted thereunder; and
- (3) The corporation shall submit an annual report to the legislature on all corporation program areas and funds organized by program area, and by fund within each program area, no later than twenty days prior to the convening of each regular session, which shall provide the following information on the status of its programs and finances:
  - (A) A description of programs being developed in the current fiscal biennium, including a summary listing of the programs, the status of each program, the methods of project financing or loans, and other information deemed significant;
  - (B) A description of programs planned for development during the two ensuing fiscal bienniums, including a summary listing of the proposed programs, the methods of project financing or loans, and other information deemed significant;
  - (C) A status report of actual expenditures made in the prior completed fiscal year from each fund established under this chapter, estimated expenditures anticipated for the current fiscal year, and projected expenditures for the ensuing fiscal years to be described in relation to specific projects developed to implement the purposes of any program or fund established under this chapter;
  - (D) A financial audit and report conducted on an annual basis by a certified public accounting firm; and
  - (E) Recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this part.

§ **-22 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.

**PART II. STATE HOUSING PROGRAMS**  
**A. Low Income Housing**

§ **-31 Definitions.** The following terms, wherever used or referred to in this subpart shall have the following respective meanings, unless a different meaning clearly appears from the context:

“Housing project” or “project” includes any housing project or projects as defined in part I which is acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

- (1) To demolish, clear, remove, alter, or repair unsanitary or unsafe housing;
- (2) To provide safe and sanitary dwelling accommodations; or
- (3) To do both.

§ **-32 Rentals and tenant selection.** (a) In the operation or management of housing projects, the corporation (acting directly or by an agent or agents) shall at all times, observe the following duties with respect to rentals and tenant selections:

- (1) It may establish maximum limits of annual net income for tenant selection in any public housing project, less such exemptions as may be authorized by federal regulations pertaining to public housing. The corporation may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the corporation;
- (2) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons who lack the amount of income which it determines to be necessary in order to obtain safe, sanitary, and uncongested dwelling accommodations within the area of operation of the corporation and to provide an adequate standard of living; and
- (3) It may rent or lease to a tenant a dwelling consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(b) Nothing in this part shall be construed as limiting the power of the corporation:

- (1) To vest in an obligee the right, in the event of a default by the corporation, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this part with respect to rentals, tenant selection, manner of operation, or otherwise; or
- (2) To vest in obligees the right, in the event of a default by the corporation, to acquire title to a housing project or the property mortgaged by the corporation, free from all the restrictions imposed by this part, except those imposed by section -168.

§ **-33 Delinquent accounts.** (a) Notwithstanding section 40-82, the corporation, with the approval of the attorney general, may delete from its accounts receivable records delinquent accounts for vacated units within federal low rent public housing projects that have been delinquent for at least ninety days.

(b) The delinquent accounts may be assigned to a collection agency.

§ **-34 Investigatory powers.** (a) The corporation may:

- (1) Investigate living, dwelling, and housing conditions and the means and methods of improving such conditions;

- (2) Enter upon any building or property in order to conduct investigations or to make surveys or soundings;
- (3) Conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;
- (4) Issue subpoenas requiring the attendance of witnesses or the production of books and papers, and order the examination of witnesses who are unable to attend before the corporation, are excused from attendance, or by leave of courts as provided by chapter 624, are out of the State; and
- (5) Make available to any government agency charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

(b) Investigations or examinations may be conducted by the corporation or by a committee appointed by it, consisting of one or more members, or by counsel, or by an officer or employee specially authorized by the corporation to conduct it. Any person designated by the corporation to conduct an investigation or examination shall have power to administer oaths, take affidavits, and issue subpoenas or orders for the taking of depositions.

§ -35 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

## B. Public Housing; Evictions

§ -51 **Definitions.** As used in this subpart:

“Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

“Public housing project” means a housing project directly controlled, owned, developed or managed by the corporation pursuant to part II.A and chapter 359.

§ -52 **Termination and eviction.** Except as hereinafter provided, the corporation may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other located within a public housing project and evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease rental agreement, permit, or license;
- (3) Violation of any of the rules of the corporation;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition; or
- (5) The existence of any other circumstances giving rise to an immediate right to possession by the corporation.

§ -53 **Hearings.** (a) Where the corporation proposes to terminate a lease, rental agreement, permit, or license, and evict a tenant, licensee, or other occupant under section -52, a hearing shall be held to determine whether cause exists for

the action. The corporation shall give written notice to the person concerned specifying the reason for which the eviction is proposed and fixing the date and place of hearing. The notice shall be given at least five days before the date set for the hearing. At the hearing, before final action is taken, the person concerned shall be entitled to be heard in person or through counsel, and shall be accorded a full and fair hearing.

(b) Hearings shall be conducted by a trial examiner or board appointed by the corporation. The board shall consist of not less than three persons. Trial examiners or members of the board may be contract hires or employees of the corporation. At least one trial examiner or board, hereinafter called the hearing examiners, shall be established in each county of the State. The findings, conclusions, decision, and order of the hearing examiners shall be final unless an appeal is taken as hereinafter provided.

(c) The hearing examiners shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the hearing examiners, or of any subpoena issued by them, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the hearing examiners, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

§ -54 Appeal. (a) Within five days after the issuance of an order under section -53 hereof, an appeal may be taken to the corporation. Notwithstanding any law to supersede the provisions of chapter 91, the appeal may be heard and decided by the corporation or an appeals board appointed by the corporation.

(b) The corporation shall review the records of the hearing examiners. The corporation or appeals board shall have the same powers in connection with the appeals as are provided for the hearing examiners in section -53, and the decision of the corporation or appeals board in the appeal shall be final.

(c) The corporation shall adopt rules covering:

- (1) The admission of new facts or evidence in the case which could not have been presented and were not available for presentation to the hearing examiners;
- (2) The writings necessary for appeal;
- (3) The necessary written notice to the appellant fixing the date, place, and time of the appeal hearing; and
- (4) The minimum amount of time within which the appellant must be notified of the appeals hearing.

§ -55 Eviction. (a) If it is proven to the satisfaction of the hearing examiner that there is cause to terminate a lease, rental agreement, permit, or license and evict the tenant, licensee, or other occupant, a writ of possession shall be issued by the corporation.

(b) The order of eviction shall not be enforced for five days after its entry. Enforcement of the order by a writ of possession shall be effected either by an officer appointed by the corporation, who shall have all of the powers of a police officer for all action in connection with the enforcement of the order, or by the sheriff, or any other law enforcement officer of the State or any county, whose duty it shall be to carry out the order. The person enforcing the order shall remove all persons from the premises and put the corporation in full possession thereof.

(c) Upon eviction, the household goods and personal effects of the person against whom the order is entered, and those of any persons using the premises

incident to the person's holding, may be removed from the premises and stored by the corporation. If the action is taken, the corporation shall have a lien on the property so taken for the expenses incurred by it in moving and storing the same, and the corporation is authorized to sell or otherwise dispose of the property, if unclaimed after thirty days.

§ -56 **Ex parte motion.** If a tenant or licensee cannot be served with an order of eviction or writ of possession, and the facts shall appear by affidavit to the hearing examiners, service to the tenant or licensee may be made according to the special order of the hearing examiners. The order shall require the officer to affix a certified copy of the order of eviction or writ of possession in a conspicuous place upon the premises such as the door or wall of the dwelling unit.

§ -57 **Judicial review.** (a) Any person aggrieved by a final decision and order by the corporation or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive the appellant of adequate relief is entitled to judicial review thereof under this subpart.

(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the corporation pursuant to the provisions of the Hawaii rules of civil procedure, except where a statute provides for a direct appeal to the supreme court and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal. The court in its discretion may permit other interested persons to intervene.

(c) The proceedings for review shall not stay enforcement of the decisions of the corporation; but the corporation or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within fifteen days after the determination of the contents of the record on appeal in the manner provided by the rules of court, or within further time as the court may allow, the corporation shall transmit to the reviewing court the record of the proceeding under review. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence and the evidence is material and good cause exists for the failure to present the evidence in the proceeding before the corporation, the court may order the corporation to hear the evidence upon the conditions as the court deems proper. The corporation may modify its findings, decision, and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modification of its findings or decision.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the corporation and not shown in the record, testimony thereon may be taken in court. The court may, upon request by any party, hear oral argument and receive written briefs.

(g) Upon review of the record the court may affirm the decision of the corporation or remand the case with instructions for further proceedings, or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;

- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ -58 Appeals. An aggrieved party may secure a review of any final judgment of the circuit court under this subpart by appeal to the supreme court. The appeal shall be taken in the manner provided in the rules of court.

§ -59 Rules. The corporation may adopt rules pursuant to chapter 91 necessary for the purposes of this subpart.

### C. Public Housing; Liens

§ -71 Definitions. The following terms wherever used or referred to in this subpart shall have the following respective meanings, unless a different meaning clearly appears from the context:

“Housing project” means and includes any housing project or projects owned, managed, administered, or operated by the corporation under or pursuant to subpart A or under or pursuant to any other law, including chapter 359.

“Tenant” includes any person occupying a room, dwelling accommodation, living quarters, or space in any housing project, under or by virtue of any tenancy lease, license, or permit under or from the corporation.

§ -72 Lien on personalty for rent, etc. The corporation shall have a statutory lien on all personal property, not exempt from execution, belonging to, or in the lawful possession of, every tenant while the personal property is in or upon any housing project, for the amount of its proper charges against the tenant for rent of a room, dwelling accommodation, living quarters, or space in the housing project, or for utilities, facilities, or services in the housing project. The lien shall commence with the tenancy or occupancy of the tenant and continue for one year after the charge or charges are due and owing to the corporation. Whenever any tenant fails or refuses to pay the charge or charges after the same are so due and owing, the corporation shall have the right and power, acting by its authorized agents or representatives, without process of law and without any liability for the taking, seizure, and retention of the personal property, to take and seize any of the personal property belonging to, or in the lawful possession of, the tenant which is found in or upon the housing project, and to hold and retain the same, as security for the payment of the charge or charges, until the amount of the charge or charges is paid and discharged. If the charge or charges, so due and owing, are not paid and discharged within thirty days after the taking and seizure, the corporation may sell the personal property in the manner provided in section -73.

§ -73 Foreclosure of lien, notice, etc. The lien of the corporation upon personal property which has been taken and retained by it as provided in section -72 may be foreclosed by the corporation by selling the same at public auction:

- (1) After first mailing by United States mail, postage prepaid, a notice of the foreclosure, addressed to the tenant who owns, or was in possession of, the personal property, at the tenant's last address shown on the records of the corporation, stating that, unless the charge or charges then due and owing from the tenant to the corporation are paid within



ten days from the time of mailing the notice, the personal property will be sold at public auction; and

- (2) After first publishing a notice of the foreclosure and sale at least two times in a newspaper of general circulation in the county in which the personal property is located. Each notice shall contain a brief description of the personal property; the name of the tenant, if known; the name of the owner of the personal property, if known; the amount of the charge or charges; and the time and place of the sale. Notices of several foreclosures and sales may be combined in one notice; and whenever so combined and published, the expenses of advertising and sale shall be a statutory lien upon the property described in the notice in a ratable proportion according to the amount received for each lot of property so advertised for sale.

If the tenant fails to pay to the corporation within ten days after the mailing of the notice of foreclosure the charge or charges, the corporation may sell the property at public auction at the time and place stated in the notice, or at a time or times or place or places to which the sale may be postponed or adjourned at the time and place stated in the notices, and may apply the proceeds thereof to the payment of the charge or charges and the expenses of advertising and sale. The balance, if any remaining, shall be paid over to the tenant who formerly owned, or was in possession of, the property. If the balance is not claimed by the tenant within thirty days after the sale, then the balance shall be paid over to the director of finance and it shall be kept by the director in a special deposit for a period not to exceed six months. If claimed by the tenant during that period it is paid over to the tenant. If no claim shall be made during the period, the sum shall become a government realization and be paid into the general fund.

§ **-74 Sheriff or police to assist.** The corporation, in taking, seizing, holding, retaining, or selling any personal property pursuant to sections -72 and -73, may require the assistance of the sheriff or any authorized police officer of any county. Any sheriff or officer, when required shall so assist the corporation.

§ **-75 Existing contracts not impaired.** Sections -72 and -73 shall not be construed as to impair or affect the obligation of any contract existing on or before May 9, 1949.

§ **-76 Lien on abandoned personalty, sale, etc.** Whenever the corporation has in its possession for four months after the termination of any residence or occupancy herein mentioned any personal property that has been left in or about any housing project by any person who formerly resided in, or occupied a room, dwelling accommodation, living quarters, or space in the housing project, the corporation may sell the same at public auction and apply the proceeds thereof to the payment of its charges for storage of the personal property, and for advertising and sale, and to the payment of other amounts, if any, then due and owing to it from the former resident or occupant for rent or for any utility or service. Before any sale is made, the corporation shall first publish a notice of the time and place of sale at least two times in a newspaper of general circulation in the county in which the personal property is located. The notice shall contain a brief description of the property; the name, if known, of the former resident or occupant who so left the property in or about the housing project; the amount of the charges for storage, if any, and the indebtedness, if any; and the time and place of the sale. The charges for storage, if any, and for advertising and sale, and the indebtedness, if any, shall be a lien upon the personal property. Notices of several sales may be combined and published in one notice, and whenever so combined and published the expenses of advertising

and sale shall be a lien and shall be satisfied in ratable proportion according to the amount received for each lot of property so advertised for sale.

§ -77 **Disposition of surplus proceeds.** After the sale the corporation shall apply the proceeds as provided in section -76. The balance, if any remaining, shall be paid over to the former resident or occupant. If the balance is not claimed by the former resident or occupant within thirty days after the sale thereof, then the balance shall be paid over to the director of finance and shall be kept by the director in a special deposit for a period not to exceed six months. If claimed by the former resident or occupant during that period it shall be paid to the former resident or occupant. If no claim is made during the period, the sum shall become a government realization and shall be paid into the general fund.

§ -78 **Lien attaches to personalty in possession.** Sections -76 and -77 shall also apply to any personal property which, before May 2, 1949, was left in or about any housing project, and was taken into the possession of the corporation, as herein set forth and provided.

§ -79 **Priority of housing lien.** The statutory liens provided for in this subpart shall be preferred and have priority over all other liens or claims and over all attachments or other process.

§ -80 **Rights, powers, supplemental.** The rights or powers conferred upon the corporation by this subpart shall be in addition and supplemental to the rights or powers conferred upon the corporation by any other law.

#### **D. Public Housing; Corporation-County Cooperation**

§ -91 **Gifts, etc., to counties from corporation.** The corporation may make and pay gifts, or donations, of money directly to any county. Any county may receive the gifts or donations as a general fund realization, and expend the same for any purpose authorized by law.

§ -92 **Facilities and services by counties to corporation and tenants.** Each county within which the corporation may own, operate, or administer any housing project or projects under any law or laws, except chapter 359, and to which, or for whose benefit, the corporation has made (by payment to the department of taxation) or may hereafter make, gifts or donations, including any payment in lieu of taxes, shall, upon request of the corporation, provide and furnish to the corporation, in regard to every such housing project or projects within the county, and to the tenants and other occupants of the same, free of charge and without condition or other requirement, all the facilities, services, and privileges as it provides or furnishes, with or without charge or other consideration, to any person or persons whomsoever, including, without limitation to the generality of the foregoing, police protection, fire protection, street lighting, or paving maintenance, traffic control, garbage or trash collection and disposal, use of streets or highways, use of county incinerators or garbage dumps, storm drainage, and sewage disposal. In addition, each county, upon request of the corporation and free of charge and without condition or other requirement, shall open or close, but not construct or reconstruct, streets, roads, highways, alleys, or other facilities within any housing project or projects within the county. Nothing in this section shall be construed to restrict or limit the power of the corporation to agree to pay, or to pay, for any and all of the facilities, services, and privileges, if in its discretion it deems such payment advisable.

§ **-93 Construction of additional powers.** Sections -91 and -92 shall not be construed as abrogating, limiting, or modifying part II.A, including amendments to part II.A, or chapter 359, including amendments thereto.

§ **-94 Charges for prior services by counties to corporation.** Every county (including departments, boards, or instrumentalities thereof) which has, prior to May 14, 1949, provided or furnished any facilities, services, or privileges, including, without limitation to the generality of the foregoing, garbage and trash collection and disposal, use of streets or highways, and use of county incinerators or garbage dumps, to the corporation in regard to any housing project or projects owned, operated, or administered by the corporation under any law or laws, or to the tenants or occupants of any such housing project or projects, for which facilities, services, or privileges the corporation, or the tenants or occupants have not paid, is prohibited from charging, collecting, or receiving any privileges, except such sum or sums as the corporation, in its discretion, may hereafter agree to pay for the same.

§ **-95 Garbage, trash disposal.** Every county which maintains or operates any garbage or trash collection and disposal service shall, free of charge, collect, and dispose of garbage and trash at and from any housing project or projects, located within a county, which is owned, operated, or administered by the corporation. Upon request of the corporation, each county shall allow the corporation to establish, maintain, or operate its own garbage and trash collection and disposal service for any or all the housing project or projects located within the county, and, in regard to such service, shall allow the corporation to use, free of charge, all incinerators, garbage dumps, and other facilities that the county may own, control, or operate.

Nothing in this section shall prohibit or prevent the corporation from paying, and any such county from receiving, any sum or sums which the corporation in its discretion may agree to pay as reasonable compensation for the services or facilities provided by any county pursuant to this section.

§ **-96 Furnishing of free water not required.** Sections -92 to -95 shall not be construed to require the furnishing of any free water to the corporation or to the tenants or occupants of any housing projects owned, operated, or administered by the corporation.

§ **-97 Powers, etc., supplemental.** The powers conferred upon the corporation by sections -91 to -95 shall be in addition and supplemental to the powers conferred by any other law, and nothing in the sections shall be construed as limiting any other powers, rights, privileges, or immunities of the corporation.

§ **-98 Regulation of traffic within projects in city and county of Honolulu.** Any law to the contrary notwithstanding, the city council of the city and county of Honolulu may regulate traffic within the various projects of the corporation in the city and county of Honolulu by ordinance.

§ **-99 Regulation of traffic within projects in other counties.** Any law to the contrary notwithstanding, the county councils of the counties of Hawaii, Maui, and Kauai may regulate traffic within the various projects of the corporation within their respective counties by ordinance as provided by law.

§ **-100 Regulations, effective when.** No ordinance or laws enacted by the council of any county regulating traffic within the projects of the corporation within the county, shall be valid or effective, unless prior thereto, the corporation has entered into a written contract with the county absolving the county from any and all

responsibility or liability for the construction, maintenance, and repair of any streets, lanes, alleys, or highways or street markers, traffic signs, or signal devices within the projects of the corporation.

§ -101 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

### E. Housing Development Programs

§ -111 **Criteria.** In administering this chapter and other laws of the State applicable to the supplying of housing or the assistance in obtaining housing, the corporation shall give preference to those applicants most in need of assistance in obtaining housing, in light of the amount of moneys available for the various programs. In doing so, the corporation shall take into consideration the applicant's household income and number of dependents; the age of the applicant; the physical disabilities of the applicant or those living with the applicant; whether or not the present housing of the applicant is below standard; whether or not the applicant's need for housing has arisen by reason of displacement of the applicant by governmental actions; and other factors as it may deem pertinent.

§ -112 **Definitions.** The following terms, wherever used or referred to in this subpart, shall have the following respective meanings unless a different meaning clearly appears from the context:

“Develop” or “development” means the planning, financing, acquisition of real and personal property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures, or any combination of the foregoing, of any housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

“Eligible bidder” means a person, partnership, firm, or corporation determined by the corporation:

- (1) To be qualified by experience and financial responsibility to construct housing of the type proposed to be contracted; and
- (2) To have submitted the lowest acceptable bid.

“Eligible developer” means any person, partnership, cooperative including limited-equity housing cooperatives as defined in chapter 421H, firm, nonprofit or profit corporation, or public agency determined by the corporation:

- (1) To be qualified by experience and financial responsibility and support to construct housing of the type described and of the magnitude encompassed by the given project;
- (2) To have submitted plans for a project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
- (3) To meet all other requisites the corporation deems to be just and reasonable, and all requirements stipulated in this chapter.

“Housing” or “housing project” includes all real and personal property, buildings and improvements, commercial space, lands for farming and gardening, community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project.

“Mortgage holder” includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture-Rural Development, or other federal or state agency engaged in housing activity, Administrator of Veterans Affairs, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees, and assigns.

“Mortgage lender” means any bank or trust company, savings bank, national banking association, savings and loan association maintaining an office in the State, any insurance company authorized to transact business in the State, or any mortgagee approved by the Federal Housing Administration and maintaining an office in the State.

“Purchaser’s equity” means the difference between the original cost of the dwelling unit to the purchaser, and the principal amount of any mortgages, liens, or notes outstanding.

“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 shall physically reside in the dwelling unit purchased or rented under this chapter;
- (4) In the case of the purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; or in the case of a rental, demonstrates an ability to pay rent as determined by the corporation and meets any additional criteria established by the corporation for the respective rental housing development for which the applicant is applying; and
- (5) Meets the following qualifications:
  - (A) Is a person who either oneself or together with spouse or household member, does not own more than one per cent interest in fee simple or leasehold lands suitable for dwelling purposes or more than one per cent interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and
  - (B) Is a person whose spouse or household member does not own more than 1% interest in fee simple or leasehold lands suitable for dwelling purposes or more than a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land, 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 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.

“Short term project notes” means evidences of indebtedness issued by the State for specified housing projects and secured by the projects the terms of which call for complete repayment by the State of the face amount in not less than two nor more than ten years.

**§ -113 Powers and duties, generally.** (a) The corporation may develop fee simple or leasehold property, construct dwelling units thereon, including condominiums, planned units, and cluster developments, and sell, lease, or rent or cause to

be leased or rented, at the lowest possible price to qualified residents, nonprofit organizations, or government agencies, with an eligible developer or in its own behalf, either:

- (1) Fully completed dwelling units with the appropriate interest in the land on which the dwelling unit is located;
- (2) Units which are substantially complete and habitable with the appropriate interest in the land on which the dwelling unit is located; or
- (3) The land with site improvements (other than the dwelling unit) either partially or fully developed.

(b) The corporation shall require all applicants for the purchase of dwelling units to make application therefor under oath, and may require additional testimony or evidence under oath in connection with any application. The determination of any applicant's eligibility under this chapter by the corporation shall be conclusive as to all persons thereafter dealing with the property; but the making of any false statement knowingly by the applicant or other person to the corporation in connection with any application shall constitute perjury and be punishable as such. The corporation shall establish a system to determine preferences by lot in the event that it receives more qualified applications than it has units available.

(c) The corporation shall adopt rules under chapter 91 on health upon direction from the governor and for the period as the governor shall authorize, rules on health, safety, building, planning, zoning, and land use that relate to the development, subdivision, and construction of dwelling units in projects in which the State, through the corporation, shall participate; provided that these rules shall not contravene any safety standards or tariffs approved by the public utilities commission; provided further that these rules shall follow existing law as closely as is consistent with the production of lower cost housing with standards that meet minimum requirements of good design, pleasant amenities, health, safety, and coordinated development.

Upon the adoption of such rules they shall have the force and effect of law and shall supersede, for all projects in which the State through the corporation shall participate, all other inconsistent laws, ordinances, and rules relating to the use, zoning, planning, and development of land, and the construction of dwelling units thereon; provided that any rules, before becoming effective, shall be presented to the legislative body of each county in which they will be effective and the legislative body of any county may within forty-five days approve or disapprove, for that county, any or all of the rules by a majority vote of its members. On the forty-sixth day after submission any rules not disapproved shall be deemed to have been approved by the county.

(d) The corporation may acquire, by eminent domain, exchange, or negotiation, land or property required within the foreseeable future for the purposes of this chapter. Whenever land with a completed or substantially complete and habitable dwelling or dwellings thereon is acquired by exchange or negotiation, the exchange value or purchase price for each dwelling, including land, shall not exceed its appraised value. Land or property acquired in anticipation of future use may be leased for the interim period by the corporation for such term and rent as it deems appropriate.

(e) Upon authorization by the legislature, the corporation shall cause the State to issue general obligation bonds to finance:

- (1) Land acquisition;
- (2) The development and improvement of land;
- (3) The construction of dwelling units;
- (4) The purchase, lease, or rental of land and dwelling units by qualified residents, nonprofit organizations, or government agencies under this chapter;

- (5) Payment of any services contracted for under this chapter, including profit or recompense paid to partners, and including community information and advocacy services deemed necessary by the corporation to provide for citizen participation in the development of housing projects, the implementation of this chapter, and the staffing of any citizen advisory committee the corporation may establish;
  - (6) The cost of repurchase of units under section -128;
  - (7) Loans for the rehabilitation and renovation of existing housing; and
  - (8) Any other moneys required to accomplish the purposes of this chapter.
- (f) The corporation shall do all other things necessary and convenient to carry out the purposes of this chapter.

§ **-114 Additional powers; development.** Notwithstanding and without compliance with section 103-7 and chapter 103D but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this chapter. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by part I and any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

§ **-115 Bond financing.** The director of finance may issue general obligation bonds and short term project notes of the State in the aggregate amount not to exceed \$105,000,000 for the dwelling unit revolving fund created by section -411. Pending the receipt of funds from the issuance and sale of the bonds and notes, the amount required for the purposes of this chapter shall be advanced from the general fund of the State. Upon the receipt of the bond or note funds, the general fund shall be reimbursed. The director of finance may sequester and separate the proceeds from the sale of the bonds and notes into separate funds and the amounts in either fund may be used for any of the purposes set forth in this chapter.

§ **-116 Exemption from general excise taxes.** (a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

- (1) Developed under this subpart;
- (2) Developed under a government assistance program approved by the corporation, including but not limited to, the United States Department of Agriculture-Rural Development 502 program and Federal Housing Administration 235 program; or
- (3) Developed under the sponsorship of a private nonprofit corporation providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing.

(b) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Any claim for exemption that is filed and approved, shall not be considered a subsidy for the purpose of this subpart.

(c) For the purposes of this section, “moderate rehabilitation” means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure. “Substantial rehabilitation” means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of

deferred maintenance. "Substantial rehabilitation" also includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for elders).

§ -117 **Exemption from tax on income and obligations.** Income earned and obligations issued by a nonprofit entity determined to constitute a "public housing agency" pursuant to section 3(6) of the United States Housing Act of 1937, as amended, and which income and obligations are declared by the United States Department of Housing and Urban Development to be exempt from all taxation imposed by the United States pursuant to section 11(b) of the Act shall be exempt from all taxation now or hereafter imposed by the State.

§ -118 **Housing development; exemption from statutes, ordinances, charter provisions, rules.** (a) The corporation may develop, on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of, housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon; provided that:

- (1) The corporation finds the project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
  - (2) The development of the proposed project does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities; and
  - (3) The legislative body of the county in which the project is to be situated shall have approved the project.
    - (A) The legislative body shall approve or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;
    - (B) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications; and
    - (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the corporation, or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar;
- and
- (4) The land use commission shall approve or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in section 205-4. If on the forty-



sixth day the petition is not disapproved, it shall be deemed approved by the commission.

(b) For the purposes of this section, “government assistance program” means a housing program qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.

**§ -119 Starter homes; design standards; applicant eligibility; authority to incorporate starter homes into housing projects of the corporation.** (a) The corporation shall adopt rules in accordance with chapter 91 to establish design and construction standards for starter homes configured to expand incrementally over time. For the purposes of this section, “starter home” means a dwelling unit that is designed to meet the basic living capacity requirements of homebuyers with families of limited size by eliminating needless design and space amenities, but which nonetheless enables future expansion, modification, and improvement by the owner to accommodate increased occupancy over time as may be necessary. The rules shall include building, set-back, minimum lot size, infrastructure, and architectural standards for the construction and development of starter homes.

(b) In addition to the requirements of subsection (a), the corporation shall adopt rules in accordance with chapter 91 to establish the basic requirements for families eligible to purchase starter homes under this section. The rules shall include guidelines and restrictions on occupancy standards initially permitted in a starter home, as well as the income ranges of families eligible to qualify for purchases under this section.

(c) The corporation may incorporate starter homes into any affordable housing project developed by the corporation under this chapter. The corporation shall determine on a project by project basis the number of starter home units to be included in each particular project.

(d) The corporation shall include in its annual report to the legislature a report on the number of starter homes constructed and developed by the corporation in accordance with the authorization provided in this section.

**§ -120 Dwelling unit project, construction and sponsorship of.** (a) The corporation, on behalf of the State or with eligible developers and contractors, shall develop real property and construct dwelling units thereon; provided that, not less than ten per cent of the total number of units in single-family projects consisting of fifty units or more sponsored by the corporation shall be first offered to owner-builders or to nonprofit organizations assisting owner-builders in the construction of units thereon. Qualifications for developers and contractors shall be provided by rules to be adopted by the corporation in accordance with chapter 91. Any person, if qualified, may act as both the developer and the contractor.

(b) In selecting the eligible developers or in contracting any services or materials for the purposes of this chapter, the corporation shall not be subject to the competitive bidding laws.

(c) If working in partnership with an eligible developer, the corporation shall have sole control of the partnership, shall keep all books of the partnership, and shall ascertain all costs of the partnership including the cost of services performed by any other partners and it shall audit the same. The other partners shall perform services for the partnership under the direction of the corporation and shall be reimbursed for all costs relating to the project as certified by the corporation, including administrative and overhead costs. Additionally, the other partners, upon transfer of title by the corporation to the purchaser, shall be entitled to a guaranteed gross share if the actual cost of the project does not exceed the original project cost. The gross share shall not exceed fifteen per cent of the original project cost prorated to the dwelling units, less

any amount subsidized by the State. Subsidies shall include unrecovered development and land costs and any other subsidized items as defined in rules to be adopted by the corporation pursuant to chapter 91. The percentage of the share shall be determined by the corporation by contract with the partner based upon the nature of the services rendered by them. For purposes of this subsection, "original project cost" means the original budget of a project as approved by the corporation without modification at a later date.

(d) The corporation may require that performance bonds be posted to the benefit of the State with surety satisfactory to it guaranteeing performance by the other partners, or the State may act as a self-insurer requiring security, if any, from the other partners, as the corporation shall deem necessary.

**§ -121 Independent development of projects.** (a) In any county, the corporation may develop or may enter into agreements for housing projects with an eligible developer if in the corporation's reasonable judgment a project is primarily designed for lower income housing. The agreement may provide for the housing to be placed under the control of the corporation, or to be sold by the corporation, or to be sold to the corporation as soon as the units are completed and shall contain terms, conditions, and covenants as the corporation, by rules, deems appropriate. Every agreement shall provide for the developer to furnish a performance bond, in favor of the corporation, assuring the timely and complete performance of the housing project. Sureties on the bond must be satisfactory to the corporation.

(b) The plans and specifications for the project shall:

- (1) Provide for economically integrated housing by stipulation and design;
- (2) Provide for the sale of all units in fee simple or in leasehold either to the corporation or to the purchaser and in all cases subject to all of the provisions of sections -127, -129 and -130 excepting units sold at market price; and
- (3) Encompass the use of lands adequately suited to the size, design, and types of occupancies designated in subsection (a), properly located for occupancy by the groups for which the project was primarily designed under this section, properly districted for the use intended prior to this application, and appropriately zoned within an urban land use district, or appropriate in its situation and surroundings for more intensive or denser zoning.

(c) The corporation may accept and approve projects independently initiated by private developers which fully comply with subsections (a) and (b). The corporation may review the plans, specifications, districting, and zoning of the project for the purpose of exempting the project from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, development, and improvement of land and the construction, improvement, and sale of homes thereon; provided that the procedures in section -118(a)(1), (2), and (3) have been satisfied.

**§ -122 Private development of projects.** (a) The corporation may enter into contracts with any eligible bidder to provide for the construction of a housing project or projects. Any such contract shall provide that the housing project or projects shall be placed under the control of the corporation, as soon as the unit is available for occupancy. Any such contract shall also provide that the capital stock of the mortgagor (where the mortgagor is a corporation) be transferred to the corporation, when the housing project or projects have been completed. Any such contract shall contain such terms and conditions as the corporation may determine to be necessary to protect the interests of the State. Any such contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with

sureties satisfactory to the corporation, and the furnishings of such bonds shall be deemed a sufficient compliance with the provisions of law and no additional bonds shall be required under law. Before the corporation shall enter into any contract as authorized by this section for the construction of a housing project or projects, it shall invite the submission of competitive bids after advertising in the manner prescribed by law.

(b) Notwithstanding any other provision of law, the corporation is authorized to acquire the capital stock of mortgagors holding property covered by a mortgage guaranty under this chapter and established by this section, and to exercise the rights as holder of the capital stock during the life of the mortgage and, upon the termination of the mortgage, to dissolve the corporation; to guarantee the payment of notes or other legal instruments of such mortgagors; and to make payments thereon. All housing projects placed under the control of the corporation pursuant to this section shall be deemed to be housing projects under the jurisdiction of the State.

(c) On request by the corporation, the attorney general shall furnish to the corporation, an opinion as to the sufficiency of title to any property on which it is proposed to construct housing projects, or on which housing projects have been constructed, under this section. If the opinion of the attorney general is that the title to the property is good and sufficient, the corporation is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, against any losses that may thereafter arise from the adverse claims to title. None of the proceeds of any mortgage loan hereafter insured shall be used for title search and title insurance costs; provided that if the corporation determines in the case of any housing project, that the financing of the construction of the project is impossible unless title insurance is provided, the corporation may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any determination by the corporation under the foregoing proviso shall be set forth in writing, together with the reasons thereto.

(d) The State shall be authorized to guarantee the repayment of one hundred per cent of the principal and interest of loans from commercial lenders for the purposes of this section pursuant to rules adopted by the corporation which shall conform as closely as is possible to the practices of the federal housing administration in insuring loans under sections 203 and 207 of the National Housing Act, as amended; provided that at no time shall the State's liability, contingent or otherwise, on the guarantees exceed \$10,000,000.

**§ -123 Interim financing of projects.** (a) The corporation may provide interim construction loans to eligible developers. In addition to the rate of interest charged on interim loans, the corporation may charge loan commitment fees, to be determined by rules adopted by the corporation.

(b) The interim loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest in the land upon which the dwelling units are constructed, or the corporation may require other security interests and instruments as it deems necessary to secure the indebtedness and such other conditions consistent with the production and marketing of dwelling units at the lowest possible prices. The corporation may also set the conditions of a loan in a building and loan agreement between the borrower and the corporation in order to secure the loan and the performance of the borrower to complete the project.

**§ -124 Commercial, industrial, and other uses.** (a) In connection with the development of any residential units under this chapter the corporation may also develop commercial, industrial, and other properties if it determines that the uses can be an integral part of the development and can help to preserve the lifestyles of the purchasers of residences in the development. The corporation may designate any

portions of the developments as for commercial, industrial, or other use and shall have all the powers granted under this chapter with respect thereto including the power to by-pass statutes, ordinances, charter provisions and rules of any governmental agency pursuant to section -118. For this purpose the corporation may use any of the funds authorized under this chapter.

(b) The corporation shall establish rules which shall provide the manner of designation of the uses and shall provide that any commercial, industrial, or other properties so developed shall be sold or leased at cost or at economic rents or sales prices. Sale or lease shall be made at cost to owners of commercial, industrial, or other facilities displaced by the corporation. All other leases or sales shall be at economic rents or sales prices determined by the corporation, after appraisal, to be consistent with rents or sales prices in similar locations or terms. The net proceeds of all such sales or leases, less costs to the corporation, shall be deposited in the dwelling unit revolving fund. The rules may also provide that during the first twenty years after its purchase, any commercial, industrial, or other property so developed and sold or leased may be resold or assigned only to the corporation at the original purchase price plus the cost of any improvements made by the purchaser together with simple interest on all of the purchaser's equity in the property at the rate of seven per cent a year. Rules may also provide that ownership of the commercial, industrial, or other property cannot be separated from ownership of the residential property in connection with which it was sold or leased.

**§ -125 Sale, mortgages, agreement of sale, other instruments.** (a) The corporation shall sell completed dwelling units or dwelling units that are substantially completed and habitable, developed and constructed hereunder, to qualified residents in fee simple, or shall cause them to be leased or rented to qualified residents, at a price or rental based on costs as determined by the corporation. The gross share to the other partners or contract payments and any amounts subsidized by the State, including but not limited to the land, need not be counted as cost so as to increase the price. Such may be borne by the State, under rules subject to reimbursement upon sale as provided for in section -127.

(b) If a qualified purchaser is unable to obtain sufficient funds at reasonable rates from private lenders, the corporation, by way of mortgage, agreement of sale, or other instrument to secure the indebtedness, may loan to the purchaser up to one hundred per cent of the purchase price. The purchaser in that event shall execute with the corporation an agreement of sale or mortgage or other instrument under the terms of which the unpaid principal and the interest thereon shall be paid in monthly installments over a period of not more than forty years.

(c) Every mortgage, agreement of sale, other instrument to secure the indebtedness, or instrument of indebtedness executed by the corporation may contain other provisions as are usually found in such instruments and shall provide that the purchaser may repay the whole or any part of the unpaid balance of the purchase price plus accrued interest at any time without prepayment penalty.

(d) If the purchaser defaults on the payment of any loan, the corporation shall take all necessary action to collect the delinquent principal and interest on the loan and may take all actions allowed to holders of obligations, including the power to repossess, lease, rent, repair, renovate, modernize, and sell the property foreclosed, subject to the restrictions hereinafter described.

(e) The mortgages, agreements of sale, and other instruments of indebtedness, at the direction of the corporation, may be assigned to and serviced by commercial banks and other lending institutions doing business in the State at a fee of not more than one-half of one per cent of the amount loaned to the purchaser.

(f) Subsections (a) to (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.

§ -126 **Co-mortgagor.** For purposes of qualifying for a mortgage loan to finance the purchase of a dwelling unit under this subpart, a “qualified resident” as defined in section -112 may be assisted by a co-mortgagor who is a family member as defined by the corporation, who may own other lands in fee simple or leasehold suitable for dwelling purposes, whose interest in the dwelling unit to be purchased is limited to no more than one per cent, and who certifies that the co-mortgagor does not intend to reside in the dwelling unit. The income and assets of the co-mortgagor shall not be counted in determining the eligibility of the “qualified resident” under this chapter.

§ -127 **Real property; restrictions on transfer; waiver of restrictions.**

(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

(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 real property, the corporation shall have the first option to purchase the real property at a price that 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 original cost and capital improvements to the purchaser at the rate of one per cent a year.

(2) The corporation may purchase the real property either:

(A) By conveyance free and clear of all mortgages and liens; or

(B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation’s interest created by this subsection shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

(i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;

(ii) Any mortgage insured or held by a federal housing agency; and

(iii) Any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.

(3) A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real prop-

erty, within ten years from the date of purchase, for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C).

- (4) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property 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 real property, and any other amount expended by the corporation not counted as cost under section -125 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
  - (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 real property; and provided further 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 real property at a price which shall not exceed the sum as computed under paragraphs (1) and (2); and
  - (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable;

and

- (5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time.

(b) 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 real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section -112, and upon the terms that preserve the intent of this section and sections -129 and -130, and in accordance with rules adopted by the corporation.

(c) The corporation may waive the restrictions prescribed in subsection (a) or

(b) if:

- (1) The purchaser wishes to transfer title to the real property 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 sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in section -112; 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 when applicable.

(d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property 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.

(e) The restrictions prescribed in this section and sections -129 to -131 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 real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property 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 in writing 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;

provided that the mortgagee's failure to provide written notice to the corporation shall not affect the holder's rights under the mortgage. 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).

(f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property 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)(4)(B), a description of the cost items that 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.

(g) This section 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.

(h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

**§ -128 Exception of current owners in corporation projects.** The corporation may allow a person who is a current owner of a multifamily dwelling unit in a project sponsored by the corporation to apply for the purchase of a larger dwelling unit in a project sponsored by the corporation if the applicant's family size exceeds the permissible maximum family size for the applicant's current dwelling unit, as determined by the corporation. The applicant shall be required to sell the applicant's current dwelling unit back to the corporation. Notwithstanding any law to the contrary, any applicant, as it pertains to for-sale housing, shall be a "qualified resident" 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 shall physically reside in the dwelling unit purchased under this chapter;
- (4) In the case of purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- (5) Except for the applicant's current residence, meets the following qualifications:
  - (A) Is a person who either oneself or together with spouse, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land; and
  - (B) Is a person whose spouse does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to such land, 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.

**§ -129 Real property; restrictions on use.** (a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the ten-year restriction period set forth in section -127, except in hardship circumstances where the inability to reside on the property arises out of unforeseeable job or military transfer, a temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case by case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than ten years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The ten-year owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

- (1) Application and approval procedures for the waivers;
- (2) Exceptions authorized by this subsection;
- (3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
- (4) Schedules of fees needed to cover administrative expenses and attorneys' fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section -127. Any person who disagrees with the corporation's determination under this section shall be entitled to a contested case proceeding under chapter 91.

(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 subsection -127(a)(1), (2), or (4), as applicable.

(c) Any deed, lease, agreement of sale, 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 terminate and shall not attach in subsequent transfers of title if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(e) Subsections (a) to (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.

(f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

**§ -130 Restrictions on use, sale, and transfer of real property; effect of amendment or repeal.** (a) Restrictions on the use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all real property, and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.

(b) The corporation, any department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule, or regulation not more than one hundred eighty days after a change in restrictions, and the notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of real property constructed and sold prior to such effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. The notice shall be published at least three times in a newspaper of general circulation in the State for state agencies and at least three times in a county newspaper for county agencies.

(c) For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.

(d) No purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the real property, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.

(e) This section shall apply to all real property developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the real property purchased.

(f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale, or transfer of dwelling units, entered into after June 20, 1977.

(g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if

the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

**§ -131 Corporation's right to repurchase or rent real property; authority to seek recovery.** (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in section -127 are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, or when vacant lands developed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:

- (1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land which has a defect, regardless of whether or not the owner wishes to sell; provided that such repurchases shall be in accordance with the following provisions:
  - (A) The corporation may repurchase a dwelling unit or land if:
    - (i) The dwelling unit or land is deemed unsafe by the county building department;
    - (ii) The defects are irreparable; or
    - (iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than a year to repair.
  - (B) The corporation's purchase price shall be based on the formula set forth in section -127(a)(1);
  - (C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the real property;
  - (D) The corporation shall give preference in all other projects of the corporation to all owners whose real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and
  - (E) If the corporation exercises its right to purchase defective real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;
- (2) If the corporation does not opt to purchase defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect or land which has a soil defect. During the period that the real property is being repaired, the corporation shall rent that real property from the owner for an amount not to exceed the owner's present mortgage payments; and
- (3) If the corporation does not execute either a contract to repurchase the real property or an agreement to repair and rent the real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies. For the purposes of this subsection, "substantial construction defect" includes but is not necessarily limited to: structural defects such as shifting foundations and bearing walls; structural deficiencies due to the use of defective or undersized materials; and defects affecting the health and safety of occupants; and "substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

(b) If moneys are expended by the corporation pursuant to subsection (a)(1) and (2), the corporation shall have the authority to take necessary legal action against

the developer, codeveloper, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657.

(c) If real property developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, is found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or cause to be filed a legal action on behalf of or by, the owner or lessee of the real property for the recovery of damages or for injunctive relief against the developer, codeveloper, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of real property that have similar substantial construction or soil defects.

(d) Nothing in this chapter shall be construed so as to diminish the rights or remedies of the corporation otherwise provided under common law, by statute or by contract.

(e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(f) This section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid.

**§ -132 Nonprofit organizations; government agencies.** (a) The corporation may retain dwelling units in a project to the extent it determines necessary and appropriate, for sale, lease, or rental to nonprofit organizations and government agencies. The dwelling units shall be used by the nonprofit organizations and government agencies to provide housing opportunities and related support services to special needs individuals or families. These purposes include but are not limited to the use of dwelling units for group homes and congregate living facilities and for government employees in special situations. The corporation, in consultation with other appropriate government agencies, shall adopt rules pursuant to chapter 91 necessary to implement this subsection, including but not limited to rules relating to the eligibility and qualifications of nonprofit organizations and government agencies, rules relating to the eligibility and qualifications of clients of nonprofit organizations and government agencies to whom housing opportunities may be made available, and rules restricting the use, sale, or transfer of, and authorizing repurchase of, dwelling units sold, leased, or rented pursuant to this subsection. The corporation, to the extent appropriate, shall have the same powers with respect to nonprofit organizations and government agencies purchasing, leasing, or renting dwelling units as the corporation has with respect to qualified residents purchasing, leasing, or renting dwelling units.

(b) In connection with the development of any residential units under this chapter, the corporation may also make provisions for the development of appropriate community facilities. The corporation may:

- (1) Sell, lease, or rent vacant land or land with site improvements to nonprofit organizations or government agencies to develop community facilities; or
- (2) Develop, on behalf of the State or with an eligible developer, the community facilities and then sell, lease, rent, or otherwise transfer or make available these facilities to nonprofit organizations or government agencies.

The corporation shall adopt rules pursuant to chapter 91 necessary to implement this subsection.

§ **-133 Rate of wages for laborers and mechanics.** The corporation shall require an eligible bidder or eligible developer of a housing project developed under this chapter to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided that this section shall not apply to a housing project developed under this chapter if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

§ **-134 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### F. Teachers Housing

§ **-141 Purpose.** The purpose of this subpart is to create a special fund for the accounting and control of receipts and disbursements in connection with the corporation's functions of planning, construction, repair, maintenance, and operation of housing for teachers employed and assigned by the department of education. Teacher housing shall be provided only if the community does not have adequate housing for teachers at reasonable cost.

§ **-142 Establishment of revolving fund.** The director of finance shall set up out of any moneys heretofore or hereafter appropriated for the purposes of teacher housing, a revolving fund to be known as the teachers' housing revolving fund. All unexpended balances of appropriations, allocations, allotments, special revolving funds or other funds heretofore created and made available for the purposes of developing or administering teachers' housing projects shall be transferred to the teachers' housing revolving fund. Notwithstanding any law to the contrary, all moneys, including refunds, reimbursements, and rentals for housing from teacher tenants shall be deposited in the revolving fund.

The revolving fund may be used by the corporation for any and all of the purposes of teachers' housing including, without prejudice to the generality of the foregoing, the planning, construction, maintenance, and operation of teachers' housing, as well as for the salaries of the necessary personnel in charge thereof.

Whenever the governor determines that the amount in the teachers' housing revolving fund is in excess of the requirements of the teacher housing program, the corporation shall transfer such excess to the state general fund.

§ **-143 Annual statements.** The corporation shall annually forward to the director of human services and the director of finance a full, detailed description and financial statement of the planning, construction, repair, maintenance, and operation of teacher housing.

§ **-144 Rules.** The corporation may adopt rules pursuant to chapter 91 necessary or desirable for the purpose of this part.

§ **-145 Annual review; disposal of units.** The corporation, in consultation with the department of education, shall annually review the status of and necessity for subsidized teacher housing throughout the State and upon determination that any particular housing unit is no longer necessary shall have all necessary power and shall proceed to dispose of such unit by sale, demolition, or otherwise. Any net proceeds from the disposal of each such unit shall be paid to the governmental entity vested with fee title to the unit at the time of disposition and any deficit incurred in the disposal shall be paid by the State.

§ **-146 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

### G. Housing for Elders

§ **-151 Definitions.** The following terms, wherever used or referred to in this subpart, shall have the following respective meanings, unless a different meaning clearly appears from the context:

“Elder” means a person who is a resident of the State and who has attained the age of sixty-two.

“Housing project” or “project” shall include all real and personal property, buildings, and improvements, corporations, lands for gardening or farming, and community facilities administered by the corporation and providing safe and sanitary dwelling accommodations for residents. The terms shall also include all other real and personal property and all tangible or intangible assets held or used in connection with a housing project administered under this subpart.

§ **-152 Resident selection; dwelling accommodations; rentals.** In the administration of housing projects, the corporation shall observe the following with regard to resident selection, dwelling accommodations, and rentals:

- (1) Except as hereinafter provided, it shall accept only elders as residents in the housing projects;
- (2) It may accept as residents in any housing unit one or more persons, related or unrelated by marriage. It may also accept as a resident in any dwelling accommodation or in any project, in the case of illness or other disability of an elder who is a resident in the dwelling accommodation or in the project, a person designated by the elder as the elder’s companion and who is approved by the corporation, although the person is not an elder; provided that the person shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder;
- (3) It may rent or lease to an elder a dwelling accommodation consisting of any number of rooms as the corporation deems necessary or advisable to provide safe and sanitary accommodations to the proposed resident or residents thereof without overcrowding; and
- (4) Notwithstanding that the elder has no written rental agreement or that it has expired, so long as the elder continues to tender the usual rent to the corporation or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the elder, nor shall the corporation otherwise cause

the elder to quit the dwelling unit involuntarily, demand an increase in rent from the elder, or decrease the services to which the elder has been entitled during hospitalization of the elder due to illness or other disability.

§ -153 **Housing for elders revolving fund.** There is created a housing for elders revolving fund to be administered by the corporation. Notwithstanding any law to the contrary, moneys received or collected by the corporation pursuant to this subpart shall be deposited into the revolving fund. Revenues from the fund may be used to pay the expenses of management, operation, and maintenance of housing, including but not limited to the cost of insurance, a proportionate share of the administrative expenses of the corporation, and the costs of repairs, equipment, and improvements.

§ -154 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

### PART III. FINANCING PROGRAMS

#### A. General Provisions

§ -161 **Bonds; authorization.** (a) The corporation, with the approval of the governor, may issue from time to time bonds (including refunding bonds to pay, retire, or provide for the retirement of bonds previously issued by the corporation) in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for any of its corporate purposes.

(b) All bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The bonds shall be issued in the name of the corporation, and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding sixty years from the date of issuance.

(d) The corporation may issue such types of bonds as it may determine, including, without limitation, bonds payable from and secured, in whole or in part, by:

- (1) Income and revenues derived from the housing project or projects financed from the proceeds of bonds;
- (2) Receipts derived from any grant from the federal government made in aid of a housing project or projects financed from the proceeds of bonds;
- (3) Income and revenues derived from a particular designated housing project or projects whether or not financed, in whole or in part, from the proceeds of bonds;
- (4) Receipts derived from any payment for "eligible loans", "eligible improvement loans", or "eligible project loans", as such terms are defined in subpart B of part III, or any other agreement or agreements entered into for a "housing loan program", as such term is defined in subpart B or E of part III, or any other loan program administered by the corporation and financed from the proceeds of bonds;
- (5) Receipts derived from loans to mortgage lenders or from the payment on account of principal of or interest on loans purchased from mortgage lenders, as such terms are defined in subpart B of part III which loans to mortgage lenders or loans purchased are financed from the proceeds of bonds;

- (6) Moneys in any funds or accounts established in connection with the issuance of bonds, and any earnings thereon;
- (7) Proceeds derived from any insurance;
- (8) Income and revenues of the corporation generally; or
- (9) Any combination of the above.

The provisions of this subsection are in addition and supplemental to part III of chapter 39.

(e) Any of the bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project, other property of the corporation, the pledge or assignment of any loans or other agreements, or any note or other undertaking, obligation, or property held by or on behalf of the corporation to secure loans made from the proceeds of bonds for any housing loan program, as such term is defined in subpart B or E of part III, or any other loan program administered by the corporation and financed from the proceeds of bonds.

(f) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon the filing, the revenues, moneys, or property so pledged and thereafter received by the corporation shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be prior to the lien of all parties having claims by any kind in tort, contract, or otherwise against the corporation, irrespective of whether such parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

(g) Any housing project or projects authorized by, and undertaken pursuant to, this chapter shall constitute an "undertaking" within the meaning of that term as defined and used in part III, chapter 39, Hawaii Revised Statutes; any loan program authorized by, and undertaken pursuant to, this chapter, including without limitation housing loan programs defined in and authorized by subparts B and E of this part, shall constitute a "loan program" within the meaning of that term as defined and used in part III, chapter 39, Hawaii Revised Statutes; and the corporation shall constitute a "department" and the board shall constitute a "governing body" within the meaning of those terms as defined and used in part III, chapter 39, Hawaii Revised Statutes.

(h) Neither the members of the corporation nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

**§ -162 Issuance of bonds for the development of infrastructure.** Without limiting section -161, the corporation, pursuant to and in accordance with this subpart, is hereby authorized to issue bonds for the purpose of financing the development of infrastructure on land owned by the corporation.

**§ -163 Issuance of bonds for the preservation of low-income housing projects.** The corporation, pursuant to and in accordance with this subpart, may issue bonds to purchase low-income housing projects financed by the United States Department of Housing and Urban Development in order to preserve these projects. Upon the payment of all interest and principal stemming from the issuance of these bonds, the corporation may transfer title to these projects to qualified nonprofit organizations. Nothing in this section shall be construed to:

- (1) Prohibit qualified nonprofit organizations from operating these projects on behalf of the corporation, or providing for the repair and mainte-

nance of these projects, before the payment of all interest and principal stemming from the issuance of these bonds; or

- (2) Prohibit the corporation from transferring title to these projects to qualified nonprofit organizations if these bonds can be secured to the satisfaction of the bondholders.

As used in this section, "qualified nonprofit organization" includes community-based nonprofit organizations and resident councils.

**§ -164 Bonds; interest rate, price, and sale.** (a) The bonds shall bear interest at a rate or rates payable at a time or times as the corporation, with the approval of the governor, may determine except for deeply discounted bonds that are subject to redemption or retirement at their accreted value; provided that the discounted value of the bonds shall not exceed ten per cent of any issue; and provided further that no bonds may be issued without the prior approval of the director of finance and the governor.

(b) The corporation may include the costs of undertaking and maintaining any housing project or projects or loan program for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the cost of undertaking and maintaining the housing projects, the corporation may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year beyond the estimated completion of any housing project or projects, or the estimated expenditure of borrowed funds, or any loan program for which the bonds are issued.

**§ -165 Trustee; designation, duties.** (a) The corporation may designate a trustee for each issue of bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the corporation to receive and receipt for, hold, and administer the proceeds of the bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the corporation to hold and administer any housing project bond special funds established pursuant to section -170, and to receive and receipt for, hold, and administer the revenues derived by the corporation from any housing project or projects or loan program for which the bonds are issued or the projects or loan programs pledged to the payment of the bonds, and to apply the revenues to the payment of the cost of administering, operating, and maintaining the housing project or projects or loan program, to pay the principal of the interest on the bonds, to the establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the bonds.

(d) Notwithstanding section 39-68, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the bonds and coupons, if any, that have been paid and the supervision of their destruction in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3, 39-13, and 39-68(a), to appoint the trustee



or others as fiscal agents, paying agents, and registrars for the bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§ **-166 Trust indenture.** (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the corporation for the purposes of this part.

(b) A trust indenture may allow the corporation to pledge and assign to the trustee agreements related to the housing project or projects or loan program and the rights of the corporation thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures.

(d) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the bonds, the investment of any reserve for the bonds, the investment of the revenues of the housing project or system of housing projects, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the bonds or any portion of them or any trustee thereof may institute proceedings for the enforcement of any agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived therefrom.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the corporation to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the housing projects or in the financing of the costs of administering, operating, or maintaining the housing projects.

§ **-167 Investment of reserves, etc.** The corporation may invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, in property or securities in which the director of finance may legally invest, as provided in section 36-21, except that funds held outside the state treasury may be invested for terms not to exceed 35 years. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to the corporation unless the legislature shall specifically so state.

§ **-168 Security for funds deposited by the corporation.** The corporation may by resolution provide that all moneys deposited by it shall be secured:

- (1) By any securities by which funds deposited by the director of finance may be legally secured as provided in section 38-3; or
- (2) By an undertaking with sureties as are approved by the corporation faithfully to keep and pay over upon the order of the corporation any deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for such deposits.

§ **-169 Arbitrage provisions; interest rate.** (a) Any other provision of law to the contrary notwithstanding, neither the corporation nor the director of finance shall make loans or purchase mortgages with the proceeds of general obligation bonds of the State or from a revolving fund established or maintained from the proceeds of bonds, at a rate of interest or upon terms and conditions which would cause any general obligation bond of the State or any bond to be an "arbitrage

bond” within the meaning of that term as defined in the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto.

(b) The rate of interest on loans made under this chapter from the proceeds of general obligation bonds of the State shall be established by the corporation, with the approval of the director of finance, after each sale of general obligation bonds of the State, the proceeds of which are to be used for the purposes of making loans or purchasing mortgages under this chapter. If no sale of general obligation bonds of the State intervenes in a twelve-month period after the last rate fixing, the corporation may review the then existing rates on loans or mortgages made under this chapter from the proceeds of general obligation bonds of the State and retain the existing rate or, with the approval of the director of finance, establish different rates.

(c) The director of finance shall approve those rates so as to produce up to, but not in excess of, the maximum yield to the State or the corporation permitted under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto, on the assumption that the general obligation bonds of the State, the proceeds of which have been or are to be used for the purposes of making loans or purchasing mortgages under this chapter, would otherwise be “arbitrage bonds” under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto, were the maximum yield to be exceeded. The establishment of the rates of interest shall be exempt from chapter 91.

**§ -170 Housing finance revolving fund; housing project bond special funds.** (a) There is created a housing finance revolving fund to be administered by the corporation. Notwithstanding sections 36-21 and -411, the proceeds in the fund shall be used for long-term and other special financings of the corporation and for the necessary expenses in administering this chapter.

(b) All moneys received and collected by the corporation, not otherwise pledged or obligated nor required by law to be placed in any other special fund, shall be deposited in the housing finance revolving fund.

(c) A separate special fund shall be established for each housing project or projects or loan program financed from the proceeds of bonds secured under the trust indenture. Each fund shall be designated “housing project bond special fund” or “housing loan program revenue bond special fund”, as appropriate, and shall bear additional designation as the corporation deems appropriate to properly identify the fund.

(d) Notwithstanding any other law to the contrary, all revenues, income, and receipts derived from a housing project or projects or loan program financed from the proceeds of bonds or pledged to the payment of principal of and interest and premium on bonds, shall be paid into the housing project bond special fund established for the housing project or projects or loan program and applied as provided in the proceedings authorizing the issuance of the bonds.

**§ -171 Rate of wages for laborers and mechanics.** The corporation shall require an eligible bidder or eligible developer of a housing project developed under this chapter to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided that this section shall not apply to a housing project developed under this chapter if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

**§ -172 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by

any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

## B. Housing Loan and Mortgage Programs

§ -181 **Definitions.** The following words or terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

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

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

“Eligible improvement” means alterations, repairs, or improvements to an existing housing unit which substantially protect or improve the basic livability of the unit.

“Eligible improvement loan” means a loan to finance an eligible improvement to the owner of the housing unit, which may be a condominium unit, where the eligible improvement is to be made; provided that the owner meets the requirements of an eligible borrower, except that the requirements of paragraph (4) set forth in the definition of “eligible borrower” need not apply, the unit to be financed is located in the State, the unit will be occupied as the principal place of residence of the borrower, and meets other requirements as established by rules adopted by the corporation.

“Eligible loan” means a loan to an eligible borrower for the permanent financing of a dwelling unit, including a condominium unit; provided that the property financed is located in the State, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation.

“Eligible project loan” means an interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of a rental housing project, and which meets other requirements as established by rules adopted by the corporation.

“Housing loan programs” includes all or any part of the loan to lenders program, the purchase of existing loans program, the advance commitments program, and the loan funding programs authorized under this part.

“Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

- (1) Is authorized to do business in the State;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution which is an approved mortgagee for the Federal Housing Administration or is an approved lender for the Veterans Administration or the U.S. Department of Agriculture Rural Development or is an approved mortgage loan service or the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Qualified sponsor” means any person or entity determined by the corporation:

- (1) To be qualified by experience, financial responsibility, and support to construct a housing project of the type and magnitude described;
- (2) To have submitted plans for a project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
- (3) To meet other qualifications as established by rules adopted by the corporation pursuant to chapter 91.

§ -182 **Owner-occupancy requirement.** (a) An eligible borrower shall utilize the dwelling unit purchased under this part as the eligible borrower’s permanent and primary residence.

(b) From time to time, the corporation may submit a verification of owner-occupancy form to the eligible borrower. Failure to respond to this verification in a timely manner may result in an immediate escalation of the interest rate or acceleration of the eligible loan.

§ -183 **Rules; eligible borrower.** (a) The corporation shall establish the qualifications of the eligible borrower, and may consider the following:

- (1) The proportion of income spent for shelter;
- (2) Size of the family;
- (3) Cost and condition of housing available to the total housing market; and
- (4) Ability of the person to compete successfully in the normal housing market and to pay the amounts on which private enterprise is providing loans for safe, decent, and sanitary housing in the State.

(b) The family income of an eligible borrower shall not exceed the income requirements of section 143(f) of the Internal Revenue Code of 1986, as amended.

(c) For the purpose of determining the qualification of an eligible borrower for an eligible improvement loan:

- (1) The housing unit for which the eligible improvement loan is to be made and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower’s assets; and
- (2) The mortgage secured by the housing unit and property shall not be included in the calculation of the eligible borrower’s liabilities.

(d) For the purpose of determining the qualification of an eligible borrower for an eligible loan for a targeted area residence:

- (1) The housing unit being replaced and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
- (2) The mortgage secured by the housing unit and the property shall not be included in the calculation of the eligible borrower's liabilities.

§ **-184 Rules; eligible loans.** (a) The corporation shall establish requirements for property financed by an eligible loan, and may consider, the location, age, condition, and other characteristics of the property.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible loans.

(c) All eligible loans made shall comply with applicable state and federal laws.

§ **-185 Rules; eligible project loans.** (a) The corporation shall establish requirements for projects to be financed by an eligible project loan, and may consider the location, age, condition, and other characteristics of the project.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, and other requirements for eligible project loans.

(c) The corporation shall establish restrictions on the prepayment of eligible project loans and on the transfer of ownership of the projects securing eligible project loans.

(d) The corporation shall require that any sums deferred on land leased at nominal rates by the corporation to the owner of an eligible project shall be recovered by the corporation at the time an eligible project loan is prepaid, whether as a result of refinancing of the eligible project loan or otherwise, to the extent that funds are available from the refinancing or other method by which the eligible project loan is paid in full prior to its due date.

(e) The corporation shall enter into an agreement with the owner of an eligible project to be financed with an eligible project loan which shall provide that in the event that the eligible project loan is at any time prepaid for the purpose of converting the rental units of such project to ownership units, all tenants at the time of the proposed conversion shall have the first option to purchase their units.

(f) All eligible project loans shall comply with applicable state and federal laws.

§ **-186 Rules; eligible improvement loans.** (a) The corporation shall establish requirements for property financed by an eligible improvement loan, and may consider, the location, age, condition, value, and other characteristics of the property.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible improvement loans.

(c) All eligible improvement loans made shall comply with applicable state and federal laws.

§ **-187 Housing loan programs; procedures and requirements.** (a) The corporation shall establish procedures for:

- (1) The submission of requests or the invitation of proposals for loans to mortgage lenders;
- (2) The purchase of existing loans by auction, invitation of tenders, or negotiation;
- (3) The making of advance commitments to purchase and the purchasing of eligible loans, eligible improvement loans, or eligible project loans

to be made by mortgage lenders by auction, invitation of tenders, or negotiation; and

- (4) Loan applications made through mortgage lenders to eligible borrowers or qualified sponsors.
- (b) The corporation shall establish standards and requirements for:
  - (1) The allocation of loans to mortgage lenders;
  - (2) The allocation of funds to purchase existing loans from mortgage lenders;
  - (3) The making of advance commitments and allocation of funds to purchase eligible loans, eligible improvement loans, or eligible project loans from mortgage lenders; and
  - (4) The participation by mortgage lenders as originators and processors of eligible loans, eligible improvement loans, or eligible project loans on behalf of the corporation.

(c) The standards and requirements for the allocation of funds to mortgage lenders adopted by the corporation shall be designed to include the maximum number of qualified mortgage lenders as participants in the housing loan programs.

**§ -188 Housing loan programs; general powers.** (a) The corporation may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purposes of the performance of its duties in executing the housing loan programs.

(b) The corporation may require representations and warranties as it determines necessary to secure its loans.

**§ -189 Housing loan programs; self-supporting.** The interest rate, fees, charges, premiums, and other terms of the loans made under the housing loan programs shall be at least sufficient to pay the cost of administering and maintaining the portion of the specific housing loan programs for which the bonds have been issued, and to assure payment of the principal of and interest on the bonds as they become due.

**§ -190 Housing loan programs; fees.** The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for its housing loan programs. The fees, premiums, and charges shall be deposited into the housing loan program revenue bond special fund established for the particular housing loan program or part thereof from which the fees, premiums, and charges are derived as determined by the corporation.

**§ -191 Housing loan programs; evidence of eligible loan, eligible improvement loan, or eligible project loan.** (a) Each mortgage lender who participates in any housing loan program shall submit evidence, as deemed satisfactory by the corporation, that eligible loans, eligible improvement loans, or eligible project loans have been made from the proceeds of the bonds.

(b) The corporation may inspect the books and records of the mortgage lenders as may be necessary for this section.

**§ -192 Loans to lenders program.** (a) The corporation may make loans to mortgage lenders under terms and conditions requiring that the loan proceeds be used within a time period prescribed by the corporation to make eligible loans, eligible improvement loans, and eligible project loans in an aggregate principal amount substantially equal to the amount of the loan.

(b) The loan made to a mortgage lender shall be a general obligation of the respective mortgage lender.

(c) The loan as determined by the corporation shall:

- (1) Bear a date or dates;
- (2) Mature at a time or times;
- (3) Be evidenced by a note, bond, or other certificate of indebtedness;
- (4) Be subject to prepayment; and
- (5) Contain other provisions consistent with this part.

(d) Subject to any agreement with the holders of its bonds, the corporation may consent to any modification to the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any loan to a mortgage lender or any bond, note, contract, or agreement of any kind to which the corporation is a party.

**§ -193 Loan to lenders program; collateral security.** (a) Loans made to mortgage lenders shall be additionally secured by a pledge of a lien upon collateral security in an amount as the corporation deems necessary to assure the payment of principal of and interest on the loans as they become due.

(b) The corporation shall determine the nature and type of collateral security required.

(c) A statement designating the collateral security pledged, the mortgage lender pledging the collateral, and the corporation's interest in the pledged collateral may be filed with the bureau of conveyances. Where a statement has been filed, no possession, further filing, or other action under any state law shall be required to perfect any security interest which may be deemed to have been created in favor of the corporation. The mortgage lender shall be deemed the trustee of an express trust for the benefit of the corporation in all matters relating to the pledged collateral.

(d) Subject to any agreement with the holders of its bonds, the corporation may collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders. The corporation may acquire, take possession of, sell at public or private sale with or without bidding, or otherwise deal with the collateral to protect its interests.

**§ -194 Purchase of existing loans program.** (a) The corporation may contract with a mortgage lender to purchase, in whole or in part, existing loans, whether or not eligible loans, eligible improvement loans, or eligible project loans. The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its bonds, including but not limited to provisions requiring the:

- (1) Repurchase of the loans, in whole or in part, by mortgage lenders at the option of the corporation;
- (2) Payments of premiums, fees, charges, or other amounts by mortgage lenders to provide a reserve or escrow fund for the purposes of protecting against loan defaults; and
- (3) Guarantee by, or for recourse against, mortgage lenders, with respect to defaults on these loans of the corporation.

(b) The corporation shall require as a condition of each purchase of existing loans from a mortgage lender that the mortgage lender proceed to make and disburse eligible loans, eligible improvement loans, or eligible project loans in an aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the corporation of loans therefrom.

**§ -195 Advance commitments program.** (a) The corporation may contract with a mortgage lender for the advance commitment to purchase eligible loans, eligible improvement loans, or eligible project loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its bonds.

§ **-196 Loan funding programs.** (a) The corporation may contract with mortgage lenders to fund eligible loans and eligible improvement loans and may directly make or contract with mortgage lenders to fund eligible project loans.

(b) Any such contract with a mortgage lender may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds.

§ **-197 Loans; service and custody.** The corporation may contract for the service and custody of its loans. The contract may provide for the payment of fees or charges for the services rendered; provided that the fees or charges shall not exceed the usual, customary, and reasonable charges for the services rendered.

§ **-198 Loans; sale, pledge, or assignment.** (a) Subject to any agreements with the holders of its revenue bonds, the corporation may sell its loans at public or private sale at a price and upon terms and conditions as it determines.

(b) Subject to any agreements with holders of its revenue bonds, the corporation may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements.

§ **-199 Loans; insurance and guarantees.** The corporation may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable.

§ **-200 Loans; default.** The corporation may renegotiate, refinance, or foreclose any loan in default.

The corporation may waive any default or consent to the modification of the terms of any loan or security agreement.

The corporation may commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement.

The corporation may bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan.

The corporation may operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan.

§ **-201 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

### C. Rental Assistance Program

§ **-221 Purpose; findings and determinations.** The legislature finds and declares that the health and general welfare of the people of the State require that the people of this State have safe and sanitary rental housing accommodations available at affordable rents; that a grave shortage in the number of such accommodations affordable by families and individuals of low and moderate income in the State exists; that it is essential that owners of rental housing accommodations be provided with appropriate additional means to assist in reducing the cost of rental housing accommodations to the people of the State.



Additionally, the legislature finds that the high cost of infrastructure development and the obtaining of interim construction financing are two of the greatest impediments to the production of affordable rental housing in this State. It is especially difficult for private nonprofit and profit entities to participate in the development of affordable housing due to the difficulty in amassing the capital necessary to plan and carry a project to completion.

It is the purpose of this subpart to:

- (1) Assist owners in maintaining the rentals at levels affordable by families and individuals of low and moderate income by providing owners with rental assistance payments which, with rentals received by tenants of low and moderate income, will provide owners with limited but acceptable rates of return on their investments in rental housing accommodations; and that assisting owners by entering into contracts with them which provide for rental assistance payments is a valid public purpose and in the public interest; and
- (2) Provide a funding source for interim construction financing for the development of affordable rental housing by private nonprofit and profit entities, as well as the corporation; provided that in allotting this financing, the corporation shall give preference to qualified sponsors who are private nonprofit and profit entities.

§ -222 **Definitions.** The following words or terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

“Eligible project” means a rental housing project which:

- (1) Is financed by the corporation pursuant to subpart B or E, or the corporation determines will require rental assistance to make it financially feasible;
- (2) Is subject to a regulatory agreement with the corporation;
- (3) Maintains at least twenty per cent of its units for eligible tenants; and
- (4) Meets other qualifications as established by rules adopted by the corporation.

Notwithstanding any provisions to the contrary, “eligible project” may also include a rental housing project which is financed by the corporation pursuant to part III A.

“Eligible tenant” means a family or an individual whose income does not exceed eighty per cent of the area median income as determined by the United States Department of Housing and Urban Development.

“Owner” means the owner of an eligible project.

“Regulatory agreement” means an agreement between the corporation and the owner relating to an eligible project which includes provisions relating to rents, charges, profits, return on owner’s equity, development costs, and methods of operation.

“Rental assistance contract” means an agreement between an owner and the corporation providing for periodic rental assistance payment for units in an eligible project.

§ -223 **Rental assistance revolving fund.** (a) There is created a rental assistance revolving fund to be administered by the corporation.

(b) The aggregate principal sum in the rental assistance revolving fund which may without limitation include sums made available from any government program or grant, from private grants or contributions, from the proceeds of any bond issue, or by appropriation, shall be invested by the corporation in a manner which will

maximize the rate of return on investment of the fund; provided that any investment shall be consistent with section 36-167 but need not comply with section 36-21.

(c) The corporation may use, as needed, the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund to make payments under the rental assistance contracts or to subsidize tenants' rents in projects developed under this part; provided that the corporation shall use up to \$25,000,000 plus any bond proceeds to provide interim construction financing to:

- (1) Qualified sponsors who are private nonprofit or profit entities; or
- (2) The corporation, for the development of affordable rental housing; provided further that the corporation, in allotting interim construction financing moneys pursuant to this part, shall give preference to rental housing projects developed by qualified sponsors who are private nonprofit or profit entities.

§ -224 **Rental assistance contracts.** (a) The corporation may enter into a rental assistance contract and a regulatory agreement with the owner of an eligible project, when the owner of an eligible project is other than the corporation.

(b) Prior to the execution of a rental assistance contract, the corporation may execute an agreement to enter into a rental assistance contract with an owner, which agreement shall provide for the execution of a rental assistance contract upon satisfaction of the terms set forth in such agreement and otherwise established by the corporation. Each rental assistance contract heretofore entered into by the corporation which provided that rental assistance payments shall be made solely from the earnings on the investment of the rental assistance revolving fund shall hereafter, without modification of such contracts, be payable from the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund.

(c) A rental assistance contract and any subsidy of tenants' rents in projects developed under this part shall be for a term not in excess of thirty-five years and shall be approved by the board of directors of the corporation. Upon such approval by the corporation, the director of finance shall be authorized to guarantee the obligation of the corporation for the term of the rental assistance contract or the subsidy of tenants' rents in an amount equal to the aggregate obligation of the corporation to make assistance payments; provided that the aggregate of all such outstanding guarantees shall not exceed \$100,000,000. Pursuant to such guarantee, the corporation shall make annual rental payments to the owner in accordance with the approved rental assistance contract or to the tenants in accordance with the approved subsidy.

(d) Each rental assistance contract shall set forth a maximum annual rental assistance payment amount. The corporation shall establish procedures for determining the maximum annual rental assistance payment amount and may consider the following:

- (1) The cost of constructing the eligible project;
- (2) The estimated annual operating cost of the eligible project;
- (3) The estimated maximum rentals which may be charged for units in the eligible project;
- (4) The amount of funds available for the funding of rental assistance contracts;
- (5) The number of eligible projects requiring assistance under this part; and
- (6) A restricted rate of return on equity to the owner, which rate shall be established by the corporation by rule.

§ -225 **Rules, rental assistance program.** (a) Prior to the execution of a rental assistance contract and annually thereafter, the owner shall submit a proposed rental schedule to the corporation for approval, which schedule shall list every rental

unit in the project and shall designate which units are to be maintained for eligible tenants.

(b) The corporation shall establish procedures for evaluating the rental schedules submitted pursuant to this section, and may consider the following:

- (1) The size of and number of bedrooms in the units comprising the eligible project;
- (2) The location of the project and its type (whether high-rise, mid-rise, or low-rise);
- (3) The percentage of units being maintained for eligible tenants; and
- (4) The rentals prevalent in the open market for comparable units.

(c) Annually, following the approval of the rental schedule submitted pursuant to the preceding section, the corporation shall determine the amount of rental assistance payments payable to the owner for the forthcoming year, which amount shall under no circumstances exceed the maximum annual rental assistance payment amount determined in accordance with section -224. The amount determined pursuant to this subsection shall take into account the estimated amount to be derived by the owner from rentals to be charged for the forthcoming year and the limited rate of return on equity permitted in accordance with section -224(d)(6).

(d) The corporation shall establish standards and requirements for:

- (1) The awarding of rental assistance contracts and the allocation of annual rental assistance payments;
- (2) The form of lease to be utilized by the owner in renting units in an eligible project;
- (3) The marketing and tenant selection and admission processes to be employed by the owner with respect to an eligible project; and
- (4) The maintenance and operation of eligible projects.

(e) The corporation shall establish procedures for:

- (1) The annual review of rental schedules for eligible projects;
- (2) The periodic review of the income of tenants renting units in eligible projects; and
- (3) The periodic inspection of eligible projects to monitor the owners' compliance with the terms and conditions of their rental assistance contracts.

(f) When an eligible project is not owned by the corporation, the corporation shall be entitled to share in the appreciation in value of units maintained for eligible tenants within an eligible project realized at the time of refinancing or prepayment of the eligible project loan. The corporation's share shall be calculated by multiplying the appreciation in value of units maintained for eligible tenants realized upon refinancing or prepayment by the ratio of the owner's equity to the discounted value of the aggregate rental assistance payments. The discount rate shall be established by rules adopted by the corporation.

The corporation shall exempt projects owned by a county from the shared appreciation requirement set forth in this section if all of the following requirements are met:

- (1) The funds derived by the county as a result of appreciation in value of the units are used for housing projects wherein:
  - (A) At least sixty per cent of the project is affordable to families earning one hundred per cent or below of the applicable area median income; and
  - (B) At least half of the foregoing sixty per cent is affordable to families earning eighty per cent or below of the applicable area median income;

and

- (2) The project from which the appreciation in value is derived remains as affordable as it was prior to the refinancing or prepayment of the eligible project loan.

§ -226 **Benefits of program not exclusive.** Nothing in this subpart contained shall be construed to prohibit, with respect to an eligible project, the operation of the rental assistance program in conjunction with other state or federal programs including the state rent supplements provided for in subpart D.

§ -227 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### D. State Rent Supplement Program

§ -231 **Rent supplements.** The corporation 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 subpart, in such amounts and under such circumstances as are prescribed in or pursuant to this subpart. No payment on behalf of a qualified tenant shall exceed a segregated amount of \$160 a month.

§ -232 **Housing owner defined.** As used in this subpart, the term "housing owner" means:

- (1) A private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is a mortgagor under sections 202, 207, 213, 221(d)(3), 221(d)(5), or 231 of the National Housing Act, as amended, or which conforms to the standards of those sections but which is not a mortgagor under those sections or any other private mortgagor under the National Housing Act, as amended, for low-or moderate-income family housing, regulated or supervised under federal or state laws or by political subdivisions of the State, or agencies thereof, as to rents, charges, capital structure, rate of return, and methods of operation, from the time of issuance of the building permit for the project; and
- (2) Any other owner of a standard housing unit or units deemed qualified by the corporation.

§ -233 **Qualified tenant defined.** As used in this subpart, the term "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, pursuant to criteria and procedures established by the corporation, 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, as amended, 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 subpart. With respect to members of a cooperative, the terms "rental" and "rental charges" mean the charges under the occupancy agreements between 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.

§ -234 **Relationship of annual payment to rental and income.** The amount of the annual payment with respect to any dwelling unit shall not exceed the amount by which the fair market rental for such unit exceeds one-fifth of the tenant's income as determined by the corporation pursuant to procedures and regulations established by it.

§ -235 **Determination of eligibility of occupants and rental charges.** (a) For purposes of carrying out this subpart, the corporation shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges. The corporation shall issue, upon the request of a housing owner, certificates as to the following facts concerning the single persons and families applying for admission to, or residing in, dwellings of that owner:

- (1) The income of the single person or family; and
- (2) Whether the single person or family was displaced from public housing administered under part II.A for exceeding the maximum allowable income for continued occupancy.

(b) Procedures adopted by the corporation hereunder shall provide for recertification of the incomes of occupants, except elders, at intervals of two years, or at shorter intervals, for the purpose of adjusting rental charges and annual payments on the basis of occupants' incomes, but in no event shall rental charges adjusted under this subpart for any dwelling exceed the fair market rental of the dwelling.

(c) No payments under this subpart may be made with respect to any property for which the costs of operation, including wages and salaries, are determined by the corporation to be greater than similar costs of operation of similar housing in the community where the property is situated.

(d) No payments shall be made under this subpart except to the extent that tenants selected under this subpart have been selected according to the following priorities:

- (1) First priority shall be given to those who have:
  - (A) An income above the maximum amount allowed for continued occupancy in housing provided for in part II.A;
  - (B) Been tenants of public housing under part II.A;
  - (C) Recently vacated or are vacating housing in subparagraph (A) or (B) because of exceeding the maximum income allowable for continued occupancy; and
  - (D) An urgent housing need;
 and
- (2) Second priority shall be given to all other eligible persons under this subpart who have an urgent housing need.

§ -236 **Rules.** The corporation may adopt all rules necessary to carry out the purpose of this subpart, including rules relating to determining preference among applicants for state rent supplements.

§ -237 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

**E. Taxable Mortgage Securities Programs**

§ -241 **Definitions.** Whenever used in this subpart, unless the context otherwise requires:

“Eligible borrower” means:

- (1) Any person or family, irrespective of race, creed, national origin, or sex, who:
  - (A) Is a citizen of the United States or a declarant alien;
  - (B) Is a bona fide resident of the State;
  - (C) Is at least of legal age;
  - (D) Does not personally, or whose spouse if the person is married, own a majority interest in any residential property in the State; and
  - (E) Meets other qualifications as established by rules adopted by the corporation;
- or
- (2) A qualified sponsor of an affordable housing project who meets the qualification requirements as established by rules adopted by the corporation.

“Eligible loan” or “loan” means:

- (1) A loan to an eligible borrower for the purchase of a housing unit, including a condominium unit; provided that the property financed is located in the State, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation; or
- (2) An interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of an affordable housing project, and which meets other requirements as established by rules adopted by the corporation.

“Housing loan programs” include all or any part of the loan programs authorized in sections -242 and -243.

“Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, which:

- (1) Is authorized to do business in the State;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single-family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution which is an approved mortgagee for the Federal Housing Administration or is an approved lender for the Veterans Administration or the Rural Economic Community Development or is an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Securities” as used in this subpart means revenue bonds, participation certificates, pass-through certificates, mortgage-backed obligations, and other obligations of the corporation issued to finance any of the housing loan programs under this subpart.

“Trustee” means a national or state bank or trust company within or without the State which enters into a trust indenture.

“Trust indenture” means an agreement by and between the corporation and the trustee, which sets forth the duties of the trustee with respect to the securities, the security therefor, and other provisions as deemed necessary or convenient by the corporation to secure the securities.

**§ -242 Housing loan programs; authorization.** (a) The corporation may establish under this subpart one or more eligible loan programs.

(b) The corporation may invest in, make, purchase, take assignments of, or otherwise acquire or make commitments to invest in, make, purchase, take assignments of, or otherwise acquire any eligible loans or any partial interest or participation therein held by or on behalf of the corporation.

(c) The corporation may sell, assign, or otherwise dispose of or enter into commitments to sell, assign, or otherwise dispose of any eligible loans or any partial interest or participation therein held by or on behalf of the corporation.

(d) The corporation may acquire any obligation under conditions which require the seller of such obligation to use the proceeds of the sale for the purpose of financing eligible loans.

**§ -243 Housing loan programs; procedures and requirements.** (a) The corporation may establish procedures and requirements for:

- (1) The purchase of loans from mortgage lenders by auction, invitation of tender, advance commitment, or other negotiation;
- (2) The making of loans through mortgage lenders to eligible borrowers or qualified sponsors;
- (3) The allocation to mortgage lenders of money made available under this subpart; and
- (4) The participation by mortgage lenders as originators and processors of loans on behalf of the corporation under this subpart.

(b) The corporation may adopt rules necessary or convenient for the operation of the housing loan programs established under this subpart.

**§ -244 Housing loan programs; general powers.** (a) The corporation may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purpose of the performance of its powers under this subpart.

(b) The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient in connection with its housing loan programs established under this subpart. The fees, premiums, and charges shall be deposited into such funds as are determined by the corporation.

(c) The corporation may contract for the servicing and custody of any loans or other obligations acquired under this subpart.

(d) The corporation may procure insurance against any default of its loans from insurers in amounts deemed necessary or desirable.

(e) Subject to any agreements with the holders of its securities, the corporation may renegotiate, refinance, or foreclose any loan in default; and may commence any action to protect or enforce any right conferred upon it by any law, or as provided in any mortgage, insurance policy, contract, or other agreement; and may bid for and purchase the property secured by the loan at any foreclosure or other sale; or acquire, or take possession of the property secured by the loan and may operate, manage, lease, dispose of, or otherwise deal with the property securing the loan.

§ -245 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

**F. Reserved**

§§ -261 to -290 **Reserved.**

**G. State Mortgage Guarantee Program**

- § -311 **State mortgage guarantee.** (a) The corporation may guarantee:
- (1) Up to the top twenty-five per cent of the principal balance of real property mortgage loans for the purchase of qualified single-family or multifamily housing units;
  - (2) A maximum of one hundred per cent of the principal balance of real property mortgage loans of qualified single-family housing under section 213 of the Hawaiian Homes Commission Act; or
  - (3) Up to one hundred per cent of the principal balance of real property mortgage loans of single-family or multifamily housing developed under self-help or shell housing programs;

plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided that at no time shall the corporation's liability, contingent or otherwise, on these guarantees exceed \$10,000,000. For the purposes of this section, the term "self-help housing program" means development or conservation of housing in which prospective homeowners have contributed labor, materials, or real property; provided that at least two-thirds of the participating homeowners are qualified by income for assistance under this subpart and that the program is carried out under the sponsorship of a nonprofit community organization. For the purposes of this section, the term "shell housing program" means development of housing which is habitable but unfinished and can be completed or expanded; provided that at least one hundred per cent of the participating homeowners are qualified by income for assistance under this chapter and that the program is carried out under the sponsorship of a public nonprofit or private organization.

(b) The loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest of the borrower in the single-family or multifamily dwelling owned and occupied by the borrower and the borrower's permitted assigns. Private lenders shall include all banks, savings and loan associations, mortgage companies, and other qualified companies and trust funds whose business includes the making of loans in the State.

(c) Loans guaranteed under this section shall be in accordance with rules adopted by the corporation.

- (d) To be eligible for loans under this section, a qualified borrower shall be:
- (1) A citizen of the United States or a resident alien;
  - (2) Qualified under the rules adopted by the corporation; and
  - (3) Willing to comply with the rules as may be adopted by the director of finance.

The corporation may secure the services of a private lender to process all applications and determine who is a qualified borrower under this chapter.

(e) When the application for an insured loan has been approved by the corporation, the corporation shall issue to the lender a guarantee for that percentage



of the loan on which it guarantees payment of principal and interest. The private lender shall collect all payments from the borrower and otherwise service the loan.

(f) In return for the corporation's guarantee, the private lender shall remit out of monthly payments collected an insurance fee as established by the corporation. The funds remitted shall be deposited to the credit of the state general fund.

(g) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the private lender may file a claim for the guaranteed portion of the overdue payments with the corporation which may then authorize vouchers for these payments, thereby acquiring a division of interest in the collateral pledged by the borrower in proportion to the amount of the payment. The corporation shall be reimbursed for any amounts so paid plus the applicable interest rate when payment is collected from the borrower.

(h) If there is any default in any payment to be made by the borrower, the lender shall notify the corporation within fifteen days. Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall so notify the corporation. Within thirty days of either notification, the corporation may elect to request an assignment of the loan on payment in full to the lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.

(i) Every qualified borrower who is granted a loan under this section shall comply with the following conditions:

- (1) Extend no portion of the qualified borrower's loan for purposes other than those sanctioned by the corporation;
- (2) Not sell or otherwise dispose of the mortgaged property except upon the prior written consent of the corporation and except upon any conditions that may be prescribed in writing by the private lender;
- (3) Undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the property mortgaged, together with cost and expense of any foreclosure of the mortgage;
- (4) Keep insured to the satisfaction of the private lender all improvements and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interest may appear at the time of the loss. At the option of the private lender, subject to the rules and standards of the corporation, sums so received may be used to pay for reconstruction of the improvements destroyed, or for decreasing the amount of the indebtedness;
- (5) Keep the improvements in good repair; and
- (6) The private lender may impose any other conditions in its mortgage; provided the form of the mortgage has received the prior approval of the corporation.

All of the above conditions shall be held and construed to be provisions of any mortgage executed by virtue of this section regardless of whether or not they are expressly incorporated in the mortgage document.

(j) Loans guaranteed and made under this subpart shall be repaid in accordance with a payment schedule specified by the private lender with payments applied first to interest and then to principal. Additional payments in any sums and the payment of the entire principal, may be made at any time within the period of the loan. The private lender for satisfactory cause and at its discretion, may extend the time within which the installments of principal may be made for a period not to exceed two years.

(k) All interest and fees collected under this subpart by the corporation shall be deposited into the general fund. All moneys necessary to guarantee payment of loans made under this subpart and to carry on the operations of the corporation in administering and granting loans under this subpart shall be appropriated by the

legislature out of the proceeds of the general fund. The corporation shall include in its legislative budgetary request for the upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

§ -312 **Mortgage guaranty agreements.** (a) To induce appropriate officials of any agency or instrumentality of the United States to commit to insure and insure mortgages under the provisions of the National Housing Act, as amended, the corporation may enter into guaranty agreements with such officials whenever:

- (1) The purchaser-mortgagor in question is ineligible for mortgage insurance purposes under the National Housing Act because of credit standing, debt obligation or income characteristics;
  - (2) The purchaser-mortgagor in question is a "displaced person" as defined in chapter 111 and the guaranty agreement will enable the purchaser-mortgagor to obtain suitable replacement housing in accordance with that chapter; and
  - (3) The corporation finds that the purchaser-mortgagor would be a satisfactory credit risk with ability to repay the mortgage loan if the purchaser-mortgagor were to receive budget, debt, management and related counseling.
- (b) Such guaranty agreements may obligate the corporation to:
- (1) Provide or cause to be provided such counseling; and
  - (2) Indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by such agency or instrumentality by reason of insurance of a mortgage.
- (c) The total of guaranties made pursuant to this section and guaranties made pursuant to section -311 shall not exceed \$10,000,000.

§ -313 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### H. Downpayment Loan Program

§ -321 **Downpayment loans.** (a) The corporation may make direct downpayment loans to eligible borrowers. The downpayment loan to any borrower shall not exceed thirty per cent of the purchase price of the residential property or \$15,000, whichever is less. The interest rate on the loans may range from zero per cent to eight per cent, depending on the buyer's incomes.

(b) The repayment of every downpayment loan shall be secured by a duly recorded second mortgage executed by the borrower to the State on the residential property purchased with the downpayment loan.

(c) The principal of the downpayment loan, together with accrued interest, shall be due and payable upon the sale, transfer, or refinancing of the home, or shall be repaid by the borrower in such installments as determined by the corporation; provided that the corporation may provide a period in which the payment could be waived. The period over which the principal and interest shall be paid need not coincide with the period over which the loan from the mortgage lender for the balance of the purchase price must be repaid. The borrower may repay the whole or any part of the unpaid balance of the downpayment loan, plus accrued interest at any time without penalty.

(d) The corporation may secure the services of the mortgage lender who loans to the borrower the balance of the purchase price of the residential property or the services of any other mortgage lender doing business in the State to collect, on

behalf of the State, the principal and interest of the downpayment loan and otherwise to service the downpayment loan, for a servicing fee not in excess of the prevailing loan servicing fees.

(e) The corporation shall adopt rules pursuant to chapter 91 to carry out the purposes of this subpart.

§ -322 **Qualifications for downpayment loan.** (a) No person shall be qualified for a downpayment loan unless the person:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the State;
- (4) Will physically reside in the residential property to be purchased for the term of the loan;
- (5) Is accepted by a mortgage lender as a person to whom it is willing to lend money for the purchase of the residential property provided the required downpayment is made; and
- (6) Provides a portion of the downpayment which shall be equal to at least three per cent of the sales price.

(b) No person who owns in fee simple or in leasehold any other residential property within the State shall be eligible to become a borrower under this section. A person shall be deemed to own a residential property if the person, the person's spouse, or both (unless separated and living apart under a decree of a court of competent jurisdiction) own a majority interest in a residential property.

§ -323 **Restrictions on borrower.** Every loan made under this subpart shall be subject to the following conditions:

- (1) The borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property;
- (2) The residential property purchased with the downpayment loan and mortgaged to the State to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender;
- (3) The borrower shall pay when due all taxes, liens, judgments, or assessments which may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State;
- (4) The borrower shall maintain fire and casualty insurance in amounts equal to the replacement value of all improvements and insurable portions of the residential property with an insurance company authorized to do business in the State. All proceeds of that insurance shall be made payable to the first mortgage lender and the corporation as their respective interests may appear at the time of any loss or damage. Subject to the rules of the corporation, in the event of any loss or damage to the improvements or property covered by the insurance, the proceeds receivable by the State shall be applied toward the reconstruction of the improvements or property destroyed or damaged, unless otherwise determined by the corporation on behalf of the State; and
- (5) The borrower shall maintain the improvements in good repair.

All of the above conditions shall be a part of any downpayment mortgage executed under this part, regardless of whether or not they are expressly incorporated in the mortgage document.

§ **-324 Default.** If the borrower defaults in the payment of any installment of principal or interest of the downpayment loan, the corporation or mortgage lender shall take all necessary action to collect the delinquent amounts and may take all actions generally allowed holders of mortgages, including the power to foreclose. Upon any foreclosure of the second mortgage, the corporation or mortgage lender on behalf of the corporation, may purchase the interest of the borrower in and to the residential property, take possession thereof and assume all of the obligations of the borrower under the first mortgage held by the private lender and any other liens having priority over the second mortgage that may then exist. On the acquisition of the borrower's interest, the corporation, at its option, may pay in full the unpaid balance of the borrower's obligation secured by the first mortgage and other prior liens, repair, renovate, modernize, or improve the residential property, and, with or without clearing the property of all prior mortgages and liens, sell, lease, or rent the property or use or dispose of the same in any manner that the corporation is authorized by law.

§ **-325 Downpayment loan program revolving fund.** There is created within the state treasury a revolving fund to be administered by the corporation and to be known as the downpayment loan revolving fund. The revolving fund shall be funded from the proceeds of general obligation bonds or other appropriations from the state legislature, and shall be used to carry out the purposes of this subpart.

§ **-326 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

### **I. Housing Alteration Revolving Loan Fund**

§ **-341 Purpose; findings and determinations.** The legislature finds that there are approximately one hundred twelve thousand persons of all ages with physical disabilities in the State. Many of them require alterations to their residences in order to accommodate their disabilities and assist them in maintaining independent lifestyles. These alterations include, but are not limited to, such basic alterations as modifications to kitchens, baths, doorways, doors, cabinets, drawers, windows, and other fixtures. These alterations are costly and largely unaffordable for persons with disabilities, many of whom live on a fixed income. The legislature further finds that the cost of these essential residential alterations is far less than the cost of the alternative of institutional care.

It is the purpose of this subpart to assist persons with physical disabilities by making available affordable loans for necessary alterations to their residences in order for them to maintain independent lifestyles.

§ **-342 Housing alteration revolving loan fund for persons with physical disabilities.** There is created a housing alteration revolving loan fund for persons with physical disabilities, to be administered by the corporation as a separate fund from the other funds under this chapter. The fund shall provide low interest loans to eligible persons with physical disabilities or their caregivers to make design alterations for the purposes of this subpart; provided that the maximum loan shall be \$25,000 per residence occupied by one or more eligible persons with physical disabilities. Any funds appropriated for the purpose of the housing alteration revolving loan fund for persons with physical disabilities and all moneys received or collected by the corporation for the purpose of the revolving fund shall be used for loans under this subpart; provided that interest earned on funds appropriated for the

housing alteration revolving loan fund may be used by the corporation for administrative purposes.

§ **-343 Program administration.** The corporation, in administering the housing alteration revolving loan fund program, shall establish the terms and conditions, maturities, interest rates, collateral, and other requirements for loans. The corporation may take all necessary actions to collect any delinquent amounts in the event of a default in the payment of any installment of principal or interest on any loans made from the fund and to otherwise secure such loans in a manner which affords reasonable protection of the State's resources. The corporation may enter into agreements with or purchase services required for the purposes of this subpart from any state or national bank authorized to accept or hold deposits in the State.

§ **-344 Rules.** The corporation, in consultation with the commission on persons with disabilities, shall adopt rules in accordance with chapter 91 with respect to the administration of this program and the fund, including but not limited to rules concerning income eligibility, certification of medical necessity, and degree of physical disability.

§ **-345 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### J. Homebuyers' Club

§ **-351 Homebuyers' club program.** (a) The corporation may establish a homebuyers' club program for participants who are desirous of purchasing a home and who have adequate incomes but who lack sufficient funds for the downpayment and closing costs. The primary focus of this program is to facilitate the purchase of homes by providing participants with strategies to save money, to resolve credit problems, and to educate participants on how to shop for and purchase a home.

(b) In establishing such a program, the corporation shall adopt rules pursuant to chapter 91 relating to establishing a savings program for participants based upon individual analyses of income and family expenses. The rules may also provide for integration of the homebuyers' club program with other governmental programs including but not limited to individual housing accounts under section 235-5.5, the state mortgage guarantee program under part III G, the downpayment loan program established under part III H, and the rent-to-own program established under part III F.

(c) The corporation may secure the services of another public or private entity to carry out the purposes of this section.

§ **-352 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### K. Rent-to-Own Program

§ **-361 Rent-to-own program.** (a) The corporation may establish a rent-to-own program under which housing units that are for sale may be rented to program participants. Under this program, the corporation shall credit a portion of the rent received toward the purchase of the unit.

(b) The sales price shall be established at the beginning of the rental term and shall remain fixed for the first five years after the rental agreement is executed. During this period, the participant shall have the option of purchasing the unit at the designated sales price. If the participant does not elect to purchase the unit within the five-year period, the renter shall forfeit the right to continue living in the unit and the unit shall be made available to another purchaser or renter.

(c) The corporation shall have the right to re-establish the sales price upon expiration of the option period or upon resale of the unit.

§ -362 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

**L. Reserved**

§§ -371 to -379 **Reserved.**

**M. State Sales Housing Program**

§ -391 **State sales housing.** Notwithstanding sections 359-8, 359-9, 359-39, or any other law to the contrary, but subject to any resolution of issuance under chapter 359, part IV, the corporation may permit any member of a tenant family of a housing project administered under chapter 359 or part II.A, or II.G, or any individual meeting the income standards under section 221(d)(3) of the National Housing Act to enter into a contract for the acquisition of a dwelling unit and lot or the acquisition of a dwelling unit and the lease of its lot, the lease to conform to chapter 171 with the exception that the lease shall not require bid, auction, or negotiation, in any project under part II.A and II.G, and chapter 359 which is suitable for sale and for occupancy by such purchaser or a member or members of the purchaser's family, upon the following terms:

- (1) The purchaser shall pay at least:
  - (A) A pro rata share cost of any services furnished the purchaser by the corporation, including but not limited to administration, maintenance, repairs, utilities, insurance, provision of reserves, and other expenses;
  - (B) Taxes on the purchaser's dwelling unit; and
  - (C) Monthly payments of interest and principal sufficient to amortize a sales price, equal to the greater of the unamortized debt or the appraised value (at the time such purchase contract is entered into) of the dwelling unit, in not more than forty years;
- (2) The interest rate shall be fixed at not less than the average interest cost of loans outstanding on the project, except that in the case of a project on which bonds are not outstanding the interest rate shall be fixed at not less than the going rate applicable to that project;
- (3) The principal payments shall be not less than one-half of one per cent a year of the sales price during the first five years after purchase, one per cent a year during the next five years, one and one-half per cent a year during the third five years, and thereafter not less than the principal payments resulting from a level debt service of interest and principal over the balance of the payment period; and
- (4) If at any time:

- (A) A purchaser fails to carry out the purchaser's contract with the corporation and if no member of the purchaser's family who resides in the dwelling assumes such contract; or
- (B) The purchaser or a member of the purchaser's family who assumes the contract does not reside in the dwelling, the corporation shall have an option to acquire the purchaser's interest under the contract upon payment to the purchaser or the purchaser's estate of an amount equal to the purchaser's aggregate principal payments plus the value to the corporation of any improvements made by the purchaser, less an amount equal to two and one-half per cent of the sales price.

§ -392 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### N. Homes Revolving Fund

§ -401 **Homes revolving fund.** (a) There is created a separate revolving fund to be administered by the corporation and to be designated as the "homes revolving fund". The homes revolving fund shall be funded from the proceeds of general obligation bonds of the State, revenue bonds, or other evidences of indebtedness of the State or the corporation, as may be authorized by the legislature from time to time, or from other sources as the legislature may determine.

(b) Pending authorization and issuance of such obligations, the director of finance, with the approval of the governor, may advance \$145,000,000, or so much thereof as is requested by the corporation, to the homes revolving fund from moneys available in the general fund; provided that the moneys advanced from the general fund shall be repaid by the corporation or by the State from the proceeds of obligations issued for the purposes of the fund, or from other sources.

(c) The corporation shall not be required to pay interest on any general fund moneys advanced to the homes revolving fund as provided in subsection (b).

§ -402 **Use of homes revolving fund.** (a) Moneys on deposit in the homes revolving fund shall be applied by the corporation from time to time for the purposes of developing and implementing affordable housing programs. The corporation shall provide the governor with a summary of any program to be developed, setting forth the various aspects of the program, including any projects or loan programs to be a part of the program, the methods of financing projects or loans, the programs, and other information as the corporation deems relevant or as the governor may request. Any affordable housing program may include, without limitation, development of infrastructure, development of off-site and on-site improvements required for development, providing short-term or interim construction loans, development and construction of housing, and advancing equity capital for the rental housing system administered by the corporation. The corporation shall adopt rules in accordance with chapter 91 with respect to the administration of any program and may adopt rules applicable to a single program which are different from rules applicable to other programs.

(b) Moneys on deposit in the homes revolving fund shall be expended by the corporation, subject to the following conditions and limitations:

- (1) Any expenditure from the homes revolving fund shall be made only upon the approval of the governor, after the board of directors of the corporation has determined that the purposes and amounts for which

the moneys are to be applied are consistent with the purposes of this section;

- (2) Expenditures of advances from the general fund authorized by section -401 may be made by the corporation from time to time with the approval of the director of finance, who may establish procedures and prescribe rules for controlling the expenditure and encumbrance of those funds;
- (3) Expenditures from the proceeds of general obligation bonds, revenue bonds, other evidences of indebtedness of the State as may be authorized, or from sources in excess of the amount advanced from the general fund under section -401, may be expended with the approval of the corporation's board of directors for any authorized purpose, and with the approval of the director of finance and the governor, for any authorized purpose; and
- (4) Moneys from the homes revolving fund shall not be used for mortgage loans or to pay administrative expenses.

(c) The corporation shall maintain proper books and records showing, among other things, the amount and purpose of the application of moneys on deposit in the homes revolving fund and the source of the moneys, and separate accounting for earnings on moneys on deposit in the homes revolving fund and proceeds of advances from the general fund and proceeds of borrowings.

§ -403 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### O. Dwelling Unit Revolving Fund

§ -411 **Dwelling unit revolving fund.** There is created a dwelling unit revolving fund. The funds appropriated for the purpose of the dwelling unit revolving fund and all moneys received or collected by the corporation for the purpose of the revolving fund shall be deposited in the revolving fund. The proceeds in the revolving fund shall be used to reimburse the general fund to pay the interest on general obligation bonds issued for the purposes of the revolving fund, for the necessary expenses in administering this part, and for carrying out the purposes of this part, including but not limited to the expansion of community facilities constructed in conjunction with housing projects, and supplementing building costs, federal guarantees required for operational losses, and all things required by any federal agency in the construction and receipt of federal funds for housing projects.

§ -412 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### P. Hawaii Development Revolving Fund

§ -421 **Hawaii development revolving fund.** (a) There shall be a revolving fund to be known as the Hawaii development revolving fund which shall be administered by the corporation. All repayments of principal and interest on loans or grants made by the corporation from the fund shall be placed in the Hawaii development revolving fund to be used for the purposes of this section.



(b) The corporation may make loans or grants, either before or after final subdivision approval, to cover planning, engineering, feasibility studies, and other initial costs, including the cost of options, agreements of sale, and downpayments of commencing projects to provide low or moderate cost housing through government assistance programs.

(c) In managing the fund, the corporation may cooperate with other public and private nonprofit organizations and may enter into loan or grant agreements with them. The necessity for the extent and nature of security required for a loan or grant shall be determined by the corporation. The security may include, but is not limited to, a borrowing resolution of the nonprofit organization.

The foregoing powers are subject, however, to the following restrictions and limitations:

- (1) No single loan or grant shall exceed two per cent of the project cost;
- (2) The loan shall be repaid with simple interest not to exceed six per cent per year; and
- (3) The moneys loaned shall be used only for the planning, engineering, feasibility studies, and other initial costs of commencing projects to provide nonprofit low or moderate cost housing.

(d) The corporation may adopt rules in accordance with chapter 91 to carry out the purposes of this section.

(e) For the purposes of this section, "government assistance programs" means housing programs qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.

§ -422 **Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

## Q. Rental Housing Trust Fund

§ -431 **Additional definitions.** As used in this subpart, unless a different meaning is clearly required by the context:

"Advisory commission" means the rental housing trust fund advisory commission established by this subpart.

"Develop" or "development" means the planning, financing, or acquisition of real and personal property; demolition of existing structures; clearance of real property; construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements; construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures; or any combination of the foregoing, of any housing project. It also includes any undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

"Fund" means the rental housing trust fund established in this subpart.

§ -432 **Rental housing trust fund.** (a) There is hereby established a rental housing trust fund to be placed within the corporation.

(b) An amount from the fund, to be set by the corporation and authorized by the legislature, may be used for administrative expenses incurred by the corporation in administering the fund; however, fund moneys may not be used to finance day-to-day administrative expenses of projects allotted fund moneys.

(c) The following may be deposited into the fund: appropriations made by the legislature, private contributions, repayment of loans, interest, other returns, and moneys from other sources.

(d) The fund shall be used to provide loans or grants for the development, pre-development, construction, acquisition, preservation, and substantial rehabilitation of rental housing units. Permitted uses of the fund may include but are not limited to planning, design, land acquisition, costs of options, agreements of sale, downpayments, equity financing, capacity building of nonprofit housing developers, or other housing development services or activities as provided in rules adopted by the corporation pursuant to chapter 91. The rules may provide for a means of recapturing loans or grants made from the fund if a rental housing project financed under the fund is refinanced or sold at a later date. The rules may also provide that moneys from the fund shall be leveraged with other financial resources to the extent possible.

(e) Moneys in the fund shall be used for the purpose of providing in whole or in part loans or grants for housing projects wherein:

- (1) At least fifty per cent of the available units are for persons and families with incomes at or below sixty per cent of the median family income; and
- (2) The remaining units are for persons and families with incomes at or below one hundred per cent of the median family income; provided that the corporation may establish rules to ensure full occupancy of fund projects.

(f) For the purposes of this subpart, the applicable median family income shall be the median family income for the county or standard metropolitan statistical area in which the project is located as determined by the United States Department of Housing and Urban Development, as adjusted from time to time.

(g) Providing loans and grants under this section; provided that the corporation shall establish loan-to-value ratios to protect the fund from inordinate risk and that under no circumstances shall the rules permit the loan-to-value ratio to exceed ninety-five per cent; and provided further that the underwriting guidelines include a debt-coverage ratio of not less than 1.05 to 1.

**§ -433 Rental housing trust fund advisory commission.** (a) There is established within the corporation the rental housing trust fund advisory commission consisting of seven members, five of whom shall be public members and appointed pursuant to section 26-34. The public members of the advisory commission shall serve four-year staggered terms, provided that the initial appointments shall be as follows: two members to be appointed for four years; two members to be appointed for three years; and one member to be appointed for two years. As part of this appointment process, an appropriate organization from each of the categories of organizations enumerated below shall submit a list of three public member nominees to the governor. The governor shall select and appoint one public member from each list.

The public members shall be representative of the following categories of organizations:

- (1) Real estate brokers and rental property managers;
- (2) Tenants and renters advocacy organizations;
- (3) Nonprofit housing developers and low income service providers;
- (4) Mortgage lenders; and
- (5) Architects and planners.

A county government official who shall be appointed for a two-year term on a rotating basis among counties and the governor's special assistant for housing or

the governor's designated representative shall be ex officio voting members of the advisory commission.

(b) The chairperson shall be a public member elected by the members of the advisory commission and shall serve not more than two one-year terms as chair.

(c) The vice-chair shall be a public member elected by the members of the advisory commission.

(d) Four members shall constitute a quorum. Four affirmative votes shall be necessary for all actions by the advisory commission.

(e) The members shall receive no compensation for services, but shall be entitled to necessary expenses, including traveling expenses, incurred in the performance of their duties.

(f) The advisory commission shall advise and serve as the liaison between the board of the corporation and the general public.

**§ -434 Duties of the advisory commission.** (a) In addition to any other duties granted by this subpart, the advisory commission shall advise and assist the board of the corporation, evaluate the fund program each year, and report its evaluation with suggested changes to the legislature not fewer than twenty days before the convening of each regular session starting with the regular session of 1998.

(b) In addition to any other powers and duties granted under subsection (a), the commission shall:

- (1) Define the guidelines, procedures, conditions, and details of loans and grants under this section; including, but not limited to the establishment of loan-to-value and debt-coverage ratios; and
- (2) Have the authority to obtain the services of technical and support staff from other government agencies to carry out the purposes of this chapter.

**§ -435 Eligible applicants for funds.** Eligible applicants for funds shall include nonprofit and for-profit developers, including government agencies, who are qualified in accordance with rules adopted by the corporation pursuant to chapter 91.

**§ -436 Eligible projects.** (a) Activities eligible for assistance from the fund shall include but not be limited to:

- (1) New construction, rehabilitation, or preservation of low-income rental housing units that meet the criteria for eligibility described in subsection (c);
- (2) The leveraging of moneys with the use of fund assets;
- (3) Pre-development activity grants or loans to nonprofit organizations; and
- (4) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing.

(b) Preference shall be given to projects producing units in at least one of the following categories:

- (1) Multifamily units;
- (2) Attached single-family units;
- (3) Apartments;
- (4) Townhouses;
- (5) Housing units above commercial or industrial space;
- (6) Single room occupancy units;
- (7) Accessory apartment units;
- (8) Employee housing; and

- (9) Other types of units meeting the criteria for eligibility set forth in subsection (c).

(c) The corporation shall establish an application process for fund allocation that gives preference to projects meeting the criteria set forth below that are listed in descending order of priority:

- (1) Serve the original target group;
- (2) Provide maximum number of units for the least amount of subsidy;
- (3) Are committed to serving the target population over a longer period of time;
- (4) Increase the integration of income levels of the immediate community area;
- (5) Meet the geographic needs of the target population, such as proximity to employment centers and services; and
- (6) Have favorable past performance with fund moneys.

The corporation may include other criteria in the above process as it deems necessary to carry out the purposes of this part.

If the corporation, after applying the process described in this subsection, finds a nonprofit project equally ranked with a for-profit or government project, the corporation shall give preference to the nonprofit project in allotting fund moneys.

§ **-437 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities conferred upon the corporation.

#### **R. Expenditures of Revolving Funds Under the Corporation Exempt from Appropriation and Allotment**

§ **-441 Expenditures of revolving funds under the corporation exempt from appropriation and allotment.** Except as to administrative expenditures, and except as otherwise provided by law, expenditures from these revolving funds administered by the corporation under part III I, O, P, or Q, sections -170, -223, -402, -411, -421, or 516-44 may be made by the corporation without appropriation or allotment of the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any revolving fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended. Nothing in sections 37-31 to 37-41 shall require the proceeds of the revolving funds identified in part I, O, P, or Q, or section -170, -223, or 516-44 to be reappropriated annually.

§ **-442 Additional powers.** The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it.

#### **PART IV. HOMELESS ASSISTANCE**

§ **-451 Additional definitions.** As used in this part:

“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 part, 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 homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for up to six weeks.

“Homeless” means:

- (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and
- (2) An individual or family who has a primary nighttime residence that is:
  - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
  - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
  - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

“Homeless facility” means a development designed to provide shelter for homeless families or individuals pursuant to this part, or to facilitate any other homeless program authorized by this part, and may include emergency or transitional shelters.

“Homeless shelter stipend” means a payment to a provider agency or to the corporation on behalf of a homeless family or individual to assist with the costs of operating a homeless facility and providing appropriate services.

“Provider agency” means an organization, including its board and officers and any employees, contractors, or agents, contracted by the corporation to provide labor and services to any homeless facility, or any other program for the homeless authorized by this part, that is:

- (1) 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; or
- (2) A nonprofit organization, with a governing board whose members have no material conflict of interest and serve without compensation with 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.

In addition, the organization shall be qualified by the corporation to operate and manage a homeless facility, or any other program for the homeless authorized by this part, pursuant to standards and criteria established by duly adopted rules for eligibility.

“Transitional shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for up to twenty-four months, pursuant to rule.

**§ -452 Duties.** (a) In addition to any other power or duty prescribed by law, the corporation shall administer and operate homeless facilities and any other program for the homeless authorized by this part; establish programs for the homeless; and take any other actions necessary to effectuate the purposes of this part.

(b) The corporation shall adopt rules pursuant to chapter 91 for the purposes of this part; provided that these rules or any rules relating directly to homelessness authorized by any statute, shall be exempt from the requirements of chapter 91, and shall take effect immediately upon filing with the office of the lieutenant governor.

**§ -453 Exception to liability for donors.** (a) Any donor who gives money to a provider agency, to a homeless facility, to or through the corporation, or

for any other program for the homeless authorized by this part, 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, to a homeless facility, to or through the corporation, or for any other program for the homeless authorized by this part, 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 corporation 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 in good faith and without remuneration or expectation of remuneration provides services or materials used to build and construct a facility for the homeless, or who renovates, repairs, or maintains an existing or acquired facility for the homeless, or who provides shelter to homeless persons, 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 corporation shall be responsible for inspecting, reviewing, analyzing, qualifying, and determining that the land, structures, materials, or services donated to the corporation for use by the corporation in facilities for the homeless are reasonably safe for public use.

§ **-454 Contract or conveyance to the corporation.** Notwithstanding any other law to the contrary, the board of land and natural resources or other state agency holding such lands and improvements, for purposes of this part, 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 the corporation or its designee. The land and improvements shall be used by the corporation or its designee for homeless facilities, or for any other program for the homeless authorized by this part.

§ **-455 Program administration.** To the extent that appropriations are made available, the corporation may contract with a provider agency to administer homeless facilities, or any other program for the homeless created by this part. The selection of provider agencies to administer homeless facilities, or any other program for the homeless authorized by this part, shall not be subject to chapters 42D, 102, 103, and 103D. The selection of provider agencies shall be subject to qualifying standards and criteria established by rule.

§ **-456 Time limits.** To the extent that appropriations are made available, a provider agency shall provide shelter or any other program assistance authorized by this part to eligible homeless families and homeless individuals not later than two days, or such time as is set by rule which shall not be later than seven days, after they apply and qualify for the shelter or other program assistance, pursuant to rule. Such time limits may be waived at the discretion of the corporation for a maximum period of fourteen days for the purpose of implementing repairs to the subject shelter, which repairs the corporation deems major or extensive.

§ **-457 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 part, or the corporation operating and managing its own homeless facility, shall be responsible for determining 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 or the corporation operating and managing its own homeless facility shall determine the degree of need for each homeless family or individual and in its determination shall consider the resources available and the number of potential eligible applicants in the area served by the homeless facility or other program for the homeless authorized by this part.

(c) The corporation may establish by rule standards and criteria for eligibility, need, and priority for each program; provided that the corporation may establish by rule exceptions to these eligibility requirements based on special circumstances.

**§ -458 Abuse of assistance.** (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this part, or the corporation operating and managing its own homeless facility, shall be responsible for determining 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, the corporation or its designee, or provider agencies together with the corporation, may act to bar homeless families or individuals from participating further in any homeless facility, may issue a writ of possession, and take such other actions as provided by rule.

The enforcement of a writ of possession shall be effected either by an officer appointed by the corporation, who shall have all of the powers of a police officer for all action in connection with the enforcement of the writ, or any other law enforcement officer of the State or any county, whose duty it shall be to enforce the writ. The person enforcing the writ shall remove all persons from the premises and put the corporation or its designee, or the provider agency designated by the corporation, in full possession thereof.

Upon eviction, the household goods and personal effects of the person against whom the writ is entered, and those of any persons using the premises incident to the person's holding, may be removed from the premises immediately and sold or otherwise disposed of by the corporation or its designee, or the provider agency. If the action is taken, the corporation or its designee, or the provider agency, shall have a lien on the property so removed for the expenses incurred by it in moving the property.

(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 part, after reasonable warning or request to leave by that provider agency's authorities, the corporation or its designee, or a police officer, shall be guilty of a misdemeanor; provided that the offense in this subsection shall be in addition to any other applicable offense in the Hawaii Penal Code. 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, or the corporation or its designee, has filed a copy of its current house 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 house 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.

**§ -459 Exemptions.** (a) Any compensation received by a provider agency for services rendered to homeless families or individuals, or in operating or manag-

ing a homeless facility authorized by this part, 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 part, is exempt, for purposes of those facilities or programs, from any requirements contained in part VIII of chapter 346 and chapters 467 and 521.

§ -460 **Emergency/transitional shelter volunteers exempted.** (a) For the purposes of this section, "emergency/transitional shelter volunteer" means an individual who:

- (1) Is a tenant at an emergency or transitional shelter administered pursuant to this part;
- (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 corporation 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 any labor law.

§ -461 **Annual program audits.** (a) The corporation shall ensure that a compliance audit by an independent auditing agency is carried out expeditiously at least once each fiscal biennium period for any provider agency which dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this part. The audit shall include recommendations to address any problems found.

(b) Copies of each audit shall be submitted to the corporation, 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 part shall contain a requirement that the provider agency shall address the recommendations made by the auditing agency, subject to exceptions as set by the corporation.

(d) Failure to carry out the recommendations made by the auditing agency may be grounds for the corporation to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies.

§ -462 **Provider agency and donor cooperation are not in restraint of trade.** No provider agency or any other agency, or donor or donors, or method or act



thereof that complies with this part, 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.

§ **-463 Construction of part.** If there is any conflict between this part and any other law, this part shall control.

§ **-464 Homeless shelter stipends.** (a) Effective July 1, 1998, the stipend limits per shelter unit of zero bedrooms shall be adjusted by the corporation on July 1, 1998, and each first day of July thereafter pursuant to standards established by rule which may consider changes in the cost of operating homeless facilities, the fair market rents, the consumer price index, or other relevant factors. A "shelter unit of zero bedrooms" means a living unit which is a studio unit or a single-room occupancy unit. The homeless shelter stipend at transitional shelters for larger shelter unit sizes shall be related to the difference in unit size, pursuant to standards established by rule.

(b) The corporation may make or may contract to make homeless shelter stipend payments on behalf of one or more homeless families or individuals to a provider agency operating or managing an emergency or transitional shelter or, in the case that the corporation itself operates and manages a homeless facility, to the corporation in such amounts and under such circumstances as provided by rule. The contract may specify a minimum total amount of homeless shelter stipends to be received by a provider agency for making its shelter and services available to eligible homeless families or individuals, pursuant to rule.

(c) In making homeless shelter stipend payments to a provider agency the corporation may establish minimal services to be provided by the provider agency to homeless families or individuals at the agency's shelter. The corporation may also direct provider agencies to establish and manage a savings account program as described in subsection (e). Additionally, the corporation may direct provider agencies to subcontract for outreach services from other private agencies specializing in programs for the unsheltered homeless.

(d) Provider agencies and the corporation may establish and collect shelter and services payments from homeless families of individuals in addition to the amount received in homeless shelter stipend payments pursuant to rule. Provider agencies and the corporation may also set aside a portion of the payments in a savings account to be made available to homeless families or individuals when these families and individuals vacate the shelter.

§ **-465 Additional powers.** The powers conferred upon the corporation by this part shall be in addition and supplemental to the powers conferred upon it by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities conferred upon the corporation."

SECTION 3. Section 26-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The employees retirement system as constituted by chapter 88 is placed within the department of budget and finance for administrative purposes. The functions, duties, and powers, subject to the administrative control of the director of finance, and the composition of the board of trustees of the employees retirement system shall be as heretofore provided by law.

The public utilities commission is placed within the department of budget and finance for administrative purposes only.

[The housing finance and development corporation is placed within the department of budget and finance for administrative purposes only.

The rental housing trust fund established under chapter 201F, is placed within the department of budget and finance for administrative purposes only.]”

SECTION 4. Section 26-14, Hawaii Revised Statutes, is amended to read as follows:

“**§26-14 Department of human services.** (a) The department of human services shall be headed by a single executive to be known as the director of human services.

(b) The department shall administer programs designed to improve the social well-being and productivity of the people of the State. Without limit to the generality of the foregoing, the department shall concern itself with problems of human behavior, adjustment, and daily living through the administration of programs of family, child and adult welfare, economic assistance, health care assistance, rehabilitation toward self-care and support, public housing, and other related programs provided by law.

[(c) The Hawaii housing authority, as now constituted by chapter 356 shall be a constituent corporate unit of the department of human services with the director of human services as an additional commissioner, ex officio, of the housing authority, serving for a term consistent with the director’s appointment. Notwithstanding any other provisions of this chapter, but subject to the administrative control of the director of human services, the functions, duties, and powers of the housing authority, as heretofore provided by law, shall be vested in the Hawaii housing authority.]

[(d)](c) The functions and authority heretofore exercised by the department of public welfare, the bureau of sight conservation and work with the blind (except for the transcription services program transferred to the department of education), the council on veterans’ affairs, and any other agency of the state or county governments with respect to the assistance and care of the indigent and medically indigent as heretofore constituted are transferred to the department of human services established by this chapter.”

SECTION 5. 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, the housing and community development corporation of Hawaii, 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 6. Section 46-15.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the [housing finance and development corporation] housing and community development corporation of Hawaii pursuant to chapter [201E] \_\_\_\_\_ insofar as such powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low and moderate income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the [housing finance and development corporation,] housing and community development corporation of Hawaii pursuant to section [201E-205,] \_\_\_\_-16; and provided further that the provisions of section [201E-30.6] \_\_\_\_-15 shall not apply to this section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. The powers shall include the power, subject to applicable limitations, to:

- (1) Develop and construct dwelling units, alone or in partnership with developers;
- (2) Acquire necessary land by lease, purchase, exchange, or eminent domain;
- (3) Provide assistance and aid to a public agency or person in developing and constructing new housing and rehabilitating old housing for elders of low and moderate income, other persons of low and moderate income, and persons displaced by any governmental action, by making long-term mortgage or interim construction loans available;
- (4) Contract with any eligible bidders to provide for construction of urgently needed housing for persons of low and moderate income;
- (5) Guarantee the top twenty-five per cent of the principal balance of real property mortgage loans, plus interest thereon, made to qualified borrowers by qualified lenders;
- (6) Enter into mortgage guarantee agreements with appropriate officials of any agency or instrumentality of the United States in order to induce those officials to commit to insure or insure mortgages under the provisions of the National Housing Act, as amended;
- (7) Make a direct loan to any qualified buyer for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;
- (8) Provide funds for a share, not to exceed fifty per cent of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of residential property; and
- (9) Sell or lease completed dwelling units.

For purposes of this section, a limitation is applicable to the extent that it may reasonably be construed to apply to a county.”

SECTION 7. Section 46-15.2, Hawaii Revised Statutes, is amended to read as follows:

“**§46-15.2 Housing; additional county powers.** In addition and supplemental to the powers granted to counties by section 46-15.1, any county shall have and may exercise any of the following powers:

- (1) To provide assistance and aid to persons of low and moderate income in acquiring housing by providing loans secured by a mortgage, includ-

ing by acquiring such loans from private lenders for which such county has made advance commitment to acquire such loans, and to make and execute contracts with private lenders or a public agency for the origination and servicing of such loans and pay the reasonable value of such services;

- (2) In connection with the exercise of any powers granted under this section or section 46-15.1, to establish one or more loan programs and to issue bonds under chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1; provided that:
  - (A) If bonds are issued pursuant to chapter 47 to finance one or more loan programs, the county may establish such qualifications as it deems appropriate;
  - (B) If bonds are issued pursuant to chapter 49 to finance one or more loan programs, such loan program or programs shall comply with the provisions of [part II, subpart B of chapter 201E;] part III.B. of chapter ;
  - (C) If bonds are issued pursuant to section 47-4 or chapter 49, any loan program established pursuant to this section or any county-owned dwelling units constructed under section 46-15.1 shall be and constitute an “undertaking” under section 49-1 and the provisions of chapter 49 shall apply to such loan program or county-owned dwelling units to the extent applicable;
  - (D) In connection with the establishment of any loan program pursuant to this section, a county may employ financial consultants, attorneys, real estate counselors, appraisers, and such other consultants as may be required in the judgment of the county and fix and pay their compensation from funds available to the county therefor;
  - (E) Notwithstanding any limitation otherwise established by law, with respect to the rate of interest on any loan made under any loan program established pursuant to this section, such loan may bear such rate or rates of interest per year as the county shall determine; provided no loan made from the proceeds of any bonds of the county shall be under terms or conditions which would cause the interest on such bonds to be deemed subject to income taxation by the United States of America;
  - (F) Notwithstanding any limitation otherwise established by law, with respect to the amount of compensation permitted to be paid for the servicing of loans made under any loan program established pursuant to this section, a county may fix such reasonable compensation as the county may determine;
  - (G) Notwithstanding the requirement of any other law, a county may establish such separate funds and accounts with respect to bonds issued pursuant to chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1 as such county may deem appropriate;
  - (H) Notwithstanding any provision of chapter 47 or 49 or of any other law, but subject to the limitations of the State Constitution, bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 may be sold at public or private sale at such price, may bear interest at such rate or rates per year, may be payable at such time or times, may mature at such time or times, may be made redeemable before maturity at the option of the county, the holder, or both, at such price or prices and upon such

- terms and conditions, and may be issued in coupon or registered form, or both, all as the county may determine;
- (I) If deemed necessary or advisable, the county may designate a national or state bank or trust company within or without the State to serve as trustee for the holders of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 and enter into a trust indenture, trust agreement, or indenture of mortgage with such trustee whereby such trustee may be authorized to receive and receipt for, hold, and administer the proceeds of such bonds and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues and other receipts derived by the county from the application of the proceeds of such bonds and to apply such revenues and receipts to the payment of the principal of, or interest on such bonds, or both. Any such trust indenture, trust agreement, or indenture of mortgage entered into with the trustee may contain any covenants and provisions as may be deemed necessary, convenient, or desirable by the county in order to secure such bonds. The county may pledge and assign to the trustee any agreements related to the application of the proceeds of such bonds and the rights of the county thereunder, including the rights to revenues and receipts derived thereunder. Upon appointment of the trustee, the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of such bonds, or may elect to limit the functions the director of finance performs as such fiscal agent, and may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the director of finance deems necessary, advisable, or expedient, including, without limitation, the holding of such bonds and coupons which have been paid and the supervision and conduction or the destruction thereof in accordance with law;
- (J) If a trustee is not appointed to collect, hold, and administer the proceeds of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1, or the revenues and receipts derived by the county from the application of the proceeds of such bonds, all as provided in subparagraph (I), the director of finance of such county may hold such proceeds or revenues and receipts, as the case may be, in a separate account in the treasury of the county, to be applied solely to the carrying out of the ordinance, trust indenture, trust agreement, or indenture of mortgage, if any, authorizing or securing such bonds; and
- (K) Any law to the contrary notwithstanding the investment of funds held in reserves and sinking funds related to bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 shall comply with the provisions of section [201E-70;] ~~167~~; provided that any investment which requires approval by the county council pursuant to section 46-48 or 46-50 must first be approved by the county council.
- (3) To acquire such policies of insurance and enter into such banking arrangements as such county may deem necessary in order to better

secure bonds issued to provide money to carry out the purposes of this section or section 46-15.1 including, without limitation, contracting for a support facility or facilities as may be necessary with respect to bonds issued with a right of the holders to put such bonds and contracting for interest rate swaps; and

- (4) To do any and all other things necessary or appropriate to carry out the purposes and exercise the powers granted in section 46-15.1 and this section.”

SECTION 8. Section 53-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “authority”, “housing authority”, “State”, “government”, “federal government”, and “real property” to read:

“(2) [“Authority,” “housing authority,” “State,”] “Housing and community development corporation of Hawaii,” “corporation,” “government,” “federal government,” and “real property” have the respective meanings set forth for such terms in chapter [356.] \_\_\_\_.”

2. By adding a new definition to be appropriately inserted and to read:

““State” means the State of Hawaii.”

SECTION 9. Section 206-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “State” to read:

“[“State”, “governor”, “lieutenant governor”, “government”,] “Government” and “federal government” shall have the respective meaning<sup>2</sup> set forth in section [356-2.] \_\_\_\_.”

2. By adding three new definitions to be appropriately inserted and to read:

““State” means the State of Hawaii.

“Governor” means the governor of the State of Hawaii.

“Lieutenant governor” means the lieutenant governor of the State of Hawaii.”

SECTION 10. Section 209-16, Hawaii Revised Statutes, is amended to read as follows:

**“§209-16 Housing relief.** (a) Whenever the governor pursuant to section 209-2 declares a state disaster, the governor may invoke this part. After the declaration by the governor and pursuant to the governor’s proclamation, the housing [finance] and community development corporation of Hawaii shall construct, manage, and operate housing units on public lands which may be set aside by the governor, using for the purpose the funds available or made available to the [authority.] housing and community development corporation of Hawaii.

(b) Housing so constructed shall be of standard quality and shall conform substantially to the specifications used on other projects controlled by the [Hawaii housing authority.

(c) Once the housing finance and development corporation has completed the construction of such housing units, the units shall be turned over to the Hawaii housing authority for operational purposes.] housing and community development corporation of Hawaii.”

SECTION 11. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

**“§247-7 Disposition of taxes.** All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year, twenty-five per cent shall be paid into the rental housing trust fund established by section [201F-2] 432 and twenty-five per cent shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed to the natural area partnership and forest stewardship programs by the department of land and natural resources after joint consultation with the forest stewardship committee and the natural area reserves system commission.”

SECTION 12. Section 359-13, Hawaii Revised Statutes, is amended to read as follows:

**“§359-13 Housing authority, revolving fund.** (a) The director of finance shall set up, out of any moneys appropriated for the purposes of this part, a revolving fund to be known as “the housing revolving fund”. All unexpended balances of appropriations, allocations, allotments, special revolving funds, or other funds heretofore created and made available for the purposes of developing or administering any housing subject to this part, or for the purposes of developing or administering any housing under chapter 324 of the Revised Laws of Hawaii 1945, shall be transferred to the housing revolving fund and are appropriated for the purposes of this part; provided, however, that any unexpended balances in any special revolving funds or other funds created and made available for housing developed, in whole or in part, with federal funds or with assistance from the federal government or for housing undertaken pursuant to contract between the federal government and the State or the authority under Title V of Public Law 849 of the 76th Congress, as amended, shall be segregated from other funds and shall be deposited and maintained as required by the federal government. There shall further be deposited in the housing revolving fund, on or after the date of expiration or repeal of the Hawaii Defense Act (subject, however, to the provisions of the second proviso of section 13139 of the Revised Laws of Hawaii 1945, and any act of the Twenty-fourth Legislature making other disposition of funds in specific instances), all unexpended moneys appropriated for the purposes of the Hawaii Defense Act by Act 24 of the Special Session Laws of 1941 and Act 96 of the Session Laws of 1943, and all funds collected, reimbursed, or otherwise realized under the Hawaii Defense Act which, were it not for the expiration or repeal of the Hawaii Defense Act, would have been available for the purposes of the Act, the sums so deposited being hereby appropriated for the purposes of this part.

(b) Except as otherwise provided in part IV of this chapter or by any resolution of issuance adopted thereunder or by any bonds issued thereunder or by any security provided or furnished thereunder, all moneys received by the Hawaii housing authority under or pursuant to this part, including refunds, reimbursements, rentals, fees, and charges received from tenants, shall be deposited in the housing revolving fund, to the extent permitted by federal law or regulation, and are hereby appropriated for the purposes of this part. Except as otherwise provided in this chapter, the housing revolving fund may be expended by the authority for any and all of the purposes of this part, including, without prejudice to the generality of the foregoing, the acquisition, clearance, and improvement of property; the construction and reconstruction of building sites; the construction, reconstruction, repair, remodeling, extension, equipment, and furnishing of housing; the development and administration of housing; the payment of rentals; and administration and other expenses. This section shall be subject to applicable federal law and regulation, to any contracts between the federal government and the State or the authority relating

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to housing subject to this part, and to the terms and conditions of contributions or other assistance from the federal government. Such provisions shall also be subject to part IV of this chapter, to any resolution of issuance adopted thereunder that is applicable to any housing project developed or administered under this part, to any bonds secured, in whole or in part, by the income or revenues from any such housing project or by any such housing project, and to the terms, covenants, and conditions of any other security relating to any such bonds or to any such housing project furnished under part IV.

SECTION 13. Act 279, Session Laws of Hawaii 1992, as amended by Act 148, Session Laws of Hawaii 1993, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect upon its approval and shall be repealed on July 1, [1997;] 2000; provided that the repeal of this Act shall not affect the right to recover grants, attorneys’ fees, and other costs under section 6.”

SECTION 14. (a) All references to ‘housing finance and development corporation’, or like terms, as the case may be, in chapter 516 and sections 10-2, 10-13.6, 27-11, 36-24, 46-15.1, 53-17, 53-22(e), 111-8, 111-9, 171-2, 171-18.5, 171-50.2, 206E-15, 209-16, 209-17, 237-29, 519-2(b), and 519-3(b), Hawaii Revised Statutes, shall be amended to ‘housing and community development corporation of Hawaii’, or like terms, as the case may be, as the context requires.

(b) All references to ‘Hawaii housing authority’ or ‘authority’, or like terms, as the case may be, in chapters 358D, 359 and sections 53-6, 76-16, 171-2, 206E-15, 209-16(b), 237-29, 290-1, 290-8, and 521-7, Hawaii Revised Statutes, shall be amended to ‘housing and community development corporation of Hawaii’ or ‘corporation’, or like terms, as the case may be, as the context requires.

SECTION 15. The revisor of statutes shall substitute all references made to ‘chapter 201E’ or any specific section or part of chapter 201E, as the case may be, in sections 10-2, 10-13.6, 46-4, 46-15.1, 46-15.2, 53-17, 104-2, 171-18.5, 205-4(a), 237-29, 321-15.6, 514A-14.5, 514A-108, and 516-1, Hawaii Revised Statutes, with the corresponding chapter, part, or section number of the new law created and codified under this Act, as appropriate.

SECTION 16. The revisor of statutes shall substitute all references made to ‘chapter 356’ or any specific section or part of chapter 356, as the case may be, in sections 237-29, 514A-108, and 516-104, Hawaii Revised Statutes, with the corresponding chapter, part, or section number of the new law created and codified under this Act, as appropriate.

SECTION 17. The revisor of statutes shall substitute all references made to ‘chapter 358D’ or any specific section or part of chapter 358D, as the case may be, in sections 46-1.5, 237-23, 346-152, 467-2, and 480-11, Hawaii Revised Statutes, with the corresponding chapter, part, or section number of the new law created and codified under this Act, as appropriate.

SECTION 18. Effective July 1, 1998, chapters 201E, 201F, 356, 358D, 359A, 360, and 359, parts III, V, VI, and VII, Hawaii Revised Statutes, are repealed.

SECTION 19. The governor shall select a management team and appoint a representative from the governor’s office to spearhead the management team and



may hire necessary staff without regard to chapters 76 and 77, Hawaii Revised Statutes, to:

- (1) Develop the appropriate transition plans;
- (2) Rework position descriptions;
- (3) Revise personnel classifications;
- (4) Develop an organizational structure including proposals to consolidate the administrative functions of the former housing agencies;
- (5) Prepare a proposed budget; and
- (6) Attend to other administrative details;

so the housing and community development corporation of Hawaii can be initially operational by July 1, 1998.

SECTION 20. The jurisdiction, functions, powers, duties, and authority heretofore exercised by the housing finance and development corporation, the Hawaii housing authority, and the rental housing trust fund shall be transferred to and conferred upon the housing and community development corporation of Hawaii 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 housing and community development corporation of Hawaii shall succeed to all of the rights and powers previously exercised, and all of the duties and obligations incurred by the housing finance and development corporation, the Hawaii housing authority, and the rental housing trust fund 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 housing finance and development corporation, the Hawaii housing authority, and the rental housing trust fund to implement provisions of the Hawaii Revised Statutes the substance of which are reenacted or made applicable to the housing and community development corporation of Hawaii by this act, shall remain in full force and effect until amended or repealed by the executive director of housing pursuant to chapter 91.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the housing finance and development corporation, the Hawaii housing authority, and the rental housing trust fund pursuant to the provisions of the Hawaii Revised Statutes, the substance of which are reenacted or made applicable to the housing and community development corporation of Hawaii by this Act, shall remain in full force and effect.

SECTION 21. All officers and employees whose functions are transferred to the housing and community development corporation of Hawaii 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.

Employees who, prior to this Act were exempt from civil service, and who are transferred to the housing and development corporation of Hawaii pursuant to this Act shall continue to retain their exempt status after the transfer and shall not suffer any loss of seniority, prior service credit, vacation, sick leave or other employee benefits as a consequence of this Act; provided that subsequent changes in status may be pursuant to applicable civil service and compensation laws. In order to facilitate a smooth transition of activities, temporary positions which are currently exempt from civil service may be temporarily continued as exempt from civil service. Any exemption under this provision may cease at such time as the current employee terminates, or the position is converted to permanent status, or expires.

**SECTION 22.** All records, equipment, files, supplies, contracts, books, papers, documents, maps, appropriations, and other property heretofore made, used, acquired, or held by the housing finance and development corporation, the Hawaii housing authority and the rental housing trust fund in the exercise of the functions to be transferred by this Act shall be transferred with the functions to which they relate to the housing and community development corporation of Hawaii.

**SECTION 23.** The Governor's office shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 1998, a detailed plan describing how:

- (1) The corporation will increase rental housing and supportive opportunities for low income and special need segments of Hawaii's population;
- (2) The corporation will provide private and non-profit housing developers with incentives to encourage the development of affordable housing;
- (3) The prioritization of the corporation's role in financing the development of housing projects will impact its structure and operations;
- (4) The de-emphasis of the corporation's role in the development of housing projects will impact its structure and operations; and
- (5) All other housing functions and employees of the state may be transferred to the housing and community development corporation of Hawaii.

**SECTION 24.** It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any state agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor is authorized and empowered to modify the strict provisions of this Act, but shall promptly report any such modifications with the reasons therefor to the legislature at its next session thereafter for review by the legislature. Nothing contained in this chapter shall affect the validity or the terms and provisions of any bond heretofore issued by the State, the Hawaii housing authority, or the housing finance and development corporation under prior law.

**SECTION 25.** 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 the regular and if applicable, special sessions of 1997 and 1998, 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 the "housing and community development corporation of Hawaii" 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 26. 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 27. Notwithstanding any provision to the contrary, the terms of the members appointed to the commission of the Hawaii housing authority, the rental housing trust fund commission, and the board of directors of the housing finance and development corporation shall terminate no later than June 30, 1998.

SECTION 28. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 29. This Act shall take effect on July 1, 1998; provided that:

- (1) Section 11 shall take effect on June 30, 1997; and
- (2) Sections 17, 21, and 27 shall take effect upon approval.

(Approved July 3, 1997.)

#### Notes

1. No subsection (b).
2. Prior to amendment "meanings" appeared here.

## ACT 351

H.B. NO. 141

A Bill for an Act Relating to Volunteer Service.

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

SECTION 1. The legislature finds that the willingness of persons to volunteer their time and services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers. The contributions of programs, activities, and services to communities are greatly diminished and worthwhile programs, activities, and services are severely hampered by the unwillingness of persons to serve either as volunteers or as uncompensated officers, directors, or trustees of volunteer entities. Moreover, the legislature is painfully cognizant that severe budget restrictions, necessitated by the State's current economic woes, have placed an increasing burden on volunteer entities to provide more services with less resources.

In meeting this challenge, volunteer entities are being forced to rely increasingly upon the assistance of volunteers. Consequently, the legislature finds that it is necessary to provide some limited immunity to volunteers to ensure the ability of volunteer entities to maximize this vital resource. However, the legislature believes it is in the public interest to strike a balance between the right of an innocent person to seek redress for injury and the right of an individual to freely give of the person's time and energy, without compensation, as a volunteer in service to the person's community, without fear of personal liability for acts undertaken in good faith and absent gross negligence, wilful or wanton conduct, or intentional misconduct on the part of the person volunteering.

Accordingly, the purpose of this Act is to encourage persons to volunteer their time and services for the good of their communities, by providing them with limited immunity, and to ensure a means of redress for an innocent, injured party.

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

**“CHAPTER  
VOLUNTEER SERVICE**

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

“Governmental entity” means any agency, association, authority, board, commission, division, office, officer, public body, task force, or any other similar entity authorized or established by any county or the State.

“Nonprofit corporation” means any corporation that is exempt from taxation pursuant to section 501(a) of the Internal Revenue Code, 26 U.S.C. section 501(a).

“Nonprofit organization” means any organization that is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, 26 U.S.C. section 501(c), as amended.

“Volunteer” means a person performing services without compensation, other than reimbursement for actual expenses incurred, for a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity. The term includes a volunteer serving as a director, officer, trustee, member, or direct service volunteer.

§ -2 **Scope of immunity.** (a) A volunteer shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting in damage or injury if:

- (1) The volunteer was acting in good faith and within the scope of the volunteer’s official functions and duties for a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity;
- (2) The damage or injury was caused by the volunteer’s negligent conduct; and
- (3) With respect to a nonprofit organization, nonprofit corporation, or hospital, the entity for which the volunteer was acting either:
  - (A) Has a general liability policy in force, both at the time of injury and at the time the claim is made against the entity, and the minimum coverage is in an amount of not less than: \$200,000 per occurrence and \$500,000 aggregate; or
  - (B) Has total assets, exclusive of grants and allocations, of less than \$50,000.

(b) In any suit against a nonprofit organization, a nonprofit corporation, a hospital, or a governmental entity for civil damages based upon the negligent act or omission of a volunteer, proof of the act or omission shall be sufficient to establish the responsibility of the entity therefor under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer with respect to any act or omission included under subsection (a).

§ -3 **Exception.** Notwithstanding section -2, if otherwise permitted by law, a person may sue and recover civil damages from a volunteer based upon:

- (1) Any conduct engaged in by the volunteer that would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct;

- (2) Any act or omission in connection with the operation of a motor vehicle;
- (3) Any conduct engaged in by the volunteer while the volunteer is unreasonably interfering with the lawful activities of another;
- (4) Any conduct engaged in by the volunteer that takes place on private property when the volunteer's presence on the property was not consented to by the owner;
- (5) Any act or omission within a volunteer's scope of practice for which the volunteer is licensed, certified, permitted, or registered under state law to perform; and
- (6) Any criminal offense committed by the volunteer."

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

(Approved July 3, 1997.)

## ACT 352

H.B. NO. 1686

A Bill for an Act Relating to Procurement.

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

SECTION 1. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§103D- Tax clearances; setoff for due and unpaid taxes.** (a) Unless the director of taxation determines that waiver of the Internal Revenue Service tax clearance requirement is necessary to expedite or facilitate the procurement process and is in the best interest of the State, and waives the Internal Revenue Service tax clearance requirement, no contract shall be binding or effective until the contractor secures and the purchasing agency receives a tax clearance from the director of taxation and the Internal Revenue Service to the effect that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued, under title 14 that are administered by the department of taxation and under the Internal Revenue Code, against the contractor have been paid.

(b) During the term of a contract, if a lien is imposed against the contractor for a tax debt under section 231-33 or the contractor fails to timely file all tax returns and pay all taxes, interest, and penalties due to the Internal Revenue Service, the comptroller or respective county director of finance, upon request of the director of taxation, shall set off the amount of the tax debt against any payment due to the contractor until the tax debt is paid in full.

(c) All state and county procurement officers or agents shall withhold final payment of a contract until the receipt of tax clearances from the director of taxation and the Internal Revenue Service. Notwithstanding sections 40-57 and 40-58, if a contractor fails to provide the requisite tax clearances within six months of the completion of the contract, the state or county procurement officer or agent shall first notify the department of taxation which in turn will notify the Internal Revenue Service, of amounts payable to the contractor on completed contracts. The department of taxation and the Internal Revenue Service, within thirty days, shall request the procurement officer or agent to set off the amount of taxes due against any payment due to the contractor until the tax debt is paid in full to the State or the Internal Revenue Service, or both. No final bill or invoice from the contractor shall

be required as a condition to the setoff. Any remaining contract balance shall revert to the appropriation under which it was encumbered.

(d) This section shall not apply to any contract of less than \$25,000 or any contract entered into pursuant to section 103D-305 or 103D-307.

(e) This section shall not apply to a contractor who the director of taxation certifies is:

- (1) Contesting the validity of a tax debt, or that any tax, penalty, or interest is due and owing the Internal Revenue Service in an administrative or judicial appeal; or
- (2) In good standing, having entered into a plan or plans in which the tax debt, or any tax, penalty, or interest due and owing the Internal Revenue Service is being paid to the department of taxation or the Internal Revenue Service.’’

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding two new sections to part X to be appropriately designated and to read as follows:

“**§103D- Application of this part.** The preferences in this part shall apply to procurements made pursuant to sections 103D-302 and 103D-303.

**§103D- Preference to bidders on state agency contracts.** (a) The requirements in this section are in addition to any other applicable requirements provided in this chapter.

(b) The preference in this section may not be used in combination with any other preference otherwise available to a bidder under state or federal law.

(c) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed all state tax returns due to the State and paid all amounts owing on such returns for two successive years prior to submitting the bid; provided that the amount of that bid is not more than seven per cent higher than the amount bid by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the bid by the state tax paying bidder is \$5,000,000 or less.

(d) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed all state tax returns due to the State and paid all amounts owing on such returns for four successive years prior to submitting the bid; provided that the amount of that bid is not more than seven per cent higher than the amount bid by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the bid by the state tax paying bidder is more than \$5,000,000.

(e) If two or more contractors who have paid state and county taxes or were required to submit a filing regarding state and county taxes are bidding on a public works contract, and those contractors meet the criteria outlined in subsection (c) or (d), the state agency shall award the contract to the contractor among them who has submitted the lowest bid.

(f) If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public works project because of preference awarded by this section, this section shall not apply insofar as its application would preclude or reduce federal assistance for that work.’’

SECTION 3. Section 103-53, Hawaii Revised Statutes, is amended:

1. By amending subsection (a) to read as follows:

“(a) All state and county officers and agents making contracts on behalf of the State or any county shall require, as a prerequisite to entering into these contracts, tax clearances from the director of taxation and the Internal Revenue

Service to the effect that all tax returns due have been filed, and all taxes, interest, and penalties levied against the contractor or accrued under [the provisions of] title 14 that are administered by the department of taxation and under the Internal Revenue Code [against the contractor] have been paid. The director of taxation may waive the Internal Revenue Service tax clearance requirement if the director determines that it is in the best interest of the state.”

2. By amending subsection (c) to read as follows:

“(c) All state and county contracting officers or agents shall withhold final payment [in the final settlement] of a contract until the receipt of tax clearances from the director of taxation and the Internal Revenue Service. Notwithstanding sections 40-57 and 40-58, if a contractor fails to provide the requisite tax clearances within six months of the [notice of final settlement or] completion date of the contract, the state or county contracting officer or agent shall [assign the final settlement payment in an amount not to exceed the tax liability to the department of taxation or Internal Revenue Service; provided that the department of taxation may first off set its tax debt against the sum owed to the contractor.] first notify the department of taxation which in turn will notify the Internal Revenue Service, of amounts payable to the contractor on completed contracts. The department of taxation and the Internal Revenue Service shall, within thirty days, request the contracting officer or agent to offset the amount of taxes due against any payment due to the contractor until the tax debt is paid in full to the State or the Internal Revenue Service or both. No final bill or invoice from the contractor shall be required as a condition to the offset. Any remaining contract balance shall revert to the appropriation under which it was encumbered.”

3. By amending subsections (e) and (f) to read as follows:

“(e) [Subsection (a)] This section shall not apply to:

- (1) Any procurement of less than [\$10,000 that qualifies as] \$25,000 or is considered a small purchase under section 103D-305[, except that] and any state or county department [or contracting agency may apply subsection (a) to contracts] contract of less than [\$10,000; and] \$25,000;
- (2) Emergency purchases [as set forth in section 103D-307.] for the procurement of goods, services, or construction under section 103D-307, disaster relief under chapter 127, or a civil defense emergency under chapter 128;
- (3) Grants and subsidies disbursed by a state agency pursuant to chapter 42D or in accordance with standards provided by law as required by article VII, section 4, of the State Constitution, or made by the counties pursuant to their respective charters or ordinances;
- (4) Contracts or agreements between government agencies;
- (5) Contracts or agreements to disburse funds:
  - (A) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, and reimbursements;
  - (B) To satisfy obligations required to be paid by law, including fees, judgments, settlements, and other payments for resolving claims;
  - (C) To make refunds or return funds held by the State or county as trustee, custodian, or bailee;
  - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
  - (E) For deposit, investment, or safekeeping, including sums to pay expenses related to their deposit investment, or safekeeping;
  - (F) For loans under government-administered loan programs;

- (G) To make periodic, recurring payments for utility services;
- (6) Rent for the use or occupation of the premises and facilities at Aloha Stadium, the convention center, or any other state or county large spectator events facility;
- (7) Contracts or agreements entered into pursuant to chapter 102; and
- (8) Requirements of chapter 103D.

(f) This section shall not apply to a contractor if the department of taxation certifies that the contractor is in good standing under a plan in which delinquent taxes, interest, and penalties are being paid to the department of taxation (and the Internal Revenue Service, if applicable) in installments.”

SECTION 4. Section 103D-201, Hawaii Revised Statutes, is amended to read as follows:

“**[[§103D-201]] Creation and membership of the procurement policy [office.] board.** (a) There is hereby created an autonomous state procurement policy [office.] board. The policy [office] board shall be assigned, for administrative purposes only, to the department of accounting and general services.

(b) The policy [office] board shall consist of [a board of] five members. Notwithstanding the limitations of section 78-5, the members of the board shall include:

- (1) The comptroller;
- (2) A county employee with significant high-level procurement experience; and
- (3) Three persons who shall not otherwise be full-time employees of, or contractors with, the State or any county; provided that at least one member shall be a certified professional in the field of procurement and at least one member shall have significant high-level, federal procurement experience.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy [office.] board. The initial and subsequent members of the policy [office.] board, other than the comptroller, shall be appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the policy [office] board members shall be subject to the requirements of section 26-34. No member of the policy [office] board shall act concurrently as a chief procurement officer. The members of the policy [office] board shall devote such time to their duties as may be necessary for the proper discharge thereof.

(c) The policy [office] board shall be assisted by employees of the department of accounting and general services, which shall provide at least one full time support staff and funding necessary to support the policy [office.] board.

(d) Members of the policy [office] board shall be reimbursed for any expenses, including travel expenses, reasonably incurred in the performance of their duties. [During the first year of the existence of the policy office, members who are not otherwise employees of the State or a county shall be allowed compensation at a rate of \$100 per day for each day’s actual attendance at meetings.]

(e) The chairperson of the policy [office] board shall be elected annually by a majority of its members from among all of its members; provided that the state comptroller shall not be eligible to serve as the chairperson. [If the chairperson is not a county officer or employee, the chairperson shall be allowed an additional compensation of \$50 per day for each day of actual attendance at board meetings.]”



SECTION 5. Section 103D-203, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-203]]~~ **Chief procurement officers.** (a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary—the administrative director of the courts;
  - (2) The senate—the president of the senate;
  - (3) The house of representatives—the speaker of the house of representatives;
  - (4) The office of Hawaiian affairs—[its board of trustees;] the chairperson of the board;
  - (5) The University of Hawaii—the president of the University of Hawaii;
  - (6) The department of education, excluding the Hawaii public library system—the superintendent of education; and
  - (7) The division of community hospitals within the department of health—the deputy director for community hospitals; and
  - (8) (7) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.
- (b) The chief procurement officers for each of the several counties shall be:
- (1) The executive branch—the respective finance directors of the several counties; and
  - (2) The legislative branch—the respective chairpersons of the councils of the several counties;

provided that the chief procurement officers designated under paragraphs (1) and (2) shall not exercise their powers or duties over contracting in a manner contrary to the respective county’s charter, ordinances, or rules adopted in accordance with chapter 91.

(c) For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, department of education, [division of community hospitals within the department of health,] University of Hawaii, remaining departments of the executive branch and all governmental bodies administratively attached to them, and the several counties, unless otherwise expressly provided, “State” shall mean “judiciary,” “state senate,” “state house of representatives,” “office of Hawaiian affairs,” “department of education,” [“division of community hospitals within the department of health,”] “University of Hawaii,” “executive branch,” and “county,” respectively.”

SECTION 6. Section 103D-204, Hawaii Revised Statutes, is amended to read as follows:

“**§103D-204 [Administrator] Establishment of the state procurement office[.]; administrator.** (a) There shall be a state procurement office, placed for administrative purposes only, within the department of accounting and general services, which shall be headed by the administrator of the state procurement office. The administrator shall be the chief procurement officer for [the] those governmental bodies of the executive branch [other than the University of Hawaii, the department of education, and the division of community hospitals within the department of health, and those governmental bodies administratively attached thereto.] as provided in section 103D-203(a)(7). The administrator shall be a full-time public official. The administrator shall serve a term of four years, and shall be paid the salary established for deputies or assistants to department heads under section 26-53

without diminution during the administrator's term of office unless by general law applying to all deputies or assistants to department heads.

(b) The administrator shall be appointed by the governor from a list of no less than three and no more than five names submitted by the policy [office.] board. The appointment of the administrator shall require the advice and consent of the senate. The administrator may only be removed from office by the governor, provided the governor shall give prior notification of such removal to the chairperson of the policy [office,] board, the president of the senate, and the speaker of the house of representatives.

(c) The administrator shall have:

- (1) A minimum of five years experience in public procurement within twelve years preceding the date of appointment; and
- (2) Demonstrated executive and organizational ability.

(d) [The procurement office shall be assigned for administrative purposes to the department of accounting and general services; provided that the] The administrator shall operate independently of the comptroller. The administrator may appoint and dismiss a private secretary without regard to chapter 76 or 77, who shall serve at the administrator's pleasure. The comptroller shall provide support to permit the administrator to satisfy all of the administrator's responsibilities as the chief procurement officer for those governmental bodies of the executive branch of the State for which a chief procurement officer is not otherwise designated."

SECTION 7. Section 103D-304, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Contracts for professional services of less than ~~[\$10,000]~~ \$25,000 may be negotiated by the head of a purchasing agency, with any two persons who appear on the list of qualified persons established pursuant to subsection (c). Negotiations shall be conducted in the manner set forth in subsection (e) but without establishing any order of preference."

SECTION 8. Section 103D-305, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-305 Small purchases; prohibition against parceling.** Procurements of[:

- (1) Less than \$10,000 for goods or services; or
- (2) Less than \$25,000 for construction;]

less than \$25,000 for goods, services, or construction shall be made in accordance with procedures set forth in rules adopted by the policy [office] board that are designed to ensure administrative simplicity and as much competition as is practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section."

SECTION 9. Section 103D-308, Hawaii Revised Statutes, is amended to read as follows:

**"[[§103D-308]] Cancellation of invitations for bids or requests for proposals.** An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the governmental body which issued the invitation, request, or other solicitation, in accordance with

rules adopted by the policy [council.] board. The reasons therefor shall be made part of the contract file.”

SECTION 10. Section 103D-310, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-310]]~~ **Responsibility of [bidders and] offerors.** (a) Unless the policy [office,] board, by rules, specifies otherwise, before submitting [a bid,] an offer, a prospective [bidder,] offeror, not less than ten calendar days prior to the day designated for opening [bids,] offers, shall give written notice of the intention to [bid] submit an offer to the procurement officer responsible for that particular procurement.

[The] (b) Whether or not an intention to bid is required, the procurement officer shall [then] determine whether the prospective [bidder] offeror has the financial ability [to deliver the goods or perform the work required, and whether the bidder has experience and competence in delivering similar goods or performing similar work,], resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer’s discretion, may require any prospective [bidder] offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy office[, setting forth a complete statement of the experience of the prospective bidder and the bidder’s organization in delivering similar goods or performing similar work and a statement of the equipment proposed to be used, together with adequate proof of availability of the equipment]. Whenever it appears [to the officer,] from answers to the questionnaire or otherwise, that the prospective [bidder] offeror is not fully qualified and able to perform the intended work, [the officer, after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, shall refuse to receive or consider any bid offered by the prospective bidder. All information contained in the answers to the questionnaire shall be and remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not lawfully entitled thereto shall be fined not more than \$250. Questionnaires so submitted shall be returned to the bidders after having served their purpose.

(b) A) a written determination of nonresponsibility of [a bidder or] an offeror [based upon the information collected and the hearing conducted by the procurement officer] shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy [office.] board. The unreasonable failure of [a bidder or] an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such [bidder or] offeror. The decision of the head of the purchasing agency shall be final unless the [bidder or] offeror applies for administrative review pursuant to section 103D-709.

(c) Information furnished by [a bidder or] an offeror pursuant to this section shall not be disclosed to any person [not lawfully entitled thereto without prior written consent by the bidder or offeror.] except to law enforcement agencies as provided by chapter 92F.”

SECTION 11. Section 103D-321, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The chief procurement officer shall maintain a record of all procurements for goods, services, or construction of \$25,000 or more made under sections

103D-102(b)(4), 103D-304, 103D-306, and 103D-307 for a minimum of five years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the goods, services, or construction procured under each contract."

SECTION 12. Section 103D-325, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The policy [office] board shall [adopt rules specifying] specify the form of the bonds required by this chapter[.] by procurement directive."

SECTION 13. Chapter 103D, Hawaii Revised Statutes, is amended by amending the title of part VIII to read as follows:

**"PART VIII. [INTERGOVERNMENTAL] GOVERNMENTAL RELATIONS AND COOPERATIVE PURCHASING"**

SECTION 14. Section 103D-801, Hawaii Revised Statutes, is amended:

1. By adding two definitions to be appropriately inserted and to read as follows:

"External procurement unit" means any buying organization not located in this State which, if located in this State, would qualify as a public procurement unit. An agency of the United States is an external procurement unit.

"Nonprofit private procurement unit" means a nonprofit health or human services organization that receives public funds to provide services to the public."

2. By amending the definition of "cooperative purchasing" to read as follows:

"Cooperative purchasing" means procurement conducted by[, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity.] a public or external procurement unit with one or more public procurement units, external procurement units, or nonprofit private procurement units, pursuant to this chapter."

SECTION 15.<sup>1</sup> Section 103D-802, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~103D-802] Cooperative purchasing authorized. A public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of goods, services, or construction with one or more public procurement units, external procurement [activities,] units, or nonprofit private [health and human services organizations] procurement units pursuant to rules adopted by the policy [office] board and an agreement entered into between the participants. The cooperative purchasing may include, but shall not be limited to, joint or multi-party contracts between public procurement units, and [open-ended] state public procurement unit requirements contracts which are made available to local public procurement units. Cooperative purchasing agreements may be exempt from preferences pursuant to part X."

SECTION 16.<sup>1</sup> Section 103D-1002, Hawaii Revised Statutes, is amended to read as follows:

**“§103D-1002 Hawaii products.** (a) [In any expenditure of public funds, a] A purchasing agency shall review all [purchase] specifications in a bid or proposal for purchase from the Hawaii products list where these products are available; provided that the products:

- (1) Meet the minimum specifications and the selling price f.o.b. jobsite;
- (2) Unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and
- (3) Unloaded, including applicable general excise tax and use tax [do], does not exceed the lowest delivered price of a similar non-Hawaii product by more than:
  - (A) Three per cent where class I Hawaii products are involved;
  - (B) Five per cent where class II Hawaii products are involved; or
  - (C) Ten per cent where class III Hawaii products are involved.

[(b) Where a package bid or offer contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a non-Hawaii product item shall be increased by adding thereto: three per cent, five per cent, or ten per cent where similar class I, class II, or class III Hawaii product items have been bid or offered by another party pursuant to this section. The lowest total bid or offer, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.]

(b) All invitations for bids and requests for proposals shall include a description of the products that are listed in the Hawaii products list established pursuant to this section, and their established classes, which may be used to complete the scope of work specified in the invitation for bids or request for proposals, where the products are available and meet the minimum specifications.

(c) All persons submitting bids or [offers based on non-Hawaii products to any purchasing agency] proposals to claim a Hawaii products preference shall designate in their bids which individual product and its price is to be supplied as a [non-Hawaii] Hawaii product. [All bidders shall list the price of the non-Hawaii product in their bid.

(d) In all public works and any repair or maintenance contracts, a purchasing agency or any person employed by a purchasing agency, including architects and engineers, shall describe in all specifications, products, and their established classes listed in the Hawaii products list established under this section which may be used, where the products are available and meet the minimum specifications.]

(d) Where a bid or proposal contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a Hawaii product item shall be decreased by subtracting therefrom: three per cent, five per cent, or ten per cent for the class I, class II, or class III Hawaii product items bid or offered, respectively. The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

(e) [The policy office shall adopt rules in accordance with chapter 91 for the establishment and administration of a Hawaii products list.] Upon receipt and approval of application for Hawaii products preference, the administrator shall include within the Hawaii products list, the names of producers and manufacturers in the State who are authorized to supply locally manufactured soil enhancement products to state agencies under subsection [(i).] (h). The administrator of the state procurement office shall maintain and distribute copies of the list to the purchasing agencies of the various governmental agencies.

(f) This section shall not apply whenever its application will disqualify any governmental agency from receiving federal funds or aid.

(g) Any purchase made or any contract awarded or executed in violation of this section shall be void and no payment shall be made by any purchasing agency on account of the purchase or contract.

(h) Any person, or any officer or employee of any person, who violates this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. In addition, any person who is awarded a contract or given an order for purchase as a result of misrepresentation in the person's bid or offer or makes a claim in the person's bid or offer that the person will purchase Hawaii products, but fails to do so:

- (1) Shall be fined the difference between the price the person would have paid for Hawaii products and the actual price; and
- (2) Shall not be awarded any contract or be given any order for purchase or be eligible for bidding until one year after the date of the payment of fines.

(i) (h) For the purposes of this section, "soil enhancement product" means any nonchemical soil preparation, conditioner, or compost mixture designed to supplement aeration or add organic, green waste, or decaying matter to the soil; provided that the term does not include any plant fertilizer intended to stimulate or induce plant growth through chemical means. All state agencies shall include in their solicitations, when required, the soil enhancement products identified on the Hawaii products list pursuant to subsection (e)."

SECTION 17.<sup>1</sup> Section 103D-1003, Hawaii Revised Statutes, is amended to read as follows:

**“[[§103D-1003[]] Printing, binding, and stationery work.** (a) [All printing, binding, and stationery work for the State or any county shall be performed within the State.] All bids or proposals submitted for a printing, binding, or stationery contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work, [and all requests for bids or contracts for this work shall so stipulate; provided that whenever it is established that this work cannot be performed within the State or that the lowest price for which the work can be procured within the State exceeds the bid or charge of a mainland manufacturer of the item by fifteen per cent, the work or any part thereof so affected may be performed outside the State.

(b) No payment shall be made by the State or any county for printing, binding, or stationery work unless it appears that the work was done within the State or was authorized to be done outside the State pursuant to this section. In addition, any manufacturer violating a stipulation in a bid or contract that all work will be performed within the State shall be subject to a civil penalty in an amount not to exceed the bid or contract price to be collected by a civil action filed by the attorney general on behalf of the State.

(c) The policy [office] board<sup>2</sup> shall adopt rules to implement this section.] shall receive a fifteen per cent preference for purposes of bid or proposal evaluation.

(b) Where bids or proposals are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid or evaluating proposals submitted only, the amount bid or proposed for work performed out-of-state shall be increased by fifteen per cent. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.’”

SECTION 18.<sup>1</sup> Section 103D-1006, Hawaii Revised Statutes, is amended to read as follows:

“[[§103D-1006]] **Software development businesses.** (a) In any expenditure of public funds for software development, the use of Hawaii software development businesses shall be preferred. Where a package bid or response to a request for proposal contains both Hawaii and non-Hawaii software development businesses, then for the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii software [developmental center] development business shall be increased by a preference percentage pursuant to rules adopted [in accordance with chapter 91.] by the policy board.

[ (b) The policy office shall adopt rules to implement this section.

(c) (b) This section shall not apply when precluded by federal requirements for competitive bidding.”

SECTION 19.<sup>1</sup> Act 193, Session Laws of Hawaii 1994, is amended by amending section 5, as amended by section 27 of Act 262, Session Laws of Hawaii 1996, to read as follows:

“SECTION 5. This Act shall take effect upon its approval[; provided that section 2 shall be repealed on June 30, 1998, and section 103D-203, Hawaii Revised Statutes, shall be reenacted in the form in which it existed on the day before the effective date of this Act].”

SECTION 20.<sup>1</sup> Section 103-45.5, Hawaii Revised Statutes, is repealed.

SECTION 21.<sup>1</sup> Section 103D-801 is amended by repealing the definition of “external procurement activity.”

[“External procurement activity” means any buying organization not located in this State which, if located in this State, would qualify as a public procurement unit. An agency of the United States is an external procurement activity.”]

SECTION 22.<sup>1</sup> Section 237-45, Hawaii Revised Statutes, is repealed.

SECTION 23.<sup>1</sup> Sections 103-24.6, 103D-102, 103D-104, 103D-202, 103D-205, 103D-208, 103D-211, 103D-213, 103D-214, 103D-302, 103D-303, 103D-304, 103D-306, 103D-310, 103D-311, 103D-312, 103D-313, 103D-322, 103D-323, 103D-324, 103D-401, 103D-501, 103D-601, 103D-701, 103D-702, 103D-703, 103D-704, 103D-709, 103D-804, 103D-901, 103D-902, 103D-1004, 103D-1005, 103D-1103, 103D-1105, 103D-1107, 103D-1201, 103D-1202, 103D-1203, and 201-82 are amended by substituting the words “policy board” wherever the words “policy office” appear, as the context requires.

SECTION 24.<sup>1</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 25.<sup>1</sup> This Act shall take effect on October 1, 1997; provided that section 3 shall take effect on July 1, 1997.

(Approved July 3, 1997.)

#### Notes

1. Section redesignated.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that economic activity in Hawaii is at one of its lowest levels. In order to encourage economic activity, the legislature believes that it must address certain structural problems existing in the Hawaii economy which add to the high cost of living in Hawaii and the overall cost of doing business. One of the most pervasive structural problems is the pyramiding of the general excise tax on lease activity. Under existing law, the general excise tax is imposed on the leasing and subleasing of the same parcel of real property. Each level of leasing pays the four per cent general excise tax on its gross proceeds from leasing. In a leasing situation with four tiers—a lessor to a sublessor to a sublessor to a lessee—the final lessee will pay the equivalent of a general excise tax of twelve per cent—four per cent on the lessor and each sublessor.

The purpose of this Act is to alleviate the effects of the pyramiding of the general excise tax on lease and sublease transactions.

The legislature finds that mitigating the pyramiding aspect of leasing will benefit the Hawaii economy and the people of Hawaii as more money will be available to business to expand or hire additional employees to provide better service, and the overall cost of living in Hawaii will be reduced. The legislature recognizes that mitigating pyramiding on leasing activities may affect state revenues. However, an incremental reduction in revenues over a seven-year period, even with the present reduced state revenues, will be beneficial to the State as tax revenues generated by business and taxpayers from expenditures of money which would otherwise have been paid to the State under the existing pyramiding tax structure will more than offset lost tax revenue under this Act.

The legislature further recognizes that the pyramiding tax issue contains many knotty problems raised in prior attempts at legislation in this area. This Act addresses those issues in a way that balances the interest of the State in taxing economic activity and the interest of the business community by removing some of the multiple and burdensome levels of taxation.

The Act, once fully phased in, allows a sublessor to reduce the amount of gross proceeds or gross income received under a written lease of real property by seven-eighths of the amount the sublessor pays to its lessor for the same real property in determining the gross proceeds or gross income subject to the general excise tax. The fraction of seven-eighths was determined by comparing the retail rate of tax (4.0 per cent) with the rate of tax normally applicable to intermediate stage transactions (0.5 per cent or one-eighth of the 4.0 per cent). It reflects the philosophy expressed in the recent Tax Review Commission report that intermediate stage transactions should be subject to a uniform rate of tax.

Under this Act, for example if under a written lease, lessor A leases real property X to lessee B for \$1,000 a year and lessee B subleases the same real property X to C for \$2,500 a year, B would be entitled to a \$1,000 deduction times seven-eighths, or \$875, from the \$2,500 amount received under the written sublease. The lessor would pay four per cent of \$1,000, or \$40, and the lessee would pay four per cent of \$2,500 minus \$875, or \$65 in tax. The total tax payable by both parties ( $\$40 + \$65 = \$105$ ) is the same as if the intermediate stage rent were taxed at one-half per cent (0.5 per cent of \$1,000 = \$5) and the retail stage rent were taxed at four



per cent (4 per cent of \$2,500 = \$100). In other words, unlike current law, \$875 would not be subject to the four per cent general excise tax twice.

The legislature notes that when a lessee leases real property, the person in many instances compensates the lessor for the actual real property or space which the person is using and for common areas such as stairs, walls, parking spaces, real property taxes (which may be paid directly to the county by the lessee or sublessee), general excise taxes, and certain affixed personalty. All compensation paid to or for the benefit of a lessor or sublessor that is consideration for the lease should be considered gross proceeds or gross income paid under the lease.

This Act recognizes that in many instances the lessee may only sublease a portion of the total area of real property which the lessee leased from its lessor. In these cases, the Act requires that the lessee's deduction be based upon the amount actually paid by the lessee to its lessor for the subleased portion of the total real property leased by the lessee.

The sublessor's method for allocating the rent to the subleased portion shall be reasonable under the circumstances, taking into consideration the size, quality, and location of the subleased premises. In no case shall the amount of the deductions claimed by the lessee exceed the total amount paid to its lessor for the use of the property. For example, if, under a written lease, A leases real property X to B for \$1,000, which in turn subleases fifty per cent of X to C for \$2,500, assuming there are no significant differences between the portion of X subleased by B and the portion not being subleased which would significantly affect the value of the respective portions of X, a deduction based upon an allocation of the percentage of the area of X being subleased would be reasonable. In this case, B's deduction would be limited to fifty per cent of the \$1,000 amount B paid to A for the lease of all of X. B's deduction would be \$500 multiplied by seven-eighths or \$437.50.

If, however, differences in the size, location, or quality of the areas within the leased real property significantly affect the relative values of the real property or space, those factors shall be considered in determining a reasonable basis for allocation. For example, assume the same facts in the example above except that real property X constitutes ground floor retail real property or space (which has a rental value of \$800) and upper floor office real property or space (which has a rental value of \$200) equal in size to the ground floor retail real property or space under lease, and that B subleases only the upper floor real property or space to C for \$2,500. B's deduction under this Act against the \$2,500 gross income would be limited to \$200 multiplied by seven-eighths, or \$175, the portion of the \$1,000 a year paid by B to A allocable to the upper floor real property or space. A deduction based upon the percentage of the real property or space leased would not be a reasonable allocation method under these circumstances.

In recognition of the complexities anticipated in implementing the provisions of this Act, rules issued by the department of taxation shall provide the necessary guidance in implementing the intent of the legislature as applied to the various factual situations affected.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§237- Tax on written real property leases; deduction allowed. (a)**

This section relates to the leasing of real property by a lessor to a lessee. There is hereby levied, and shall be assessed and collected annually, a privilege tax against persons engaging or continuing within the State in the business of leasing real property to another, equal to four per cent of the gross proceeds or gross income received or derived from the leasing; provided that where real property is subleased by a lessee to a sublessee, the lessee, as provided in this section, shall be allowed a

deduction from the amount of gross proceeds or gross income received from its sublease of the real property. The deduction shall be in the amount allowed under this section.

All deductions under this section and the name and general excise tax number of the lessee's lessor shall be reported on the general excise tax return. Any deduction allowed under this section shall only be allowed with respect to leases and subleases in writing and relating to the same real property.

(b) The lessee shall obtain from its lessor a certificate, in the form as the department shall prescribe, certifying that the lessor is subject to tax under this chapter on the gross proceeds or gross income received from the lessee. The absence of the certificate in itself shall give rise to the presumption that the lessee is not allowed the deduction under this section.

(c) If various real property or space leased to the lessee have different rental values, then the total monetary gross proceeds or gross income paid to a lessor for all real property or space shall first be allocated to the fair rental value for each real property or space. If the lessee leases less than one hundred per cent of real property or space that was leased from the lessor to a sublessee, then the total monetary gross proceeds or gross income paid by the lessee for that real property or space to its lessor shall be allocated. The percentage of real property or space subleased shall be multiplied by the monetary gross proceeds or gross income paid for the real property or space by the lessee to its lessor. The product of the preceding multiplication shall be deducted from the monetary gross proceeds or gross income received for real property or space by the lessee.

Once the allocations are made, the appropriate deduction under subsection (g) shall be made.

(d) The lessor shall make allocations under this section at the time the sublease is entered into and the allocations shall not be changed during the term of the sublease. There shall be a reasonable basis for the allocations, taking into consideration the size, quality, and location of the real property or space subleased. In no event shall the total amount allocated to all subleases exceed the total monetary gross proceeds paid by the lessee to its lessor. The director may redetermine the amount of the deduction under this section if the director finds that the basis for allocation is not reasonable or that redetermination is necessary to prevent the avoidance of taxes.

(e) As used in this section:

"Lease" means the rental of real property under an instrument in writing by which one conveys real property for a specified term and for a specified consideration, and includes the written extension or renegotiation of a lease, and any holdover tenancy.

"Lessee" means one who holds real property under lease, and includes a sublessee.

"Lessor" means one who conveys real property by lease, and includes a sublessor.

"Real property or space" means the area actually rented and used by the lessee, and includes common elements as defined in section 514A-3.

"Sublease" includes the rental of real property which is held under a lease and is made in a written document by which one conveys real property for a specified term and for a specified consideration. Sublease includes the written extension or renegotiation of a sublease and any holdover tenancy under the written sublease.

"Sublessee" means one who holds real property under a sublease.

"Sublessor" means one who conveys real property by sublease.

(f) This section shall not cause the tax upon a lessor, with respect to any item of the lessor's gross proceeds or gross income, to exceed four per cent.

(g) After allocation under subsection (c), if necessary, the deduction under this section shall be allowed from the gross proceeds or gross income of the lessee received from its sublease in an amount calculated by multiplying the gross proceeds or gross income paid by the lessee to its lessor for the lease of the real property by the following amount:

- (1) In calendar year 1998, .125;
- (2) In calendar year 1999, .25;
- (3) In calendar year 2000, .375;
- (4) In calendar year 2001, .50;
- (5) In calendar year 2002, .625;
- (6) In calendar year 2003, .75; and
- (7) In calendar year 2004, and thereafter, .875.

The amount calculated under paragraphs (1) to (7) shall be deducted by the lessee from the lessee's total reported gross proceeds or gross income. The deduction allowed by this subsection may be taken by the fiscal and calendar year lessees."

SECTION 3. 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 ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells 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. 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, shall be 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] the values.
  - (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make 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] the 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).
  - (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] the gross proceeds shall be so attributed.

- (C) No manufacturer or producer, engaged in such business in the State and selling 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 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 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 the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and 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 the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; except that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.
  - (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in [any such] that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.
  - (F) The department, by rule, may provide that a seller may take from the purchaser of tangible personal property a certificate, in [such] a form as the department shall prescribe, certifying that the sale is a sale at wholesale. If the certificate is so provided for by rule of the department:
    - (i) Any purchaser who furnishes [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, 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 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.
- (B) In computing the tax levied under this paragraph 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 subparagraph (A) or section 237-16, on:
- (i) Another taxpayer who is a contractor, as defined 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 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 the taxpayer to the assessor at the time of filing the return, [such] the withholding being authorized by this paragraph; but any person claiming a deduction under this paragraph shall be required to show in the person's return the name of the person paying the tax on the amount deducted by 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 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 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[.]; and
  - (ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that 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 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 the person (whether held as a leasehold, fee simple, or otherwise), 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 the person shows that at the time 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 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 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 a business 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)[.]; provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237- , the tax shall be levied by section 237-.

- (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 the person.
- (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] the business; provided that where any person engaging or continuing within the State in any service business or calling renders [such] those 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] those services and the ultimate recipient of the benefits of [such] those 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] a 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)(1)) 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] the 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] those 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] that 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 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] a producer in the form of a benefit payment shall be paid by the person or persons to whom [such] the amount is actually disbursed, and the producer actually making [any such] a benefit payment to another shall be entitled to claim on 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 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on October 1, 1998.

(Approved July 3, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.



## ACT 354

S.B. NO. 252

A Bill for an Act Relating to General Assistance.

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

SECTION 1. The legislature finds that:

- (1) There are more than six thousand people in Hawaii who, because of physical or mental disability, are not able to provide for their personal subsistence needs but who have not yet been determined eligible for the federal Supplemental Security Income program;
- (2) These individuals will become extremely vulnerable to the ravages of homelessness, victimization by criminals, and aggravation of their disabilities as general assistance is discontinued;
- (3) The cost of providing general assistance to meet these individuals' subsistence needs is less than the cost of providing housing alone through a publicly supported shelter;
- (4) The cost of one month's general assistance for such an individual is less than that of providing one day of emergency medical or acute psychiatric care through the Hawaii health QUEST or other state-funded program;
- (5) If the general assistance program is not maintained, the department of health will experience cost increases in the operation of its medical and psychiatric care facilities and community mental health centers;
- (6) If general assistance payments to persons with disabilities are terminated, the counties will bear costs far in excess of the cost of general assistance in the form of increased demand on county medical facilities, parks, police, and shelter facilities;
- (7) Significant savings for the general assistance program can be realized by fully staffing—completely with federal funds—the department of human services' Supplemental Security Income disability determination unit and expediting the processing of applications for persons otherwise receiving general assistance or assistance to the aged, blind, or disabled;
- (8) Expedited processing will also save money in both the short- and long-term because a general assistance recipient later found eligible for Supplemental Security Income payments may be required to return the amount of general assistance received for the period the person waited for final eligibility approval;
- (9) There are alternative ways to reduce the cost of the general assistance program such as the use of case management, tightening eligibility criteria, and adjusting the amount of monthly benefits, with floor and ceiling amounts. The minimum number of hours per week that an individual is unable to work can be reduced from thirty hours to twenty hours. The length of time disability needs to have lasted can be increased from thirty to sixty days, all while residing in the State; and
- (10) Recipients of general assistance are either adults who have dependent children at home or persons with disabilities that prevent them from earning enough to support themselves. As a condition of receiving assistance, both groups are required to seek employment and participate in public works projects. Persons with disabilities are required to accept vocational rehabilitation, if appropriate.

The legislature believes that a society is characterized by the way it treats its most vulnerable members. Our society cannot allow persons who are unable to

support themselves for reasons beyond their control, to go without the barest of necessities of life. Society has a responsibility to prevent people from living in the parks and alleyways, eating out of trash containers, and suffering the terror, trauma, and pain of abandonment and deprivation. The legislature recognizes that the State is under severe fiscal pressures but also recognizes that providing general assistance to persons unable to survive without it is cost-effective and responsible public policy.

The purpose of this Act is to provide general assistance for the duration of the eligible disability and to eliminate all artificial durational time limits on general assistance benefits for the disabled. If the twenty-four month limit is not eliminated, about two thousand disabled persons will be cut off general assistance, their sole source of support, on June 30, 1997.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§346- General assistance advisory council; established.** (a) There is created within the department of human services for administrative purposes only the general assistance advisory council. The advisory council shall consist of twelve members to be appointed by the governor in accordance with section 26-34 and who shall serve without compensation. The council shall be advisory and informational in nature only and shall not have the power to adopt rules.

(b) The council may request the assistance of professional facilitators as necessary and shall offer advice to the department of human services on matters relating to the general assistance program including determination of the amounts of benefit payments.”

SECTION 3. Section 346-71, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person between eighteen and sixty-five years of age with a disability shall be eligible for general assistance [for not more than twenty-four months,] to households without minor dependents if the person:

- (1) Is determined to be needy in accordance with standards established by this chapter and the rules adopted under subsection (f);
- (2) Is unable to meet the disability requirements established by the [Federal] federal Supplemental Security Income Program or its successor agency; and

- (3) [(A)] Is unable to engage in any substantial gainful employment because of a determined and certified physical or mental disability. Determination and certification of physical and mental disability shall be as follows:

(A) A determination and certification of physical disability shall only be made by a board of licensed [physician.] physicians designated and paid for by the department;

(B) A determination and certification of mental disability shall be made by a board of licensed psychologists or licensed [physician] physicians whose specialty is in psychiatry [or by a licensed psychologist. The department may require that such determination and certification be by a psychiatrist or a psychologist designated and paid by the department;]. This board shall also be designated and paid by the department;

[(B) When] (C) If a determination of mental disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person’s choice;

[(C) When] (D) If a determination of physical disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person's choice; and

[(D)] (E) Any person, to continue to be certified as mentally or physically disabled, shall be reevaluated annually as provided by this section and more frequently as required by the department.

As used in this subsection:

“Substantial gainful employment” [as the term is used herein] means at least [thirty] twenty hours of work per week.

“With a disability” or “having a disability” [as the terms are used in this section] means a disability which extends for a period of over [thirty] sixty days.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be required to accept the services as a further condition of eligibility for the receipt of general assistance to households without minor dependents under this section. An assistance unit shall be determined ineligible for general assistance to households without minor dependents if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment, and participate in public work projects as described in section 346-31, and in public employment projects as described in section 346-102.

The general assistance advisory council established in section 346- shall offer advice and information to the department as appropriate.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1997.

(Approved July 3, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 355**

S.B. NO. 1421

A Bill for an Act Relating to Payroll Periods.

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

SECTION 1. Section 78-13, Hawaii Revised Statutes, is amended to read as follows:

“**§78-13 Salary periods.** Unless otherwise provided by law, all officers and employees shall be paid at least semimonthly except that substitute teachers, part-time hourly rated teachers of adult and evening classes, and other part-time, intermittent, or casual employees may be paid once a month and that the governor, upon reasonable notice and upon determination that the payroll payment basis should be converted from predicted payroll to after-the-fact payroll, may allow a one-time once a month payroll payment to all public officers and employees to effect a conversion to after-the-fact payroll; provided that the conversion time schedule shall occur over a one-year period.] as follows:

- (1) The implementation of the after-the-fact payroll will commence with the June 30, 1998, pay day, which will be delayed to July 1, 1998;
- (2) The July 15, 1998, pay day will be delayed to July 17, 1998;
- (3) The July 31, 1998, pay day will be delayed to August 3, 1998;
- (4) The August 14, 1998, pay day will be delayed to August 19, 1998;
- (5) The August 31, 1998, pay day will be delayed to September 4, 1998;
- (6) The September 15, 1998, pay day will be delayed to September 18, 1998; and
- (7) Thereafter, pay days will be on the fifth and the twentieth of every month. If the fifth and the twentieth fall on a state holiday, Saturday, or Sunday, the pay day will be the immediately preceding weekday.

The implementation of the after-the-fact payroll shall not be subject to negotiation under chapter 89.”

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

SECTION 3. This Act shall take effect on June 29, 1998.

(Approved July 3, 1997.)

**ACT 356**

H.B. NO. 113

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-14, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) Any material, compound, mixture, or preparation [which] that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alpha-ethyltryptamine (AET);
- (2) 2,5-dimethoxy-4-ethylamphet-amine (DOET);
- [(1)] (3) 2,5-dimethoxyamphetamine (2,5-DMA);
- [(2)] (4) 3,4-methylenedioxy amphetamine;
- [(3)] (5) 3,4-methylenedioxymethamphetamine (MDMA);
- [(4)] (6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
- [(5)] (7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
- [(6)] (8) 5-methoxy-3,4-methylenedioxy-amphetamine;
- [(7)] (9) 4-bromo-2,5-dimethoxy-amphetamine (4-bromo-2,5-DMA);
- [(10)] (10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
- [(8)] (11) 3,4,5-trimethoxy amphetamine;
- [(9)] (12) Bufotenine;
- [(10)] (13) 4-methoxyamphetamine (PMA);
- [(11)] (14) Diethyltryptamine;
- [(12)] (15) Dimethyltryptamine;
- [(13)] (16) 4-methyl-2,5-dimethoxy-amphetamine;
- [(17)] (17) Gamma hydroxybuterate (GHB);
- [(14)] (18) Ibogaine;
- [(15)] (19) Lysergic acid diethylamide;

- [(16)] (20) Marijuana;
- [(17)] (21) Parahexyl;
- [(18)] (22) Mescaline;
- [(19)] (23) Peyote;
- [(20)] (24) N-ethyl-3-piperidyl benzilate;
- [(21)] (25) N-methyl-3-piperidyl benzilate;
- [(22)] (26) Psilocybin;
- [(23)] (27) Psilocyn;
- [(24)] (28) 1-[1-(2-Thienyl)cyclohexyl] Pyrrolidine (TCPy);
- [(25)] (29) Tetrahydrocannabinols;
- [(26)] (30) Ethylamine analog of phencyclidine (PCE);
- [(27)] (31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- [(28)] (32) Thiophene analog of phencyclidine (TPCP; TCP).

(e) Unless specifically excepted, the schedule shall include any material, compound, mixture, or preparation which contains any quantity of the substance [methaqualone.]:

- (1) Mecloqualone;
- (2) Methaqualone.”

SECTION 2. 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) Glutethimide;
- (11) [Levo-alphaacetylmethadol (LAAM);
- (12)] Isomethadone;
- (12) Levo-alphaacetylmethadol (LAAM);
- (13) Levomethorphan;
- (14) Levorphanol;
- (15) Metazocine;
- (16) Methadone;
- (17) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (18) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (19) Pethidine;
- (20) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (21)]<sup>1</sup> Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (22) Pethidine-Intermediate-C, 1-methyl-4<sup>2</sup> phenylpiperidine-4-carboxylic acid;
- (23)]<sup>1</sup> Phenazocine;
- (24) Piminodine;
- (25) Racemethorphan;

- (26) Racemorphan;
- (27) Sufentanil.”

SECTION 3. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation [which] that 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] that contains any quantity of a derivative of barbituric acid or any salt thereof;
- (4) Chlorexadol;
- (5) Ketamine hydrochloride;
- ~~[(5)]~~ (6) Lysergic acid;
- ~~[(6)]~~ (7) Lysergic acid amide;
- ~~[(7)]~~ (8) Methyprylon;
- ~~[(8)]~~ (9) Sulfondiethylmethane;
- ~~[(9)]~~ (10) Sulfonethylmethane;
- ~~[(10)]~~ (11) Sulfonmethane;
- ~~[(11)]~~ (12) Tiletamine/Zolazepam (Telazol).”

SECTION 4. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) [Any material, compound, mixture, or preparation containing limited quantities or any of the following narcotic drugs, or any salts thereof:] Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts, or alkaloid, in limited quantities as set forth below:

- (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 (Hydrocodone), 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[;] provided that these narcotic drugs shall be monitored pursuant to section 329-101;
- (4) Not more than 300 milligrams of dihydrocodeinone (Hydrocodone), 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[;] provided that these narcotic drugs shall be monitored pursuant to section 329-101;
- (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 [or] 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.”

SECTION 5. Section 329-61, Hawaii Revised Statutes, is amended to read as follows:

“**§329-61 Substances subject to reporting.** Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this State or for use in this State shall submit a report to the department of public safety of all those transactions:

- (1) Phenyl-2-propanone;
- (2) Methylamine;
- (3) Phenylacetic acid;
- (4) Ephedrine;
- (5) Pseudoephedrine;
- (6) Norpseudoephedrine;
- (7) Phenylpropanolamine;
- (8) Hydriodic acid;
- (9) Benzyl cyanide;
- (10) Benzyl chloride;
- (11) N-methylformamide;
- (12) N-methylephedrine;
- (13) N-ethylephedrine;
- (14) N-ethylpseudoephedrine;
- (15) N-methylpseudoephedrine;
- (16) Chloroephedrine;
- (17) Chloropseudoephedrine;
- (18) Ethylamine;
- (19) D-lysergic acid;
- (20) Ergotamine tartrate;
- (21) Piperidine;
- (22) N-acetylanthranilic acid;
- (23) Anthranilic acid;
- (24) Propionic anhydride;
- (25) Isosafrole;
- (26) Safrole;
- (27) Piperonal;
- (28) Thionylchloride; [and]
- (29) Ergonovine maleate[.];
- (30) 3,4-Methylenedioxyphenyl-2-propanone;
- (31) Benzaldehyde;
- (32) Nitroethane.”

SECTION 6. Section 329-11, Hawaii Revised Statutes, is amended to read as follows:

“§329-11 Authority to schedule controlled substances. (a) Annually, upon the convening of each [annual] regular session of the state legislature, the department of public safety shall report to the legislature additions, deletions, or revisions in the schedules of substances[,] enumerated in sections 329-14, 329-16, 329-18, 329-20, and 329-22, and any other recommendations [which] that it deems necessary. [The] Three months prior to the convening of each regular session, the department of public safety shall [not recommend] post public notice, at the state capitol and in the office of the lieutenant governor for public inspection, of the department’s recommendations to the legislature concerning any additions, deletions, or revisions in [such] these schedules [until after notice and an opportunity for a hearing is afforded all interested parties, except such hearing]; provided that the posting shall not be required if official notice has been received that the substance has been added, deleted, or rescheduled as a controlled substance under federal law. In making a determination regarding a substance, the department of public safety shall assess the degree of danger or probable danger of the substance by considering the following:

- (1) The actual or probable abuse of the substance including:
  - (A) Its history and current pattern of abuse;
  - (B) The scope, duration, and significance of abuse; and
  - (C) A judgment of the degree of actual or probable detriment [which] that may result from the abuse of the substance;
- (2) The biomedical hazard of the substance including:
  - (A) Its pharmacology: the effects and modifiers of effects of the substance;
  - (B) Its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychic or physiological dependence;
  - (C) Risk to public health and particular susceptibility of segments of the population; and
  - (D) Existence of therapeutic alternatives for substances [which] that are or may be used for medical purposes;
- (3) A judgment of the probable physical and social impact of widespread abuse of the substance;
- (4) Whether the substance is an immediate precursor of a substance already controlled under this part; and
- (5) The current state of scientific knowledge regarding the substance.

(b) After considering the factors enumerated [above,] in subsection (a), the department of public safety shall make a recommendation to the legislature, specifying to what schedule the substance should be added, deleted, or rescheduled if it finds that the substance has a degree of danger or probable danger. The department of public safety may make [such] its recommendation to the legislature prior to the submission of its annual report, in which case the department of public safety shall publish and give notice to the public of [such] the recommendation.

(c) If the legislature designates a substance as an immediate precursor, substances [which] that are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If a substance is added, deleted, or rescheduled as a controlled substance under federal law and notice of the designation is given to the department of public safety, the department of public safety shall recommend that a corresponding change in Hawaii law be made. The department of public safety shall similarly designate the substance as added, deleted, or rescheduled under this chapter, after the expiration of thirty days from publication in the Federal Register of a final order, and [such] this change shall have the effect of law. If a substance is added, deleted, or rescheduled under this subsection, the control shall be temporary and, if the next regular session



of the state legislature has not made the corresponding changes in this chapter, the temporary designation of the added, deleted, or rescheduled substance shall be nullified.

(e) The administrator may make an emergency scheduling by placing a substance into schedule I, II, III, IV, or V on a temporary basis, if the administrator determines the action is necessary to address or avoid a current or imminent danger to the health and safety of the public. If a substance is added or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the state legislature has not enacted the corresponding changes in this chapter, the temporary designation of the added or rescheduled substance shall be nullified.

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 July 3, 1997.)

#### Notes

1. So in original.
2. Prior to amendment a hyphen appeared here.

## ACT 357

H.B. NO. 472

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” and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a

guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under said Article VII, Section 13.

(2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1996-1997 and estimated for each fiscal year from 1997-1998 to 2000-2001, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1993-1994	3,054,307,502	
1994-1995	2,932,879,814	
1995-1996	3,136,543,568	
1996-1997	3,074,692,000	\$562,630,071
1997-1998	3,117,764,000	563,887,115
1998-1999	3,204,016,000	575,288,307
1999-2000	3,325,769,000	579,449,107
2000-2001	(Not Applicable)	594,932,188

For fiscal years 1996-1997, 1997-1998, 1998-1999, 1999-2000, and 2000-2001 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 1993-1994, 1994-1995, and 1995-1996 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, 1996, dated November 27, 1996. The net general fund revenues for fiscal years 1996-1997 to 1999-2000 are estimates, based on general fund revenue estimates made as of March 13, 1997, 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. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by Article VII, Section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 1997 is as follows for fiscal year 1997-98 to fiscal year 2003-2004:

Fiscal Year	Principal and Interest
1997-1998	\$350,852,787
1998-1899	336,127,272
1999-2000	382,892,079
2000-2001	333,063,172
2001-2002	329,805,365
2002-2003	317,899,856
2003-2004	258,491,021

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit

generally continues to decline each year from fiscal year 2004-2005 to fiscal year 2016-2017 when the final installment of \$42,091,275 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$181,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of February 28, 1997, adjusted for (1) the issuance of \$350,000,000 in general obligation bonds of 1997, Series CN, and (2) lapses as provided in House Bill No. 350, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the General Appropriations Act of 1997) amounting to \$4,239,366, the total amount of authorized but unissued general obligation bonds is \$554,656,300. The total amount of general obligation bonds authorized by this Act is \$1,419,054,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is \$1,973,710,300. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$181,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.
- (5) Proposed general obligation bond issuance. As reported herein for fiscal years 1996-1997, 1997-1998, 1998-1999, 1999-2000, and 2000-2001, the State proposes to issue \$200,000,000 during the remainder of fiscal year 1996-1997, \$400,000,000 during the first half of fiscal year 1997-1998, \$300,000,000 during the second half of fiscal year 1997-1998, \$400,000,000 during the first half of fiscal year 1998-1999, \$300,000,000 during the second half of fiscal year 1998-1999 and \$100,000,000 semiannually in each of fiscal years 1999-2000 and 2000-2001. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, and interest payments commencing six months from the date of issuance and being paid semiannually thereafter. As reported by the department of budget and finance, the bonds will be maturing in substantially equal annual installments of principal and interest. It is assumed that this practice will 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 1996-1997 to 1999-2000 is \$1,800,000,000. An additional \$200,000,000 is proposed to be issued in fiscal year 2000-2001. The total amount of \$1,800,000,000 which is proposed to be issued through fiscal year 1999-2000 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 \$1,973,710,300, as reported in paragraph (4), except for \$173,710,300. It is assumed that the appropriations to which an additional \$173,710,300 in bond issuance needs to be applied will have

been encumbered as of June 30, 2000. The \$200,000,000 which is proposed to be issued in fiscal year 2000-2001 will be sufficient to meet the requirements of the June 30, 2000 encumbrances in the amount of \$173,710,300. The amount of assumed encumbrances as of June 30, 2000 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, 2000, and the amount of June 30, 2000 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2000-2001, 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. (A) 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:
- (i) 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
  - (ii) Not all reimbursable general obligation bonds may qualify for exclusion. 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 the calculation against the debt limit is 8.9 percent for the ten years from fiscal year 1997-1998 to fiscal year 2006-2007. For the purpose of this declaration, the assumption is made that five percent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13

of the State Constitution for the fiscal years 1996-1997, 1997-1998, 1998-1999, 1999-2000 and 2000-2001 are as follows:

Fiscal year	Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution
1996-1997	\$3,051,769,764
1997-1998	3,518,775,668
1998-1999	3,956,637,978
1999-2000	3,895,292,422
2000-2001	3,847,324,672

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven percent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (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 6.5 percent, 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, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such 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 on Bonds and Guaranties
Remainder FY 1996-1997 \$190,000,000	\$562,630,071	\$401,103,579 (1999-2000)
1st half FY 1997-1998 \$380,000,000	563,887,115	425,803,579 (1999-2000)
2nd half FY 1997-1998 \$285,000,000	563,887,115	444,328,579 (1999-2000)

1st half FY 1998-1999		
\$380,000,000	575,288,307	469,028,579 (1999-2000)
2nd half FY 1998-1999		
\$285,000,000	575,288,307	487,553,579 (1999-2000)
1st half FY 1999-2000		
\$95,000,000	579,449,107	480,893,329 (2001-2002)
2nd half FY 1999-2000		
\$95,000,000	579,449,107	487,068,329 (2001-2002)
1st half FY 2000-2001		
\$95,000,000	594,932,188	493,243,329 (2001-2002)
2nd half FY 2000-2001		
\$95,000,000	594,932,188	499,418,329 (2001-2002)
(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, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.		

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act 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. 350, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the General Appropriations Act of 1997), House Bill No. 1390, H.D. 1, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Appropriations Act of 1997), and House Bill No. 1854, H.D. 1, S.D. 1, C.D. 1<sup>3</sup> (Relating to Hawaii Hurricane Relief Fund Bonds) passed by this regular session of 1997, 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 \$1,419,054,000. 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 section 1 and section 3 the corresponding act numbers for bills identified therein.

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

(Approved July 3, 1997.)

Notes

1. Act 328.
2. Act 155.
3. Act 222. There is no C.D. 1.

ACT 358

H.B. NO. 1216

A Bill for an Act Relating to Captive Insurance Companies.

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

SECTION 1. Section 431:19-115, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-115 Laws applicable.** (a) No insurance laws of this State other than those contained in this article, or contained in specific references contained in this article, shall apply to pure captive insurance companies. In addition to this article, [all of the other insurance laws of this State] article 1, article 2, part III of article 3, article 4A, parts I and II of article 5, article 6, article 11, and article 15 of this chapter, and chapter 431K shall apply to association captive insurance companies, including risk retention insurance companies, unless these other laws are inconsistent with this article.

The application of the foregoing provisions shall not diminish the commissioner’s authority for exemption as may be contained therein or as may be deemed appropriate under the circumstances.

(b) In addition, the commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary in connection with the financial oversight and regulation of association captive insurance companies, including risk retention captive insurance companies.”

SECTION 2. Act 190, Session Laws of Hawaii 1994, as amended by Acts 61 and 232, Session Laws of Hawaii 1995, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on June 21, 1994; provided that on June 30, 2000, sections 1 through [5] 4 of this Act and section 431:2-307, Hawaii Revised Statutes, shall be repealed, and sections 431:3-302, 431:5-307, and 431:19-107, [and 431:19-115,] Hawaii Revised Statutes, are reenacted in the form in which they read on June 20, 1994.”

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 July 3, 1997.)

A Bill for an Act Relating to the Redevelopment of Barbers Point Naval Air Station.  
*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to:

- (1) Establish the Barbers Point Naval Air Station redevelopment commission, hereinafter referred to as the "commission", to serve as the local redevelopment authority for the redevelopment of real and personal property at the Barbers Point Naval Air Station that has been declared surplus as a result of a federal base realignment and closure process;
- (2) Authorize the commission to negotiate with, acquire real and personal property from, and enter into cooperative agreements with agencies of the federal government for the purpose of redeveloping surplus real and personal property;
- (3) Establish property declared surplus by the federal government at Barbers Point Naval Air Station as the "Kalaeloa community development district", and empower the commission to redevelop this property in accordance with the Barbers Point Naval Air Station community reuse plan and new development policies established herein; and
- (4) Provide an appropriation to carry out the purposes of this Act.

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

**"CHAPTER  
 REDEVELOPMENT OF BARBERS POINT NAVAL AIR STATION**

**PART I. KALAELOA COMMUNITY DEVELOPMENT DISTRICT**

§ -1 **Findings and purpose.** (a) The legislature finds that:

- (1) The federal department of defense has reevaluated the need for Barbers Point Naval Air Station, initiated a base realignment and closure (BRAC) process, and declared approximately 2,150 acres of valuable lands to be surplus to military and other federal agency needs;
- (2) These surplus lands will be made available to a local redevelopment authority to be designated by the State of Hawaii for redevelopment to satisfy pressing public and private sector needs and to promote economic development;
- (3) The governor has established the Barbers Point Naval Air Station redevelopment commission by executive order to develop a community reuse plan, and has approved the plan for these surplus lands at Barbers Point Naval Air Station;
- (4) The community redevelopment plan includes sites for a regional and beach park for public recreational use, a publicly-operated airport for civil aviation use, public facilities including a life safety academy and a desalination plant, facilities and land for programs to support the homeless, residential, light industrial, and commercial land to be managed by the department of Hawaiian home lands, and economic development projects that will stimulate the economy and produce jobs within the area; and
- (5) The traditional Hawaiian name for the Barbers Point area is "Kalaeloa" which means "Long Point".



(b) The purpose of this chapter is to:

- (1) Establish the Barbers Point Naval Air Station redevelopment commission as a public body corporate and politic to serve as the local redevelopment authority for surplus lands at Barbers Point Naval Air Station to be conveyed to the State under the base realignment and closure process;
- (2) Authorize the commission to negotiate with and receive lands, buildings, and property from the federal department of defense;
- (3) Authorize and empower the commission to redevelop these lands in accordance with the reuse plan approved by the governor;
- (4) Rename the surplus lands at Barbers Point Naval Air Station to be received by the State as the "Kalaeloa Community Development District"; and
- (5) Assign the staff of the Hawaii community development authority to assist the commission in its redevelopment activities.

§ -2 **Definitions.** As used in this part, the following words and terms have the following meanings unless the context indicates otherwise:

"Commercial project" means an undertaking involving commercial or light industrial development, which includes a mixed use development where commercial or light industrial facilities may be built into, adjacent to, under, or above residential units.

"Commission" means the Barbers Point Naval Air Station redevelopment commission established by section -3.

"County" means the city and county of Honolulu.

"Project" means a specific work or improvement, including real and personal properties, or any interest therein, acquired, owned, constructed, reconstructed, rehabilitated, or improved by the commission, including a residential project, a redevelopment project, or a commercial project, or any combination thereof, which combination shall hereinafter be called a "multipurpose project".

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

"Public facilities" includes streets, utility and service corridors and utility lines where applicable, sufficient to adequately service developable improvements in the district, sites for schools, parks, parking garages, sidewalks, pedestrian ways, and other community facilities. "Public facilities" also includes public highways and roadways as defined by statute, storm drainage systems, water systems, street lighting systems, off-street parking facilities, and sanitary sewerage systems.

"Qualified person" includes any individual, partnership, corporation, or any public agency, possessing the competence, expertise, experience, and resources including financial, personnel, and tangible resources, required for the purposes of the project and such other qualifications as may be deemed desirable by the commission.

"Real property" means lands, structures, and interests in land including lands under water and riparian rights, space rights, and air rights, and any and all other things usually included within the term. "Real property" also means any and all interests in the property less than full title such as easements, incorporeal hereditaments, and every estate, interest, or legal or equitable right, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.

"Redevelopment project" means an undertaking for the acquisition, clearance, replanning, reconstruction, or a combination of these and other methods, of an area for a residential project, for an incidental commercial project, for residential, recreational, commercial, or industrial projects associated with former military lands

at Barbers Point Naval Air Station to be conveyed under the base realignment and closure process, and for facilities incidental or appurtenant thereto, pursuant to and in accordance with this chapter. The terms “acquisition, clearance, replanning, reconstruction, and rehabilitation” include renewal, redevelopment, conservation, restoration, or improvement or any combination thereof.

“Residential project” means a project or that portion of a multipurpose project, including residential dwelling units, designed and intended for the purpose of providing housing and facilities incidental or appurtenant thereto.

**§ -3 Barbers Point naval air station redevelopment commission; established.** (a) There is established within the department of business, economic development, and tourism, for administrative purposes, the Barbers Point Naval Air Station redevelopment commission, which shall be a body corporate and a public instrumentality of the State for the purpose of implementing this chapter.

(b) The purpose of the commission shall be to act as the local redevelopment authority to facilitate the redevelopment of Barbers Point Naval Air Station in accordance with the Barbers Point naval air station community reuse plan. The commission’s duties shall include but not be limited to:

- (1) Coordinating with the navy and other entities during the preparation of an environmental impact statement and conduct of remediation activities for the Barbers Point Naval Air Station community reuse plan;
  - (2) Assisting the land holders designated by the plan in the marketing of their properties and the preparation and processing of conveyance requests;
  - (3) Assisting the navy by providing “caretaker services” after the closure of Barbers Point Naval Air Station as necessary;
  - (4) Working with the navy and others to ensure that infrastructure support is provided to the existing developed area, which is referred to as the “downtown area” and other federally retained areas;
  - (5) Developing the infrastructure necessary to support the implementation of the Barbers Point Naval Air Station community reuse plan; and
  - (6) Providing, to the extent feasible, maximum opportunity for the reuse of surplus property by private enterprise or state and local government.
- (c) The commission shall consist of fifteen voting members as follows:
- (1) The state director of business, economic development, and tourism; the chairperson of the board of land and natural resources; the adjutant general; the chairperson of the Hawaiian homes commission; and the director of transportation, or their designated representatives shall serve as ex-officio voting members;
  - (2) The county chief planning officer; the director and chief engineer of public works; the director of housing and community development; and the director of transportation services, or their designated representatives shall serve as ex-officio voting members;
  - (3) Six voting members shall be appointed for staggered terms as follows:
    - (A) The governor shall appoint one member from a list of three nominees submitted by the chair of the Makakilo/Kapolei/Honokai Hale neighborhood board;
    - (B) The governor shall appoint one member from a list of three nominees submitted by the chair of the Ewa neighborhood board;
    - (C) The governor shall appoint, subject to the advice and consent of the senate, two members from the general public;
    - (D) The mayor of Honolulu shall select one member from the general public; and

(E) The Honolulu city council shall select one member from the general public.

(d) The commission shall select a chairperson from among its members.

(e) The commander, naval base Pearl Harbor and commanding officer, naval air station Barbers Point may serve as non-voting ex-officio members of the commission.

(f) A majority of all voting members shall constitute a quorum to do business, and the concurrence of a majority of all voting members shall be necessary to make any action of the commission valid. All members shall continue in office until their respective successors, selected in the same manner and representing the same community of interest, have been appointed and qualified.

(g) The commission shall hire an executive director for the commission. The Hawaii community development authority shall make available employees of the authority to staff the commission as the commission deems necessary.

(h) Members appointed under subsection (c) shall serve without compensation, but each shall be reimbursed for expenses including travel expenses incurred in the performance of their duties.

**§ -4 Powers; generally.** In its role as the local redevelopment authority for the redevelopment of the Kalaehoa community development district, and except as otherwise limited by this chapter, the commission may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Make rules with respect to its projects, operations, properties, and facilities, in conformance with chapter 91;
- (6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;
- (7) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;
- (8) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements;
- (9) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project which the commission has theretofore sold or otherwise conveyed, transferred, or disposed of;
- (10) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property rights or for the furnishing of property or services in connection with a project;

- (11) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on such terms and conditions as it deems advisable;
- (12) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;
- (13) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (14) Contract for and accept gifts or grants in any form from any public agency or from any other source; and
- (15) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter.

**§ -5 Designation of the Kalaeloa Community Development District.**

(a) The federal department of defense has declared approximately 2,150 acres of land at the Barbers Point Naval Air Station to be surplus to its needs and has initiated a base realignment and closure process to transfer these surplus lands to the commission as the local redevelopment authority established by the State of Hawaii. The governor of Hawaii has approved and forwarded to the navy a community reuse plan for these lands.

(b) The legislature hereby designates these lands to be received by the State as the "Kalaeloa community development district" in recognition of the traditional Hawaiian name for the area, which means "long point".

**§ -6 District established; boundaries.** The Kalaeloa community development district is established and shall include all lands within tax map key numbers 9-1-31:28 and 9-1-13:01, excluding those areas to be:

- (1) Retained by the federal government;
- (2) Conveyed as an airport complex to the department of transportation; and
- (3) Conveyed to the department of Hawaiian home lands.

**§ -7 Kalaeloa community development district; development guidance policies.** The following shall be the development guidance policies generally governing the commission's actions in the Kalaeloa community development district:

- (1) Development shall be in accordance with the community reuse plan;
- (2) With the approval of the governor and concurrence of the navy, the commission, upon the concurrence of a majority of its voting members, may modify and make changes to the reuse plan to respond to changing conditions; provided that prior to amending the reuse plan, the commission shall conduct a public hearing to inform the public of the proposed changes and receive public input;
- (3) Development shall seek to promote economic development and employment opportunities by fostering diverse land uses and encouraging private sector investments which utilize the opportunities presented by the receipt of property from the base closure consistent with the needs of the public;
- (4) The commission may engage in planning, design, and construction activities inside the district and outside the district; provided that

activities outside the district relate to infrastructure development, area-wide drainage improvements, roadways realignments and improvements, business and industrial relocation, and other activities deemed by it necessary to carry out the redevelopment of the district and to implement this chapter. Studies or coordinating activities to be undertaken by the commission may address facility systems, industrial relocation, and other activities in conjunction with the county and appropriate state agencies;

- (5) Planning, replanning, rehabilitation, development, redevelopment and other preparation for reuse of Barbers Point Naval Air Station under this chapter are public uses and purposes for which public money may be spent and private property acquired;
- (6) Historic sites and culturally significant facilities, settings, and/or locations shall be preserved to the extent feasible;
- (7) Land use and redevelopment activities within the district shall be coordinated with and to the extent possible complement existing county and state policies, plans, and programs affecting the district; and
- (8) Public facilities within the district shall be planned, located, and developed to support the redevelopment policies established by this chapter for the district, the reuse plan approved by the governor, and rules adopted pursuant hereto.

§ **-8 Kalaeloa community development revolving fund.** There is created the Kalaeloa community development revolving fund into which all receipts and revenues of the commission shall be deposited. Proceeds from the fund shall be used for the purposes of this chapter.

§ **-9 Assistance by state and county agencies.** In addition to the Hawaii community development authority, which shall render staff support to the commission pursuant to section -3(g), any other state or county agency may render services and support upon request of the commission.

§ **-10 Court proceedings; preferences; venue.** Any action or proceeding to which the commission, the State, or the county may be a party, in which any question arises as to the validity of this chapter, shall be preferred over all other civil cases, except election cases, in any court of this State and shall be heard and determined in preference to all other civil cases pending therein except election cases, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the commission in any action or proceeding questioning the validity of this chapter in which the commission may be allowed to intervene. In addition to the preference provided in this section, any such action or proceeding to which the commission, the State, or the county may be a party, in which any question arises as to the validity of this chapter or any portion of this chapter, may be filed in the supreme court of the State, which court is hereby vested with original jurisdiction over the action, and notwithstanding any provision of law to the contrary, declaratory relief may be obtained for any such action.

§ **-11 Issuance of bonds.** The director of finance, from time to time, may issue general obligation bonds pursuant to chapter 39 in such amounts as may be authorized by the legislature, for the purposes of this chapter.

§ **-12 Violations and penalty.** (a) The commission may set, charge, and collect reasonable fines for violation of this chapter or any rule adopted pursuant to chapter 91. Any person violating any of the provisions of this chapter or any rule

adopted pursuant to chapter 91, 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 commission.

(b) The commission may maintain an action for an injunction to restrain any violation of this chapter and may take any other lawful action to prevent or remedy any violation.

(c) Any person violating any provision of this chapter, upon conviction, shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding thirty days, or both. The continuance of a violation after conviction shall be deemed a new offense for each day of the continuance. The commission may commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement.

(d) The commission may bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan.

(e) The commission may operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan.

## PART II. REVENUE BONDS FOR PUBLIC FACILITIES PROJECTS

§ -21 **Findings and declarations.** The legislature finds and declares that:

- (1) The health, safety, and general welfare of the people of the State require that every opportunity be taken to assist the redevelopment of the Barbers Point Naval Air Station and that the redevelopment and revitalization of this area will alleviate community needs for employment, housing, parks, open space, and commercial and industrial facilities;
- (2) A significant deterrent to redevelopment is the cost of public facilities including infrastructure;
- (3) Interest rates on moneys necessary to finance those public facilities add significantly to the cost of the facilities and more favorable interest rates would be available through the issuance of tax-exempt bonds; and
- (4) The availability of revenue bonds to finance the cost of public facilities will facilitate redevelopment of portions of Barbers Point Naval Air Station designated in this chapter as the Kalaeloa community development district.

The legislature further finds that the powers conferred, the issuance of revenue bonds, and the expenditure of public moneys under this part constitute a serving of a valid public purpose, and that this enactment is in the public interest and is so declared as an express legislative determination.

§ -22 **Definitions.** The following words or terms as used in this part shall have the following meanings, unless the context indicates otherwise:

“Revenue bonds” means bonds, notes, or other evidence of indebtedness of the commission issued to finance any public facility under this part.

“Trustee” means a national or state bank or trust company within or without the State which enters into a trust indenture.

“Trust indenture” means an agreement by and between the commission and the trustee, which sets forth the duties of the trustee with respect to the revenue bonds, the security thereof, and other provisions as deemed necessary or convenient by the commission to secure the revenue bonds.

§ -23 **Revenue bonds; authorization.** (a) The commission, with the approval of the governor, may issue from time to time revenue bonds in amounts not

exceeding the total amount of bonds authorized to be issued by the legislature, and in no event exceeding in the aggregate \$125,000,000, for the purpose of constructing, acquiring, remodeling, furnishing, and equipping any public facility, including acquisition of the site thereof relating to the Kalaeloa community development district.

(b) All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The revenue bonds under this part are declared to be issued for a public purpose and, together with interest thereon, shall be exempt from all state and county taxation except estate and transfer taxes. The legislature consents to federal income taxation of interest on revenue bonds issued under this part, if it is determined by the commission that the issuance is in the best interest of the State.

(d) The revenue bonds shall be issued in the name of the commission and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance.

**§ -24 Revenue bonds; payment and security.** (a) The revenue bonds shall be payable from and secured by the revenues derived from the public facility for which the revenue bonds are issued, including revenue derived from the insurance proceeds and reserve accounts and earnings thereon.

(b) The commission may pledge revenues derived from the public facility financed from the proceeds of the revenue bonds to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note or other undertaking, obligation, or property held by the commission to secure the loans.

(d) Any pledge made by the commission shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the commission from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon filing, the revenues, moneys, or property pledged thereafter received by the commission shall immediately be subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of the pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

**§ -25 Revenue bonds; interest rate, price, and sale.** (a) The revenue bonds shall bear interest at a rate or rates payable monthly, quarterly, or semiannually established by the commission.

(b) The commission shall include the costs of undertaking the public facility for which the revenue bonds are issued in determining the principal of revenue bonds to be issued. In determining the cost of undertaking the public facility, the commission may include:

- (1) The cost of constructing, acquiring, remodeling, furnishing, and equipping the public facility, including acquisition of the site thereof;
- (2) The cost of purchasing or funding loans or other agreements entered into for the public facility;
- (3) The costs of studies, surveys, and insurance premiums;
- (4) Underwriting fees;
- (5) Financial consultant, legal, accounting, and marketing services incurred;

- (6) Reserve account, trustee, custodian, and rating agency fees; and
- (7) Any capitalized interest.

(c) The revenue bonds may be sold at public or private sale, and for a price that may be determined by the commission to be in the best interest of the State.

§ -26 **Revenue bonds; investment of proceeds, and redemption.** Subject to any agreement with the holders of its revenue bonds, the commission may:

- (1) Invest its moneys not required for immediate use, including proceeds from the sale of revenue bonds, in any investment in accordance with procedures prescribed in a trust indenture; and
- (2) Purchase its revenue bonds out of any fund or money of the commission available therefor, and hold, cancel, or resell the revenue bonds.

§ -27 **Revenue bonds; special funds.** (a) A separate special fund shall be established for each public facility financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "public facility revenue bond special fund" and shall bear additional designation that the commission deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, all revenues, income, and receipts derived from the public facility for which the revenue bonds are issued shall be paid into the public facility revenue bond fund established for that public facility and applied as provided in the proceedings authorizing the issuance of the revenue bonds.

§ -28 **Trustee; designation, duties.** (a) The commission shall designate a trustee for each issue of revenue bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the commission to receive and receipt for, hold, and administer the proceeds of the revenue bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the commission to hold and administer the public facility revenue bond special fund established pursuant to section -27, and to receive and receipt for, hold, and administer the revenues derived by the give authority from the public facility for which the revenue bonds are issued and to apply these revenues to pay the costs of:

- (1) Undertaking the public facility;
- (2) Administering and operating the proceedings providing for the issuance of the revenue bonds;
- (3) Principal or interest on these bonds;
- (4) The establishment of reserves; and
- (5) Other purposes that may be authorized in the proceedings providing for the issuance of the revenue bonds.

(d) Notwithstanding section 39-68, the commission may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the revenue bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, that the commission may deem necessary, advisable, or expeditious, including the holding of the revenue bonds and coupons which have been paid and the supervision of the destruction thereof in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the commission in sections 36-3, 39-13, and 39-68, to appoint the trustee or others



as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§ -29 **Trust indenture.** (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and that deemed necessary or convenient by the commission for the purposes of this part.

(b) A trust indenture may allow the commission to pledge and assign to the trustee loans and other agreements related to the public facility, and the rights of the commission thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any revenue bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the revenue bonds required by section 39-56 may be facsimiles of their signatures.

(d) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the revenue bonds, the investment of any reserve for the bonds, the investment of the revenues of the public facility, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the revenue bonds or any portion of them or any trustee thereof may institute proceedings for the foreclosure of any loan or other agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived from the foreclosure.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the commission to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the financing of the costs of undertaking the public facility.’’

SECTION 3. Section 206E-4, Hawaii Revised Statutes, is amended to read as follows:

“**§206E-4 Powers; generally.** Except as otherwise limited by this chapter, the authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;
- (6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;
- (7) Prepare or cause to be prepared a community development plan for all designated community development districts;
- (8) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber the same;

- (9) Acquire or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities, including but not limited to streets, sidewalks, parks, schools, and other public improvements;
- (10) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project which the authority has theretofore sold or otherwise conveyed, transferred, or disposed of;
- (11) Arrange or contract for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, or other places, or for the furnishing of facilities or for the acquisition of property or property rights or for the furnishing of property or services in connection with a project;
- (12) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on such terms and conditions as it deems advisable;
- (13) Prepare or cause to be prepared plans, specifications, designs, and estimates of costs for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, designs, or estimates;
- (14) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (15) 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;
- (16) Contract for and accept gifts or grants in any form from any public agency or from any other source;
- (17) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter; [and]
- (18) Allow satisfaction of any affordable housing requirements imposed by the authority upon any proposed development project through the construction of reserved housing, as defined in section 206E-101, by a person on land located outside the geographic boundaries of the authority's jurisdiction. Such substituted housing shall be located on the same island as the development project and shall be substantially equal in value to the required reserved housing units that were to be developed on site. The authority shall establish the following priority in the development of reserved housing:
  - [(1)] (A) Within the community development district;
  - [(2)] (B) Within areas immediately surrounding the community development district;
  - [(3)] (C) Areas within the central urban core;
  - [(4)] (D) In outlying areas within the same island as the development project.

The Hawaii community development authority shall adopt rules relating to the approval of reserved housing that are developed outside of a community development district. The rules shall include, but are not

- limited to, the establishment of guidelines to ensure compliance with the above priorities[.]; and
- (19) Render technical and administrative services as necessary to assist the Barbers Point Naval Air Station redevelopment commission as the local redevelopment authority in the development of the Kalaeloa community development district.”

SECTION 4. 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 1997-1998, to provide and accommodate staffing and initiate planning, development, and marketing activities to support the development of the Kalaeloa community development district.

SECTION 5. The sums appropriated shall be expended by the department of business, economic development and tourism for the purposes of this Act.

SECTION 6. The Barbers Point Naval Air Station redevelopment commission shall submit an annual report to the legislature twenty days prior to each regular session, detailing the progress of the development of the Kalaeloa community development district, and including a summary of public hearings and other forms of community involvement and input.

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved July 3, 1997.)

## ACT 360

H.B. NO. 1707

A Bill for an Act Relating to the Office of Veterans' Services.

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

SECTION 1. Section 363-3, Hawaii Revised Statutes, is amended to read as follows:

“**§363-3 Activities of the office.** Except as otherwise provided by law, the office shall:

- (1) Maintain or cause to be maintained, subject to the control and supervision of the office, a center to which veterans, including their families and dependents, may come for information, counsel, aid, and assistance, and by which they may be directed or referred to any agency in the community whose function it is, by law or otherwise, to provide the services, assistance, or benefits which in each instance appear necessary or appropriate. Agencies to which any referrals may be made shall include, but are not limited to, departments and divisions of the federal and state governments, veterans' organizations, and so-called “private” social agencies;
- (2) Assume the initiative, in cooperation with agencies in the community, for coordinating all services now available, and which hereafter may become available, for the use and benefit of veterans, including their families and dependents, to the end that maximum effectiveness of the services may be realized, and overlapping and duplication of effort as between agencies may be minimized;

- (3) Assemble, analyze, compile, and disseminate factual, up-to-date information with respect to:
  - (A) Benefits, rights, and services of whatever nature to which veterans, including their families and dependents, are entitled, or which may be available to them; and
  - (B) The structure, functions, area of service, and other pertinent information regarding each agency and organization participating in the veterans' assistance program in the State;
- (4) Cooperate with federal departments and other agencies which, by law, have responsibility for the administration of rights and benefits granted by the federal government to veterans, including their families and dependents;
- (5) As soon as possible after the close of each fiscal year, compile and submit to the governor, for such use or distribution as the governor may deem appropriate, a comprehensive report of the activities and operations of the office, and of all disbursements and expenditures authorized by the office under this section; and
- (6) Inspect [annually] every three years all state war memorials and veterans' cemeteries for repair and maintenance deficiencies, and report all repair and maintenance problems at these memorials and cemeteries to the adjutant general, the comptroller, and the legislature prior to the start of [each] the next regular session."

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 July 3, 1997.)

## ACT 361

S.B. NO. 26

A Bill for an Act Relating to Parent and Guardian Responsibility for Minor.

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

SECTION 1. The legislature finds that parents serve as their children's first and primary teachers and, therefore, should be actively involved in all aspects of their children's educational process. Encompassed within this parental responsibility is the requirement that parents take steps to ensure that their children comply with the student code of conduct as adopted by the board of education. The purpose of this Act is to ensure that parents and guardians are informed of their responsibility with respect to their children's compliance with the student code of conduct and to clarify the consequences to parents and guardians for the children's failure to conform to such conduct.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§302A- Parent and guardian accountability for compliance with student code of conduct.** (a) The department shall inform all parents and guardians of the student code of conduct and of their responsibilities with respect to ensuring that their children comply with the code. The department also shall provide assis-

tance and advice to parents and guardians in meeting their responsibilities under the code.

(b) The failure of a student to meet the requirements for regular attendance and punctuality shall subject the student's parent, parents, or guardian to the penalties provided in section 302A-1135. Destruction of school property by a student, in addition to all other legal action that may be taken, shall subject the student's parent, parents, or guardian to proceedings under section 302A-1130 or 302A-1153, as appropriate."

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved July 3, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 362**

S.B. NO. 58

A Bill for an Act Relating to Kindergartens.

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

SECTION 1. Section 302A-411, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“~~[[§302A-411]]~~ **Kindergartens; establishment; attendance.** (a) The department [may] shall establish and maintain kindergartens with a program of instruction [in school zones where there are at least fifteen children eligible to attend,] as a part of the public school system[.]; provided that attendance shall not be mandatory. No child shall attend any kindergarten unless the child will be at least five years of age on or before December 31 of the school year; provided that a child attending a school that convenes after the regular school schedule shall be five years of age on or before one hundred twenty-five days following the date the school convenes; and provided further that the [department may establish procedures and criteria to determine the psychological and physiological readiness of children for kindergarten and may grant an exception in the case of a child who is found to be ready.] board shall develop informational guidance to promote the understanding of a child's readiness for kindergarten.”

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

SECTION 3. This Act shall take effect on July 1, 1997.

(Approved July 3, 1997.)

A Bill for an Act Relating to Child Abuse.

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

SECTION 1. Section 707-750, Hawaii Revised Statutes, is amended by amending subsections (1) and (2) to read as follows:

“(1) A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person produces, directs, or participates in the preparation of pornographic material or engages in a pornographic performance [which] that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

“Community standards” means the standards of the State.

“Lascivious” means tending to excite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording[,] and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than sixteen years old.

“Performance” means any play, motion picture film, dance, or other exhibition performed before any audience.

“Pornographic” shall have the same meaning as defined in section 712-1210.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, [or] sadomasochistic abuse[.], or lascivious exhibition of the genital or pubic area of a minor.

“Sadomasochistic abuse” means flagellation or torture by or ~~upon a person~~ as an act of sexual stimulation or gratification.

[“Pornographic” shall have the same meaning as defined in section 712-1210.]”

SECTION 2. Section 707-751, Hawaii Revised Statutes, is amended by amending subsections (1) and (2) to read as follows:

“(1) A person commits the offense of promoting child abuse in the second degree if, knowing or having reason to know its character and content, the person possesses or disseminates any pornographic material which employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

“Community standards” means the standards of the State.

“Disseminate” means to publish, sell, distribute, transmit, exhibit, or present material or to offer or agree to do the same.

“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.

“Material” means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

“Minor” means any person less than sixteen years old.

“Pornographic” shall have the same meaning as defined in section 712-1210.

“Somasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, ~~[or] somasochistic abuse[.]~~ or lascivious exhibition of the genital or pubic area of a minor.

[“Pornographic” shall have the same meaning as defined in section 712-1210.]”

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 July 3, 1997.)

## ACT 364

S.B. NO. 512

A Bill for an Act Relating to Professions and Vocations.

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

SECTION 1. One of the visions and opportunities for economic development for the State of Hawaii is to enhance its role as a health care hub of the Pacific, attracting patients from Asia and the Pacific regions to high quality health care facilities and services in the State. To achieve this vision, we need to encourage partnership between nationally and internationally recognized experts and our own outstanding local health care providers. This partnership will be a powerful force in attracting a greater share of the health care market in the Asian and Pacific regions.

The purpose of this Act is to take further steps in facilitating that partnership through judicious revisions in medical licensure laws.

The legislature recognizes that there may be concerns that local service providers will not be included in this expanding market. This Act is carefully crafted to encourage opportunities for local practitioners. In the area of training, the Act will provide an avenue for advanced training for our local physicians to enhance and update their skills with the latest procedures and techniques, while still providing outstanding care for their patients.

The legislature’s objective is to:

- (1) Facilitate the creation of new opportunities within our local economy in the health care community;
- (2) Help to create more jobs for our local health care workers; and
- (3) Maintain and improve the quality of care available to Hawaii’s residents.

SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§453- Training replacement temporary license. (a) The board may issue a limited and temporary license to a physician to maintain patient services for the purpose of substituting for another physician licensed in this State to enable specialized training at an out-of-state fully accredited medical teaching institution; provided that the out-of-state physician:

- (1) Is board certified by the American Board of Medical Specialties in the subspecialty in which the Hawaii physician is seeking training;
- (2) Is a member of the teaching faculty of the accredited medical teaching institution;
- (3) Has an unrestricted license in another state;
- (4) Has been invited by the chief of a clinical department of a hospital; and
- (5) Has been examined and approved by the hospital’s credential process.

The limited and temporary license issued under this section shall expire upon notification of the board by the Hawaii-licensed physician that the physician has resumed the physician’s practice in this State. Licenses and extensions of licenses issued under this section to an individual shall not be valid for more than nine months during any consecutive twenty-four month period.

(b) The chief of the clinical department in which the out-of-state physician will practice shall submit a letter to the board which shall include, without limitation, the following:

- (1) Identification and documentation of unrestricted license for the applicant for the specialty training license;
- (2) A statement that the hospital is sponsoring the applicant, and shall be responsible for monitoring the individual physician during the period of the temporary license;
- (3) Verification of the start and end dates for the requested temporary license; and
- (4) Verification that the chief of the clinical department is a licensed physician of this State.

(c) The holder of a specialty training license shall obey and be subject to all laws and rules of this State.”

SECTION 3. Section 453-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing herein shall:

- (1) Apply to so-called Christian Scientists so long as they merely practice the religious tenets of their church without pretending a knowledge of medicine or surgery;
- (2) Prohibit service in the case of emergency or the domestic administration of family remedies;
- (3) Apply to any commissioned medical officer in the United States armed forces or public health service, engaged in the discharge of one’s official duty, nor to any practitioner of medicine and surgery from another state when in actual consultation, including but not limited to in-person, mail, electronic, telephonic, fiber-optic, or other telemedicine consultation, with a licensed [practitioner] physician of this State if the [practitioner] physician from another state, at the time of such consultation, is licensed to practice in the state in which the [practitioner] physician resides; provided that [the practitioner]:
  - (A) The physician from another state shall not open an office, or appoint a place to meet patients, or receive calls within the limits of the State; and



- (B) The licensed physician of this State retains control and remains responsible for the provision of care for the patient; and provided further that the laws and regulations relating to contagious diseases are not violated;
- (4) Prohibit services rendered by any person certified under part II of this chapter to provide emergency medical services or any physician assistant when the services are rendered under the direction and control of a physician licensed in this State except for final refraction resulting in a prescription for spectacles, contact lenses, or visual training as performed by an oculist or optometrist duly licensed by the State. The direction and control shall not be construed in every case to require the personal presence of the supervising and controlling physician. Any physician who employs or directs a person certified under part II of this chapter to provide emergency medical services or physician assistant shall retain full professional and personal responsibility for any act which constitutes the practice of medicine when performed by such person or physician assistant; or
- (5) Prohibit automatic defibrillation by any first responder personnel certified by the department of health to provide automatic defibrillation when it is rendered under the medical oversight of a physician licensed in this State.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved July 3, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 365**

S.B. NO. 653

A Bill for an Act Relating to Employment Practices.

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

SECTION 1. The legislature finds that patients in health care facilities represent a population that is particularly vulnerable to wrongdoers. This vulnerability may be due to anesthesia, medication, disease, injury, disability, or some other incapacity.

The purpose of this Act is to allow hospitals, nursing homes, home health agencies, and other health care facilities, to consider criminal records in determining whether employees or prospective employees are suited to working in close proximity to vulnerable patients.

SECTION 2. Section 378-3, Hawaii Revised Statutes, is amended to read as follows:

**“§378-3 Exceptions.** Nothing in this part shall be deemed to:

- (1) Repeal or affect any law, ordinance, or government rule having the force and effect of law;

- (2) Prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise, and that have a substantial relationship to the functions and responsibilities of prospective or continued employment;
- (3) Prohibit or prevent an employer, employment agency, or labor organization from refusing to hire, refer, or discharge any individual for reasons relating to the ability of the individual to perform the work in question;
- (4) Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan that is not intended to evade the purpose of this chapter; provided that this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age;
- (5) Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making a selection calculated to promote the religious principles for which the organization is established or maintained;
- (6) Conflict with or affect the application of security regulations or rules in employment established by the United States or the State;
- (7) Require the employer to execute unreasonable structural changes or expensive equipment alterations to accommodate the employment of a person with a disability;
- (8) Prohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to children;
- (9) Prohibit or prevent any financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution from denying employment to or discharging from employment any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, unless it has the prior written consent of the federal agency having jurisdiction over the financial institution to hire or retain the person;
- (10) Preclude any employee from bringing a civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto; provided that notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed in circuit court; [or]
- (11) Require the employer to accommodate the needs of a nondisabled person associated with or related to a person with a disability in any way not required by Title I of the Americans with Disabilities Act[.]; or
- (12) Prohibit or prevent a "health care facility," as defined in chapter 323D, from considering the record of a criminal conviction where the criminal offense is a relevant factor in determining the bona fide occupational qualifications for a position where an employee or prospective employee who has received an offer for employment is working in close proximity to patients."

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 June 30, 1999, and section 378-3, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved July 3, 1997.)

## ACT 366

S.B. NO. 1279

A Bill for an Act Relating to Sexual Assault.

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

SECTION 1. Section 707-731, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of sexual assault in the second degree if:
- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
  - (b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless;
  - (c) The person, while employed in a state correctional facility[,] or while employed as a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual penetration an imprisoned person[.]; a person confined to a detention facility, or a person in custody; provided [paragraphs] that paragraph (b) [and (c)] and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices[.]; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.”

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 July 3, 1997.)

## ACT 367

S.B. NO. 1487

A Bill for an Act Relating to Mutual Benefit Societies.

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

SECTION 1. Chapter 432, Hawaii Revised Statutes, is amended by adding to part IV of article 1 four new sections to be appropriately designated and to read as follows:

**“§432:1- Definitions.** As used in this article:

“Health care expenditures” means claims incurred.

“Managed hospital payment basis” means agreements wherein the financial risk is primarily related to the degree of utilization rather than to the cost of services.

“Member” means an individual who is covered by a mutual benefit society.

“Net worth” means the excess of total admitted assets over total liabilities, but the liabilities shall not include fully subordinated debt.

“Operating expenses” means claims adjustment, administrative, soliciting, and reinsurance allowances.

“Society” means mutual benefit society.

“Uncovered expenditures” means the costs to the mutual benefit society for health care services that are the obligation of the mutual benefit society, for which a member may be liable in the event of the mutual benefit society’s insolvency, and for which no alternative arrangements have been made that are acceptable to the commissioner. Uncovered expenditures do not include expenditures for services when a provider has agreed not to bill the member even though the provider is not paid by the mutual benefit society, or for services that are guaranteed, insured, or assumed by a person or organization other than a mutual benefit society.

**§432:1- Protection against insolvency.** (a) Net worth requirements are as follows:

- (1) Before issuing a certificate of authority pursuant to section 432:1-301, the commissioner shall require that the mutual benefit society has an initial net worth of \$1,500,000 and the society shall thereafter maintain the minimum net worth required under paragraph (2);
  - (2) Except as provided in paragraph (3), every mutual benefit society shall maintain a minimum net worth equal to the greater of:
    - (A) \$1,500,000;
    - (B) Two per cent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first \$150,000,000 of premium revenues and one per cent of annual premium revenues on the premium revenues in excess of \$150,000,000; or
    - (C) An amount equal to eight per cent of the sum of annual health care expenditures and operating expenses as reported on the most recent financial statement filed with the commissioner;
  - (3) The minimum net worth requirement set forth in subparagraph (2)(C) shall be phased in as follows:
    - (A) Fifty per cent of the amount required by subparagraph (2)(C) by December 31, 1997;
    - (B) Seventy-five per cent of the amount required by subparagraph (2)(C) by December 31, 1998; and
    - (C) One hundred per cent of the amount required by subparagraph (2)(C) by December 31, 1999.
- (b) Deposit requirements are as follows:
- (1) Unless otherwise provided below, each mutual benefit society shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than \$300,000;
  - (2) A mutual benefit society that is in operation on the effective date of this section shall make a deposit equal to \$150,000. Within one year after

the effective date of this section, a society that is in operation on the effective date of this section shall make an additional deposit of \$150,000 for a total of \$300,000;

- (3) Deposits shall be an admitted asset of the mutual benefit society in the determination of net worth;
- (4) All income from deposits shall be an asset of the mutual benefit society. A society that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be subject to approval by the commissioner before being deposited or substituted;
- (5) The deposit shall be used to protect the interests of the mutual benefit society's members and to assure continuation of health care services to members of a society which is in rehabilitation, liquidation, or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If a society is placed in receivership or liquidation, the deposit shall be an asset subject to article 15 of chapter 431; and
- (6) The commissioner may reduce or eliminate the deposit requirement if the mutual benefit society deposits with the director of finance or the insurance commissioner, for the protection of all subscribers and members, wherever located, cash, acceptable securities, or surety, and delivers to the commissioner a certificate to that effect, duly authenticated by the appropriate state official holding the deposit.

(c) Every mutual benefit society, when determining liabilities, shall include an amount estimated in the aggregate to provide for any unearned premium, and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of claims. The liabilities shall be computed in accordance with rules adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the society.

(d) Every contract between a mutual benefit society and a participating provider of health care services shall be in writing and shall set forth that in the event the society fails to pay for health care services as set forth in the contract, the subscriber or member shall not be liable to the provider for any sums owed by the society. If a contract with a participating provider has not been reduced to writing as required by this subsection, or if a contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or member sums owed by the society. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or member to collect sums owed by the society.

(e) The commissioner shall require that each mutual benefit society have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:

- (1) Insurance to cover the expenses to be paid for continued benefits after the insolvency;
- (2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the society's insolvency for which premium payment has been made and until the members' discharge from inpatient facilities;

- (3) Insolvency reserves;
  - (4) Acceptable letters of credit; or
  - (5) Any other arrangements acceptable to the commissioner to assure that benefits are continued as specified above.
- (f) An agreement to provide health care services between a provider and a mutual benefit society shall require that a provider shall give the organization at least sixty days' advance notice in the event of termination.

**§432:1- Uncovered expenditures insolvency deposit.** (a) If, at any time, uncovered expenditures exceeds ten per cent of total health care expenditures, a mutual benefit society shall place with the commissioner or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is maintained, an uncovered expenditures insolvency deposit consisting of cash or securities that are acceptable to the commissioner. The deposit shall have, at all times, a fair market value in an amount of one hundred twenty per cent of the society's outstanding liability for uncovered expenditures for members in this State, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. If a society is not otherwise required to file a quarterly report, it shall file a report within forty-five days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section.

(b) The deposit required under this section is in addition to the deposit required under section 432:1- and is an admitted asset of the mutual benefit society in the determination of net worth. All income from the deposits or trust accounts shall be assets of the society and may be withdrawn from the deposit or account quarterly with the approval of the commissioner.

(c) A mutual benefit society that has made a deposit may withdraw that deposit or any part of the deposit if:

- (1) A substitute deposit of cash or securities of equal amount and value is made;
- (2) The fair market value exceeds the amount of the required deposit; or
- (3) The required deposit under subsection (a) is reduced or eliminated.

Deposits, substitutions, or withdrawals may be made with the prior written approval of the commissioner.

(d) The deposit under this section shall be held in trust and may be used only as provided in this section. The commissioner may use the deposit of an insolvent mutual benefit society for administrative costs associated with administering the deposit and payment of claims of members of this State for uncovered expenditures in this State. Claims for uncovered expenditures shall be paid on a pro rata basis based on assets available to pay such ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the society.

(e) The commissioner may prescribe by rule the time, manner, and form for filing claims under subsection (d).

(f) The commissioner may require by rule or order mutual benefit societies to file annual, quarterly, or more frequent reports as the commissioner deems necessary to demonstrate compliance with this section. The commissioner may require that the reports include liability for uncovered expenditures as well as an audit option.

**§432:1- Rehabilitation, liquidation, or conservation of mutual benefit societies.** (a) Any rehabilitation, liquidation, or conservation of a mutual benefit society shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commis-

sioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a mutual benefit society upon any one or more grounds set out in article 15 of chapter 431, or, when in the commissioner's opinion, the continued operation of the society would be hazardous either to the members or to the general public. Members shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(b) For purposes of determining the priority of distribution of general assets, claims of members and members' beneficiaries shall have the same priority as established by article 15 of chapter 431 for policyholders and beneficiaries of insureds of insurance companies. If a member is liable to any provider for services provided pursuant to and covered by the health care plan, that liability shall have the status of a member claim for distribution of general assets. Any provider who is obligated by statute or agreement to hold members harmless from liability for services provided pursuant to and covered by a health care plan shall have a priority of distribution of the general assets immediately following that of members and members' beneficiaries as described in this subsection, and immediately preceding the priority of distribution described in article 15 of chapter 431."

SECTION 2. Section 431:1-502,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

**"§432:1-502 [Receiver; appointment, powers, duties.** (a) The commissioner shall give immediate notice thereof to the society and demand that irregularities be promptly corrected, impairments of assets be made good, that all unsafe or unauthorized practices be discontinued, or that there be compliance with the laws in question, if, upon the examination of any mutual benefit society, as defined in section 432:1-104(2), the commissioner ascertains and finds that:

- (1) The laws of the State relating to such societies are not being fully observed;
- (2) That any irregularities are being practiced;
- (3) That the assets have been or are in danger of being impaired;
- (4) That the society is conducting its affairs in an unsafe manner so that continuance of its business would be hazardous to the public; or
- (5) That it is necessary for the protection of the members or creditors of the society.

(b) If the commissioner's demand issued under subsection (a) is not complied with within a reasonable time fixed by the commissioner, but not exceeding thirty days after the notice, then upon the request of the commissioner, application shall be made by the attorney general on the commissioner's behalf, to a judge or court of competent jurisdiction for the appointment of a receiver for the society. If it appears that any of the facts enumerated in the application as the ground for a receivership exists, the court or judge shall immediately appoint a competent person as receiver, and shall determine such receiver's bond and prescribe the receiver's duties, and may make such other or further orders as shall seem proper.

(c) Except as otherwise provided by the court or judge, any receiver appointed under this article shall have, exercise, and perform all of the powers and duties of a receiver of a financial institution under chapter 412, article 2, part IV.] **Summary orders and supervision.** (a) **Whenever the commissioner determines that the financial condition of any mutual benefit society is such that its continued operation might be hazardous to its members, creditors, or the general public, or that it has violated any provision of this chapter, the commissioner, after notice and hearing, may order the society to take such action as may be reasonably necessary to**

rectify such condition or violation, including but not limited to one or more of the following:

- (1) Reducing the total amount of present and potential liability for benefits by reinsurance or other method acceptable to the commissioner;
- (2) Reducing the volume of new business being accepted;
- (3) Reducing expenses by specified methods;
- (4) Suspending or limiting the writing of new business for a period of time;
- (5) Increasing the society's capital and surplus by contribution; or
- (6) Taking such other steps as the commissioner may deem appropriate under the circumstances.

(b) For purposes of this section, the violation by a society of any law of this State to which such society is subject shall be deemed a violation of this chapter.

(c) The commissioner, by rule, may set uniform standards and criteria for early warning that the continued operation of any society might be hazardous to its members, creditors, or the general public and to set standards for evaluating the financial condition of any society, which standards shall be consistent with the purposes expressed in subsection (a).

(d) The remedies and measures available to the commissioner under this section shall be in addition to, and not in lieu of, the remedies and measures available to the commissioner under article 15 of chapter 431."

SECTION 3. This Act shall not apply to:

- (1) Societies that do not operate as a hospital, medical or indemnity society, or corporation; and
- (2) Labor union mutual benefit societies under section 432:1-103(b).

SECTION 4. If any provision of this Act, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved July 3, 1997.)

**Notes**

- 1. Should be "432:1-502".
- 2. Edited pursuant to HRS §23G-16.5.

**ACT 368**

S.B. NO. 1535

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Section 431:2-206, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person competent to serve a summons shall serve upon the commissioner triplicate copies of legal process against an insurer for whom the commissioner is attorney. In the absence of the commissioner, the process may be served



upon the chief deputy or the deputy in charge of the insurance function. At the time of service the plaintiff shall pay to the commissioner [\$7.50,] \$12, taxable as costs in the action.”

SECTION 2. Section 431:3-302, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-302 Annual and quarterly filings with the National Association of Insurance Commissioners.** (a) Each domestic, foreign, and alien insurer [which] that is authorized to transact insurance in this State shall [file annual and quarterly statements with the National Association of Insurance Commissioners. Each insurer,] annually on or before March 1 of each year, [shall] file a copy of its annual statement convention blank along with additional filings as prescribed by the commissioner for the preceding year[.] with the National Association of Insurance Commissioners. Each insurer shall file quarterly, on or before the forty-fifth day after each quarter, a copy of its quarterly statement with the commissioner and the National Association of Insurance Commissioners. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addenda to the statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners. In addition to the printed annual statement blank, quarterly statements, and other reports addressed in this section, the annual filing [for 1993 and thereafter] and the quarterly filings [for 1994 and thereafter] shall include diskettes containing annual and quarterly statement information in the format prescribed by the National Association of Insurance Commissioners annual and quarterly statement diskette filing specifications. The annual and quarterly diskette filings shall be due on the same dates as the corresponding printed information.

(b) In respect to quarterly filings, foreign insurers that are domiciled in a state [which] that has a law substantially similar to subsection (a) shall be deemed to be in compliance with this section and are not required to file [such] the statements with this State. [However, all] All other filings are required to be filed in accordance with this section.

(c) Any insurer failing or refusing to submit the annual or quarterly filings in accordance with this section shall be liable for a penalty in an amount not less than \$100 and not more than \$500 for each day of delinquency.”

SECTION 3. Section 431:3-302.5, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-302.5 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 May 7, 1991]. 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] that utilizes a pooling or one hundred per cent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and [such] the insurer cedes all of its direct and assumed business to the pool.

(c) The audit required in subsection (a) and the audited consolidated or combined financial statements required in subsection (b) shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' accounting practices and procedures manuals.

[(c)] (d) Any insurer failing or refusing to submit the annual audit or any of the documents required under subsection (a) on or before June 1, or a later date as the commissioner upon request or for cause may specify, shall be liable for a penalty in an amount not less than \$100 and not more than \$500 for each day of delinquency. 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 4. Section 431:5-301, Hawaii Revised Statutes, is amended to read as follows:

**“§431:5-301 Unearned premium reserve.** (a) Every insurer shall maintain an unearned premium reserve on all policies in force for:

- (1) Insurance against loss or damage to property, except as provided in section 431:5-302;
- (2) General casualty insurance;
- (3) Disability insurance, except as provided in section 431:5-303 and section 431:5-307; and
- (4) Surety insurance.

(b) For purposes of this article, [unearned premium reserve] “unearned premium reserve” means the portions of the gross premiums in force, less authorized reinsurance.

[(c)] Such reserve shall be computed according to the following table:

<u>Terms for which policy was written</u>	<u>Reserve for unearned premium</u>
One year or less .....	1/2
Two years .....	3/4
	First year .....
	Second year .....
Three years .....	1/4
	First year .....
	Second year .....
	Third year .....
Four years .....	5/6
	First year .....
	Second year .....
	Third year .....
Five years .....	1/6
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
Five years .....	7/8
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
Five years .....	5/8
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
Over five years .....	3/8
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
	Fifth year .....
Over five years .....	1/8
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
	Fifth year .....
Over five years .....	9/10
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
	Fifth year .....
Over five years .....	7/10
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
	Fifth year .....
Over five years .....	1/2
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
	Fifth year .....
Over five years .....	3/10
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
	Fifth year .....
Over five years .....	1/10
	First year .....
	Second year .....
	Third year .....
	Fourth year .....
	Fifth year .....
Over five years .....	Pro rata

(d) In lieu of computation according to the table in subsection (c), all of the (c) All reserves may be computed, at the insurer's option, on a monthly or more frequent, pro rata basis.

[(e)] (d) After adopting any one of the methods for computing such reserve, an insurer shall not change methods without the commissioner's approval."

SECTION 5. Section 431:5-302, Hawaii Revised Statutes, is amended to read as follows:

**"§431:5-302 Unearned premium reserve for marine and transportation.**

Marine and transportation insurance policy premiums on trip risks not terminated shall be deemed unearned. The commissioner may require the insurer to carry a reserve [thereon] equal to one hundred per cent on trip risks written during the month ended as of the date of statement, and:

- (1) Computed upon a pro rata basis[.]; or
- (2) With the commissioner's consent, in accordance with the alternative methods provided in section [431:5-301(d)] 431:5-301(c) and section [431:5-301(e)] 431:5-301(d)."

SECTION 6. Section 431:10C-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers education fund underwriters fee of \$2 a year on each motor vehicle insured by each insurer or self-insurer. This fee is due and payable on [a quarterly] an annual basis by means and at a time to be determined by the commissioner."

SECTION 7. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Each pure captive insurance company shall submit to the commissioner a statement of financial condition written according to generally accepted accounting principles and audited by an independent certified public accountant on or before the last day of the sixth month following the end of the company's fiscal year.

(b) [In addition, each] Each association captive and risk retention captive shall file with the commissioner an annual statement on or before March 1 each year, using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. In addition to the annual statement, annually on or before June 1, or such later date as the commissioner upon request or for cause may specify, each association captive and risk retention captive shall file an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive. The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' practices and procedures manuals. The reported information shall be verified by oaths of at least two of the [insurer's] captive's principal officers. Each risk retention group shall also comply with section 431:3-302."

SECTION 8. Section 431K-1, Hawaii Revised Statutes, is amended by amending the definitions of "liability" and "personal risk liability" to read as follows:

““Liability” means legal liability for damages, including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to those other persons resulting from or arising out of:

- (1) Any business, whether for profit or nonprofit, trade, product, services, including professional services, premises, or operations; or
- (2) Any activity of any state or county government, or any agency or political subdivision [thereof];

but does not include personal risk liability and an employer’s liability with respect to its employees other than legal liability under the Federal Employers’ Liability Act, 45 U.S.C. §51 et seq.

“Personal risk liability” means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (1) and (2) in the definition of “liability”.”

SECTION 9. Section 431K-7, Hawaii Revised Statutes, is amended to read as follows:

**“§431K-7 Notice and registration requirements of purchasing groups.**

(a) A purchasing group that intends to do business in this State shall furnish, on forms prescribed by the National Association of Insurance Commissioners, notice to the commissioner that shall include the following:

- (1) Identification of the state in which the group is domiciled;
- (2) Specification of the lines and classifications of liability insurance that the purchasing group intends to purchase;
- (3) Identification of the insurance company or risk retention group from which the group intends to purchase its insurance and the domicile of [such] the company or risk retention group; and
- (4) Identification of the principal place of business of the group[;]
- (5) Provision of other information as may be required by the commissioner to verify that the purchasing group qualifies as such under section 431K-1;
- (6) The method by which, and the person or persons through whom, insurance will be offered to its members whose risks are resident or located in this State; and
- (7) Identify all other states in which the group intends to do business[.]

(b) The commissioner may require a purchasing group to provide the following information:

- (1) The method by which, and the person or persons through whom, insurance will be offered to its members whose risks are resident or located in this State;
- (2) Identify all other states in which the group intends to do business; and
- (3) Provision of other information to verify that the purchasing group qualifies as such under section 431K-1.

(b) (c) The purchasing group shall register with and designate the commissioner or other appropriate authority as its agent solely for the purpose of receiving service of legal documents or process, except that these requirements shall not apply in the case of a purchasing group that:

- (1) Was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States;
- (2) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;

- (3) Was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., before October 27, 1986; and
- (4) Does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.

[(c) A] (d) Within ten days a purchasing group shall[, within ten days,] notify the commissioner of any changes in any of the items set forth in [subsection (a).] subsections (a) and (b).”

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

SECTION 11. This Act shall take effect upon its approval, except section 6 shall take effect on July 1, 1998.

(Approved July 3, 1997.)

**ACT 369**

S.B. NO. 1589

A Bill for an Act Relating to Child Death Review.

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

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . CHILD DEATH REVIEW**

**§321- Multidisciplinary and multiagency reviews.** The department of health may conduct multidisciplinary and multiagency reviews of child deaths in order to reduce the incidence of preventable child deaths.

**§321- Definitions.** As used in this part:

“Child” means a person under eighteen years of age.

“Child death review information” means information regarding the child and child’s family, including but not limited to:

- (1) Social, medical, and legal histories;
- (2) Death and birth certificates;
- (3) Law enforcement investigative data;
- (4) Medical examiner or coroner investigative data;
- (5) Parole and probation information and records;
- (6) Information and records of social service agencies;
- (7) Educational records; and
- (8) Health care institution information.

“Department” means the department of health.

“Director” means the director of health or the director’s designated representatives.

“Family” means:

- (1) Each legal parent;
- (2) The natural mother;
- (3) The natural father;
- (4) The adjudicated, presumed, or concerned natural father as defined under section 578-2;

- (5) Each parent's spouse or former spouses;
- (6) Each sibling or person related by consanguinity or marriage;
- (7) Each person residing in the same dwelling unit; and
- (8) Any other person who, or legal entity that, is a child's legal or physical custodian or guardian, or who is otherwise responsible for the child's care, other than an authorized agency that assumes such a legal status or relationship with the child under chapter 587.

"Preventable death" means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.

"Provider of medical care" means any health care practitioner who provides, or a facility through which is provided, any medical evaluation or treatment, including dental and mental health evaluation or treatment.

**§321- Access to information.** (a) Upon written request of the director, all providers of medical care and state and county agencies shall disclose to the department, and those individuals appointed by the director to participate in the review of child deaths, child death review information regarding the circumstances of a child's death so that the department may conduct a multidisciplinary and multiagency review of child deaths pursuant to section 321-31 and this part.

(b) To the extent that this section conflicts with other state confidentiality laws, this section shall prevail.

**§321- Exception.** Information regarding an ongoing civil or criminal investigation shall be disclosed at the discretion of the applicable state, county, or federal law enforcement agency.

**§321- Use of child death review information and records.** (a) Except as otherwise provided in this part, all child death review information acquired by the department during its review of child deaths pursuant to this part, is confidential and may only be disclosed as necessary to carry out the purposes of this part.

(b) Child death review information and statistical compilations of data that do not contain any information that would permit the identification of any person shall be public records.

(c) No individual participating in the department's multidisciplinary and multiagency review of a child's death may be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a child death review meeting. Nothing in this subsection shall be construed to prevent a person from testifying to information obtained independently of the department's multidisciplinary and multiagency review of a child's death, or which is public information, or where disclosure is required by law or court order.

(d) Child death review information held by the department as a result of child death reviews conducted under this part are not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that child death review information otherwise available from other sources is not immune from subpoena, discovery, or introduction into evidence through those sources solely because they were provided as required by this part.

**§321- Immunity from liability.** All agencies and individuals participating in the review of child deaths pursuant to this part shall not be held civilly or criminally liable for providing the information required under this part."

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

(Approved July 3, 1997.)

## ACT 370

S.B. NO. 1618

A Bill for an Act Relating to the Transportation Improvement Special Fund.

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

SECTION 1. The purpose of this Act is to establish a transportation improvement special fund to:

- (1) Fund qualified transportation projects; and
- (2) Receive reimbursements from private developers who have been advanced public funds to fulfill the conditions of land use development relating to transportation.

Developers will be offered a financing option to fulfill their financial obligation for the costs of required transportation projects if these projects meet federal and state eligibility requirements. This option will provide for more timely implementation of high priority transportation projects.

In addition, the Federal Highway Administration requires the establishment of this special fund to ensure that federal funds will be used for the intended transportation purposes.

SECTION 2. Chapter 264, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§264- Transportation improvement special fund.** (a) There is created within the state treasury the transportation improvement special fund to fund qualified transportation projects and to receive reimbursements from private developers who have been advanced public funds to fulfill the conditions of land use development relating to transportation.

The director may expend from the special fund such sums as are necessary to advance transportation projects, including administrative expenses, to the extent permissible:

- (1) When such projects:
  - (A) Have been identified in or are consistent with the statewide transportation plan adopted pursuant to chapter 279A; and
  - (B) Satisfy all applicable federal and state eligibility requirements; or
- (2) When the director determines that funds previously authorized for the aforementioned projects are inadequate or any delay in the completion of such projects would unnecessarily increase their cost or intensify undesirable transportation conditions.

(b) Expenditures from the special fund shall be made on vouchers approved by the director or such other officer as may be designated by the director.

(c) There shall be credited to the special fund all reimbursements and any interest earned or penalty accrued on late payments thereon received from developers who have been advanced public funds to fulfill the conditions of land use development relating to transportation or other transportation requirements imposed upon such developers.

(d) Expenditures from the special fund may not be made by the director without appropriation by the legislature. No expenditure shall be made from, and no obligation shall be incurred against, the special fund in excess of the amount standing to the credit of the special fund or for any purpose for which moneys from the special fund may not lawfully be expended.

(e) The director may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of, and to administer, this section.

- (f) As used in this section:

## ACT 371

“Director” means the director of transportation.

“Special fund” means the transportation improvement special fund.”

SECTION 3. The department of transportation shall prepare and submit an annual report to the legislature on the use of the transportation improvement special fund which shall include, but not be limited to:

- (1) The fund balance and the expenses made from the fund for the immediately preceding fiscal year; and
- (2) Proposed appropriations from the fund for the next fiscal year.

This report shall be submitted to the legislature no later than twenty days prior to the convening of each legislative session.

SECTION 4. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or 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 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 that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved July 3, 1997.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 371

S.B. NO. 1628

A Bill for an Act Relating to Rehiring Retired Teachers in the Department of Education.

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

SECTION 1. The department of education in its efforts to provide quality education for all students, continues to seek viable solutions to address its recruitment needs in maintaining a teacher applicant pool capable of addressing continuing teacher shortages in areas such as special education, mathematics, science, industrial arts, and Hawaiian immersion. Less severe shortages also exist for English teachers. Neighbor Island schools, particularly schools in more isolated areas, are experiencing shortages in all fields.

The pool of applicants for these shortage areas is projected to exist for at least another five years. Given the fact that the pool of applicants for the aforementioned shortage areas must be rebuilt each year because fully certified applicants in shortage fields are quickly depleted, the legislature believes that there are high quality teachers who participated in the 1995 early retirement incentive program who, provided they could be rehired on a full-time basis without loss of their current



retirement benefits, would be willing to return to a classroom teaching position on a year-to-year basis, until the shortage areas no longer exist.

SECTION 2. The department of education may employ retired teachers at up to one hundred per cent full-time equivalents in teacher shortage areas identified by the department, with prior approval of the superintendent of education and pursuant to collective bargaining agreements. The specific provisions of sections 88-21, 88-42.5, 88-43, 88-45, and 88-46, Hawaii Revised Statutes, and any other statute to the contrary notwithstanding, those retired teachers who are rehired shall not earn retirement service credit, contribute to the retirement system, or gain additional retirement system benefits as a result of such employment; provided that the retired teacher shall continue to receive entitled normal retirement benefits without penalty.

SECTION 3. This Act shall take effect upon its approval and shall be repealed at the close of the 1997-1998 school year.

(Approved July 3, 1997.)

## ACT 372

S.B. NO. 1901

A Bill for an Act Relating to Time Share.

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

SECTION 1. Chapter 514E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§514E- Classes of time share interests.** (a) A time share plan may establish classes of time share interests defined by characteristics as the developer shall determine, including but not limited to season, unit size, location, view, or otherwise.

(b) If one or more of the time share units will not be available for the entire duration of the time share plan then, in addition to other characteristics as the developer shall determine, the time share interests shall be classified by duration.

**§514E- One-to-one use-right to use-night requirement.** (a) A developer shall not offer or dispose of a time share unit or a time share interest unless the one-to-one use-right to use-night requirement is currently satisfied and will continue to be satisfied for the duration of the time share plan.

(b) The time share instruments shall contain provisions assuring satisfaction of the one-to-one use-right to use-night requirement for the duration of the time share plan except during temporary periods of noncompliance due to casualty or condemnation.

(c) The following criteria shall be considered in determining whether the one-to-one use-right to use-night requirement is satisfied:

- (1) If the time share plan has more than one class of time share interest, then the requirement must be satisfied within each class;
- (2) Only use nights available and protected from blanket liens for the duration of the time share plan shall be counted; provided that if time share interests are classified by duration, then as to each class, only use nights available and protected from blanket liens for the entire duration of that class shall be counted;

- (3) A use night counted to satisfy the requirement for one class may not also be counted to satisfy the requirement for a competing class;
- (4) No individual time share unit may be counted as providing more than three hundred sixty-five use nights per calendar year (or more than three hundred sixty-six use nights per leap year);
- (5) The use rights of each owner shall be counted without regard to whether the owner's use rights have been suspended for failure to pay assessments or otherwise. Use rights attributable to unsold time share interests shall be counted;
- (6) Use rights of nonowners shall be counted. Use rights of the developer and its affiliates in excess of those attributable to unsold time share interests shall be counted;
- (7) Use rights reserved by the association or plan manager for the purpose of performing maintenance and repairs to a time share unit shall not be considered;
- (8) Use rights borrowed from a subsequent year or carried over from a prior year shall not be considered; provided that such practice is not established for the purpose of evading the requirements of this section; and provided further that any such acceleration or deferral of use rights is appropriately balanced and restricted; and
- (9) The director may adopt rules identifying additional criteria to be used to calculate whether the one-to-one use-right to use-night requirement is satisfied.

(d) This section shall not be deemed to prohibit the time share instruments from including provisions permitting rental by the association or the developer, or reservation and use by owners, of use nights which remain unreserved as of sixty or fewer days in advance of the use night. Any such use rights shall not be considered in determining whether the one-to-one use-right to use-night requirement is satisfied.”

SECTION 2. Section 514E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““One-to-one use-right to use-night requirement” means that the sum of the nights which owners are entitled to use in a given year shall not exceed the number of nights available for use by those owners during that year.”

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

SECTION 4. This Act shall apply to all time share plan applications for registration which are filed on or after the effective date of this Act.

The requirements of this Act shall not apply to time share plans which were registered, or as to which an application for registration was filed, prior to the effective date of this Act; provided that if additional time share units are included in the time share plan after the effective date of this Act, then the requirements of this Act shall apply to such time share plan.

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1997.

(Approved July 3, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 373**

S.B. NO. 1919

A Bill for an Act Relating to the Legislature.

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

SECTION 1. In response to increasing interest and involvement in the legislative process on the part of Hawaii's citizens, the legislature has continued to expand its public access programs. Some of these programs include:

- (1) Live and delayed television broadcasts of legislative sessions and hearings;
- (2) The operation of the widely-used public access room at the state capitol; and
- (3) The maintenance of on-line networks that readily provide public access to legislative data and information, including: bill status; the text of bills, resolutions, and committee reports; public hearing schedules; information on individual legislators; introducers of bills; and voting records.

Although these activities have proven successful, the legislature finds that more improvements are necessary to conduct legislative business more efficiently and to ensure that the public continues to be kept apprised of legislative proceedings.

The purpose of this Act is to increase public access to the legislative process and to enhance the efficiency and effectiveness of the legislature by:

- (1) Establishing the legislative broadcast program in the state capitol as a permanent part of the legislature's public access program;
- (2) Providing equal access to legislative broadcasts for all citizens in the State;
- (3) Appropriating moneys to replace the legislature's existing computer information system.

**PART I. LEGISLATIVE PUBLIC ACCESS**

SECTION 2. Chapter 21G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§21G- Legislative broadcast program established.** (a) There is established in the state capitol a legislative broadcast program that shall become part of the legislature's permanent public access program.

(b) The legislative broadcast program shall be supervised by the joint legislative access committee established pursuant to section 21D-6.”

SECTION 3. The legislature finds that on Oahu, legislative proceedings are broadcast at convenient times for most residents. However, neighbor island residents can view legislative broadcasts only during late night hours, starting at 11:00 p.m., because the public community television stations do not have the equipment to tape and replay the legislative proceedings during more reasonable hours.

**ACT 374**

The purpose of this section is to remedy this inequity by providing grants to community television stations on Hawaii, Maui, and Kauai to permit legislative telecasts to be taped and replayed during hours that are more convenient for viewers on the neighbor islands.

SECTION 4. 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 1997-1998, for grants-in-aid to purchase taping and other equipment needed for rebroadcasting the state legislative programming:

Ho‘ike Kauai .....	\$22,379
Akaku: Maui Community Television .....	\$20,323
Na Leo ‘O Hawaii’i .....	\$32,298

The sum appropriated shall be expended by the legislature for the purposes of this part.

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 1997-1998, for the legislative broadcast program, including the production and distribution of television broadcasts of legislative proceedings during fiscal year 1997-1998.

The sum appropriated shall be expended by the legislature for the purposes of this part.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 1997-1998 for the purpose of replacing the existing legislative information system.

The sum appropriated shall be expended by the legislature for the purposes of this part.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1997.

(Approved July 3, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 374**

H.B. NO. 139

A Bill for an Act Relating to the Public Employees’ Retirement System.

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

SECTION 1. Section 88-21, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:  
“‘Legislative officer’ means a chief clerk, an assistant chief clerk, a sergeant at arms, or an assistant sergeant at arms of either house of the legislature.”

2. By amending the definition of “elective officers, elective officials” to read:

“[‘‘Elective officers, elective officials’’:] ‘‘Elective officer’’ or ‘‘elective official’’: any person elected to a public office[,] or appointed to fill a vacancy of an elective office, except as a delegate to a constitutional convention, member of the board of education or trustee of the office of Hawaiian affairs, in accordance with an

election duly held in the State or counties under chapter 11; provided that the person receives compensation, pay, or salary for such office.”

SECTION 2. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

“**§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 age 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, ~~excluding any credited service as an elective officer or legislative officer, 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:
  - (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;
  - (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;
  - (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 service as an investigator of the department of the attorney general;
  - (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 service as a narcotics enforcement investigator;
  - (E) After June 30, 1992, if the member has at least ten years of credited service, a part of which is credited as a corrections officer or narcotics enforcement investigator; provided the member is employed with the department of public safety, is promoted or accepts a position as a public safety investigations staff investigator, and retires from that department;
  - (F) After December 31, 1993, 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 water safety officer; and
  - (G) After June 30, 1994, if the member has at least ten years of credited service, a part of which is credited as a public safety investigative staff investigator and the member is employed with the department of public safety and retires from that department; then for each year of 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, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member’s average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member’s average final compensation. If the member has not attained age 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 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, public safety investigations staff investigator, sewer worker, or water safety officer, 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 refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest; [or]
- (3) If the member has credited service as a judge, [an elective officer, or the chief clerk, 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, 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 that 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).], (2) and (4). No allowance shall exceed seventy-five per cent of the 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 in excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation[.]; or

- (4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:
  - (A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and
  - (B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;

- (C) Irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(d)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and
- (D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section 88-81(d)(4) shall be multiplied by two per cent, two and one-half per cent, or one and one-quarter per cent, as applicable to the credited service earned as a class A, B, or C member, respectively.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(d)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3)."

SECTION 3. Section 88-76, Hawaii Revised Statutes, is amended to read as follows:

**"§88-76 Allowance on ordinary disability retirement.** Upon retirement for ordinary disability, a 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, assistant clerk, sergeant at arms, or assistant sergeant at arms of a house of the legislature,] a legislative officer, the member shall receive a retirement allowance computed as provided in section 88-74(3)[(A).] or (4), as applicable. The minimum retirement allowance payable under this section shall be thirty per cent of the member's average final compensation."

SECTION 4. Section 88-81, Hawaii Revised Statutes, is amended to read as follows:

**"§88-81 Average final compensation.** (a) Average final compensation is (1) for employees who have become members prior to January 1, 1971, the average annual compensation pay or salary upon which a member has made contributions as required by sections 88-45 and 88-46, (A) during [his] the member's five highest paid years of credited service, (B) at the option of the member, during [his] the member's three highest paid years of credited service; provided that no payment of salary in lieu of vacation shall be included in the computation, or (C) if [he] the member has less than three years of credited service, then during [his] the member's actual years of credited service; or (2) for employees who become member<sup>1</sup> on or after January 1, 1971, the average annual compensation pay or salary upon which a member has made contributions as required by sections 88-45 and 88-46, (A) during [his] the member's three highest paid years of credited service; provided that no payment of salary in lieu of vacation shall be included in the computation, or (B) if [he] the member has less than three years of credited service, then during [his] the member's actual years of credited service.

(b) In computing the compensation of a judge, the compensation paid to [him] the judge by the United States as well as by the Territory shall be included.

(c) For service rendered as a member of the legislature from and after November 5, 1968, the actual annual salary of a member shall be the only amount used for determining the member's average final compensation. For service rendered as a member of the legislature prior to November 5, 1968, and after admission of this State into the Union, the annual compensation of a member shall be computed, for the purpose of determining the member's average final compensation, as follows: during a year in which a general session was held, it shall be deemed to have been an amount equal to four times the salary of a member of the legislature for a general session; and during a year in which a budget session was held, it shall be deemed to have been an amount equal to six times the salary of a member of the legislature for a budget session. For service rendered as a member of the legislature prior to the admission of this State into the Union, the annual compensation of a member shall be deemed to have been four times the salary of a member of the legislature for a regular session for each year during [his] the member's term of office.

(d) If a member has credited service rendered as an elective officer or as a legislative officer, the member's average final compensation shall be computed separately for each category of service as follows:

- (1) For the three highest paid years of credited service as an elective officer, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service;
- (2) For the three highest paid years of credited service as a legislative officer, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service;
- (3) For the three highest paid years of credited service as a judge, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service; and
- (4) For the three highest paid years of credited service not included in paragraph (1), (2), or (3), or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service.'

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 on July 1, 1997; provided that with respect to:

- (1) Current elective officers and legislative officers as defined in section 1 of this Act, who are members of the employees' retirement system, the member's benefits accrued up to November 3, 1998, shall not be diminished or impaired; and
- (2) Other individuals who are members of the employees' retirement system and who accrued benefits as elective officers or legislative officers as defined in section 1 of this Act, before July 1, 1997, the member's benefits accrued up to June 30, 1997, shall not be diminished or impaired.

(Approved July 7, 1997.)



## Note

1. Prior to amendment "members" appeared here.

## ACT 375

H.B. NO. 140

A Bill for an Act Relating to Elections.

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

SECTION 1. The legislature finds that while many improvements were made to the campaign spending law in 1995, there are several changes which are necessary to streamline the law and add clarity to certain areas, including closing a loophole related to the making of loans, closing a loophole regarding the sole electoral activity committees, and making other amendments to the reporting requirements. The purpose of this Act is to make these changes so that the campaign spending commission can do a more effective job.

SECTION 2. Section 11-191, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "committee" to read:

""Committee" means:

- (1) Any organization, association, or individual that accepts or makes a contribution or makes an expenditure for or against any:
  - (A) Candidate;
  - (B) Individual who files for nomination at a later date and becomes a candidate; or
  - (C) Party;
 

with or without the authorization of the candidate, individual, or party. In addition, the term "committee" means any organization, association, or individual who accepts or makes a contribution or makes an expenditure for or against any question or issue appearing on the ballot at the next applicable election;
- (2) Any organization, association, or individual that raises or holds money or anything of value for a political purpose, with or without the consent or knowledge of any:
  - (A) Candidate;
  - (B) Individual who files for nomination at a later date and becomes a candidate; or
  - (C) Party; and
 

subsequently contributes money or anything of value to, or makes expenditures on behalf of, the candidate, individual, or party;
- (3) Notwithstanding any of the foregoing, the term "committee" shall not include any individual making a contribution or expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this subpart; or
- (4) Any committee as defined in paragraph (1) that accepts or makes contributions or makes expenditures in aggregate of more than \$1,000 [per] in an election to influence the nomination and election of individ-

uals to public office or the outcome of ballot questions or issues, shall register with the commission and file reports as required by this chapter]; or

- (5) Any committee as defined in paragraph (1), organized within six months of an election, whose sole electoral activity consists of direct contributions or expenditures in aggregate of more than \$1,000 per election to influence the outcome of an election or ballot questions or issues, shall register with the commission prior to making any contributions or expenditures in aggregate of more than \$1,000 and shall submit a statement of contributions or expenditures to the commission in lieu of filing reports as required by this chapter].”

2. By amending the definition of “contribution” to read:

““Contribution” means:

- (1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers for the purpose of:
- (A) Influencing the nomination for election, or election, of any person to office;
  - (B) Influencing the outcome of any question or issue [which] that appears or is reasonably certain to appear on the ballot at the next applicable election [above;] described in subparagraph (A); or
  - (C) Use by any party for the purposes set out in subparagraph (A) or (B) [above];
- (2) The payment, by any person other than a candidate or committee, of compensation for the personal services or services of another person which are rendered to the candidate or committee without charge or at an unreasonably low charge for the purposes set out in paragraph (1)(A), (1)(B), or (1)(C);
- (3) A contract, promise, or agreement to make a contribution; provided that notwithstanding this paragraph and paragraphs (1) and (2), the term “contributions” shall not include services or portions thereof voluntarily provided without reasonable compensation by individuals to or in behalf of a candidate or committee; or
- (4) Notwithstanding paragraphs (1), (2), and (3), a candidate’s expenditure of the candidate’s own funds or the making of a loan or advance in the pursuit of the candidate’s campaign shall not be a contribution for the purpose of this subpart but shall nevertheless be reportable as a campaign receipt.”

3. By amending the definition of “matching payment period” to read:

““Matching payment period” means:

- (1) For a primary election, from January 1 of the year of a general election through the day of the primary election, or nine months prior to a special election through the day of a special election; and
- (2) For a general election, from [the day after a primary election] January 1 of the year of a general election through the day of the general election.”

SECTION 3. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The duties of the commission under this subpart are:

- (1) To develop and adopt reporting forms required by this subpart;

- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
- (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify [such] these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to [such] these persons. The commission shall publish in the newspaper the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;
- (6) To hold public hearings;
- (7) To investigate and hold hearings for receiving evidence of any violations;
- (8) To adopt a code of fair campaign practices as a part of its rules;
- (9) To establish rules pursuant to chapter 91;
- (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
- (11) To administer and monitor the distribution of public funds under this subpart;
- (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- (13) To employ or contract, without regard to chapters 76 and 77 and section [103D-209(b),] 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- (14) To do random audits, field investigations, as necessary;
- (15) To file for injunctive relief when indicated; [and]
- (16) To censure any candidate who fails to comply with the code of fair campaign practices[.]; and
- (17) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a

violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion.”

SECTION 4. Section 11-194, Hawaii Revised Statutes, is amended to read as follows:

**“§11-194 Registration.** (a) Each candidate, committee, or party shall file an organizational report as set forth in section 11-196, or section 11-196.5 as applicable, within ten days from the date [the] a candidate or candidate committee receives any [contribution] contributions or makes any expenditures, the aggregate amount of which is more than \$100, or, [makes any expenditure.] within ten days from the date a noncandidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$1,000.

(b) Committees that form within ten days of an election and expend in the aggregate more than \$1,000 shall register and fully disclose [such] the expenditure by 4:30 p.m. the last calendar day prior to the expenditure.

(c) Each candidate who is certified to be a candidate by the chief election officer or county clerk by way of the “write-in” ballot shall file an organizational report within five days of being certified as a candidate.

(d) Each candidate shall re-register for the new election period. A noncandidate committee need not re-register for a new election period, but shall affirm the accuracy of the information on the organizational report as set forth in section 11-196.5.”

SECTION 5. Section 11-195, Hawaii Revised Statutes, is amended to read as follows:

**“§11-195 Filing of reports, generally.** (a) All reports required to be filed under this subpart by a candidate or those committees directly associated with the candidate’s candidacy shall be certified by the candidate. Reports required to be filed under this subpart by a party or committee [which] that supports more than one candidate shall be certified by a person authorized to sign [such] the reports. All reports required to be filed under this subpart shall be open for public inspection in the office of the commission.

(b) The original and one copy of all reports required under this subpart shall be filed at the office of the commission. In the case of counties having less than two hundred thousand voters, the filing shall be accomplished by filing an original and two copies of the required report with either the commission or the clerk of the county in which the candidate resides. The clerk shall then immediately mail the original and one copy of the report to the commission [by certified mail].

(c) The commission or county clerk shall give each person filing a report a receipt stating the type of report filed and the date and time of filing.

(d) All reports filed with the county clerk’s office shall be preserved by that office for ten years.

(e) All reports required to be filed under this subpart shall at all times be available to the [chief election officer.] general public.

(f) For purposes of this subpart, whenever a report is required to be filed with the commission, “filed” means received in the office of the commission or county clerk, whichever is applicable, by the date and time specified for the filing of [such]

the report; except that a candidate or the committee of a candidate who is seeking election to the office of:

- (1) Governor;
- (2) Lieutenant governor;
- (3) Mayor; [or]
- (4) Prosecuting attorney; or
- (5) County council;

shall file by electronic means in the manner prescribed by the commission. Candidates for the offices named in this subsection with contributions or expenditures of less than \$5,000 need not file by electronic means.”

SECTION 6. Section 11-199, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All monetary contributions shall be promptly deposited in a [financial] depository institution, as defined by section 412:1-109, duly authorized to do business in the State, such as a bank, savings bank, savings and loan [institution] association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, or the national credit union administration in the name of the candidate, committee, or party, whichever is applicable.”

SECTION 7. Section 11-203, Hawaii Revised Statutes, is amended to read as follows:

“**§11-203 [Fundraiser] Fundraisers and fundraising activities.** (a) As used in this section, “fundraiser” means any function held for the benefit of a person that is intended or designed, directly or indirectly, to raise funds for political purposes for which the price or suggested contribution for attending the function is more than \$25 per person.

(b) There shall be no more than [one] two fundraisers held for a person prior to a general or special election in which that person is either elected or defeated.

Within six months after a general or special election, however, a candidate or committee directly associated with a candidate who has a deficit may hold an additional fundraiser.

(c) No fundraiser or fundraising activity shall be held unless a notice of intent to hold the function is filed by the person in charge of the function with the commission prior to the date of the function setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the affair and the method thereof.

(d) Fundraisers sponsored by a candidate for a statewide office are exempt from the \$25 limit of subsection (a) and the restrictions of subsection (b), and fundraisers sponsored by a party for a political purpose for the general benefit of the party are exempt from the restrictions of subsection (b).

(e) The following expenses incident to a fundraiser and to all other political fundraising activities held for the benefit of a candidate shall not be considered expenditures within the limitations set by section 11-209:

- (1) The cost of food and beverages consumed at the function;
- (2) Rent and utilities for the premises where the function is held;
- (3) The amount paid for guest speakers and entertainment;
- (4) Printing and postage related to a function; and
- (5) All other direct costs incurred in solicitation of the fundraiser, or fundraising activity.”

SECTION 8. Section 11-204, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) No person or any other entity shall make contributions to:
- (1) A candidate seeking nomination or election to a two-year office or to the candidate’s committee in an aggregate amount greater than \$2,000 during an election period; and
  - (2) A candidate seeking nomination or election to a four-year statewide office or to the candidate’s committee in an aggregate amount greater than \$6,000 during an election period; and
  - (3) A candidate seeking nomination or election to a four-year nonstatewide office or to the candidate’s committee in an aggregate amount greater than \$4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business.

(b) No person or any other entity shall make contributions to a noncandidate committee,<sup>1</sup> in an aggregate amount greater than \$1,000 in an election[.]; except that in the case of a corporation or company using funds from its own treasury, there shall be no limit on contributions or expenditures to the corporation or company noncandidate committee.”

SECTION 9. Section 11-205.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§11-205.6]]~~ **Campaign contributions; loans.** (a) Any loan to a candidate or candidate’s committee in excess of \$100 shall be documented and disclosed as to lender including the lender’s name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the relevant repayment obligations under this section. Failure to document the loan or to disclose the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter.

(b) A candidate or candidate’s committee may receive and accept loans in an aggregate amount not to exceed \$10,000 during an election period, provided that if the \$10,000 limit is reached, the candidate or candidate’s committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full by the candidate or candidate’s committee.

(c) If any loan made to a candidate is not repaid within one year of the date that the loan is made, the candidate and candidate’s committee shall be prohibited from accepting any other loans, and all subsequent contributions received and any surplus retained shall only be expended toward the repayment of the outstanding loan, until the loan is repaid in full by the candidate or candidates committee.

(d) No loan may be accepted or made by noncandidate committees.

~~[[b)]~~ (e) Any loan by a financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business, or a loan by a candidate of the candidate’s own funds, or a loan from immediate family members of a candidate using their own funds to the candidate’s committee shall not be deemed a contribution and not subject to the contribution limits provided in section 11-204 [.] or the loan limit and repayment provisions of subsection (b) and (c); provided that loans from the immediate family members of the candidate shall remain subject to the provisions in section 11-204(c).”

SECTION 10. Section 11-206, Hawaii Revised Statutes, is amended by amending the section title and subsection (a) to read as follows:

**“§11-206 Campaign contributions; restrictions as to [excess.] surplus.**

(a) Every candidate in a primary, special primary, special, or general election who has voluntarily agreed to abide by spending limits and who subsequently receives campaign contributions in [excess of] an amount greater than the expenditure limit set for the candidate’s respective office shall reserve use of [such] these contributions until after a general or special election.”

SECTION 11. Section 11-208, Hawaii Revised Statutes, to<sup>2</sup> read as follows:

**“§11-208 Voluntary campaign expenditure limitation.** (a) Any candidate may voluntarily agree to limit the candidate’s campaign expenditures and those of the candidate’s committee or committees and the candidate’s party in the candidate’s behalf by filing an affidavit with the campaign spending commission; provided that a candidate may withdraw the candidate’s affidavit no later than thirty days prior to [an] a primary election. Any candidate withdrawing the candidate’s affidavit shall notify all contributors during the election period, in writing, that contributions are not tax deductible.

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in section 11-209 and that the candidate is voluntarily agreeing to limit the candidate’s expenditures and those made on the candidate’s behalf by the amount set by law. The affidavit shall be subscribed to by the candidate and notarized.

(c) Affidavits in compliance with this section shall be filed by January 31 of the year of any primary, special, or general election, or on the date set for filing the candidate’s organizational report as provided in section 11-196[.], whichever is later.”

SECTION 12. Section 11-212, Hawaii Revised Statutes, is amended to read as follows:

**“§11-212 Preliminary reports.** (a) Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a candidate committee, shall file a preliminary report with the commission or appropriate county clerk’s office, on forms provided by the commission no later than 4:30 p.m. on the twenty-fifth and tenth calendar day prior to each primary and initial special election, and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information which [is] shall be current through the fifth calendar day prior to the filing of a preliminary report:

- (1) The aggregate sum of all contributions and other campaign receipts received;
- (2) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of [more than] \$1,000 or more during an election period, which has not previously been reported;
- (4) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and

(5) A current statement of the balance on hand or deficit.

(b) Each noncandidate committee shall file a preliminary report with the commission, on forms provided by the commission, no later than 4:30 p.m. on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

- (1) The aggregate sum of all contributions and other campaign receipts received;
- (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

[(b) Notwithstanding this section, a] (c) A candidate, party, or committee whose aggregate contributions or expenditures for the reporting period total \$2,000 or less may file a short form report with the commission or appropriate county clerk's office in lieu of the reports required by this section and section 11-213.

(d) Notwithstanding this section and section 11-213, a candidate, party, or committee whose aggregate contributions or expenditures for the election period total \$1,000 or less need not file a preliminary and final primary report, a preliminary and final general report, or a special election report, but shall file only a final election period report."

SECTION 13. Section 11-213, Hawaii Revised Statutes, is amended to read as follows:

**“§11-213 Final and supplemental reports.** (a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the [thirtieth] twentieth calendar day after a primary or initial special election. The report shall include[:] the following information which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of [more than] \$1,000 or more during an election period, which has not previously been reported;
- (4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (5) The cash balance and a statement of surplus or deficit.



(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-195, with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary election. The report shall include the following information, which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

[(b)] (c) General, special general, [or] special election[.] or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period general report with the commission on forms provided by the commission no later than 4:30 p.m. on the thirtieth calendar day after a general, special general, or special election. The final [general] election period report shall be certified pursuant to section 11-195 [and], shall report all items prescribed in subsection (a)[.] or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election [need not] shall file a final [general] election period report.

(d) Termination. A candidate, party, or committee may terminate registration with the commission with no surplus or no deficit. A termination report approved by the commission shall include information on the disposition of any funds, which has not previously been reported.

[(c)] (e) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a)[.] or subsection (b) in the case of noncandidate committees. The first report shall be due no later than 4:30 p.m. on the [thirtieth] thirty-first day after the last day of the election year.

[(d)] (f) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall:

- (1) Maintain the cash surplus in a financial depository; and
- (2) Every six months, until the candidate [becomes a candidate again,] files to be on the ballot with the state office of elections, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a)[.] or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than 4:30 p.m. on the thirtieth calendar day after the last day of the election year.

[(e)] (g) Short form reporting. A candidate, party, or committee who receives no contributions, makes no expenditures, [or] and has a deficit or surplus of [\$1,000] \$2,000 or less in any prescribed reporting period shall nevertheless [be required to] file preliminary, final, and supplemental reports on the respective dates pursuant to

this subpart. [Such] The reports may be filed on a short form as provided by the commission.

[(f) Supplemental reporting.] (h) All supplemental reports required by this section [are to] shall be filed until a candidate[, party, or committee:

- (1) Re-registers with the commission for a new election period; or
- (2) Terminates registration with the commission.]

files to be on the ballot with the state elections office. Each party or noncandidate committee shall file a supplemental report for the respective reporting period during a nonelection year. In an election year, each party and noncandidate committee shall file reports as prescribed in this section and section 11-212 for the primary and general election.”

SECTION 14. Section 11-214, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This section shall not apply to:

- (1) Elected officials;
- (2) Candidates who failed to be nominated or elected [and] yet who [do not] become a candidate for nomination or election to office within four years thereafter; or
- (3) Elected officials who resign their office before the end of their term [or] yet who [do not] file to become a candidate for reelection within four years after [their resignation or] the end of the term [for] from which they [did not seek reelection respectively.] resigned.”

SECTION 15. Section 11-217, Hawaii Revised Statutes, is amended to read as follows:

“**§11-217 Hawaii election campaign fund; creation.** The Hawaii election campaign fund is created as a trust fund within the state treasury. The fund shall consist of all moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5, any general fund revenues appropriated, as well as all other moneys collected pursuant to this subpart. Payment to each candidate from the fund shall be by the comptroller in the manner prescribed in section 11-222. No more than \$100,000 may be appropriated annually for the administration of the program under this subpart.”

SECTION 16. Section 11-219, Hawaii Revised Statutes, is amended to read as follows:

“**§11-219 Qualifying campaign contributions; amounts.** As a condition of receiving public funds for a primary, special primary, or general election, a candidate shall not be unopposed in any election for which public funds are sought, and shall have filed an affidavit with the commission pursuant to section 11-208 to voluntarily limit the candidate’s campaign expenditures and shall be in receipt of the following sum of qualifying campaign contributions for the candidate’s respective office for each election:

- (1) For the office of governor—qualifying contributions [which] that in the aggregate, exceed [\$75,000;] \$100,000;
- (2) For the office of lieutenant governor—qualifying contributions [which] that in the aggregate, exceed \$50,000;
- (3) For the office of mayor [and prosecuting attorney in a county having more than one hundred thousand registered voters—qualifying contri-

- butions which in the aggregate exceed \$40,000;] for each respective county:
- (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$50,000;
  - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$15,000;
  - (C) County of Maui—qualifying contributions that in the aggregate, exceed \$10,000; and
  - (D) County of Kauai—qualifying contributions that in the aggregate, exceed \$5,000;
- and
- (4) For the office of [mayor and] prosecuting attorney [in a county having less than one hundred thousand registered voters—qualifying contributions which in the aggregate exceed \$10,000;] for each respective county:
    - (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$30,000;
    - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$10,000; and
    - (C) County of Kauai—qualifying contributions that in the aggregate, exceed \$5,000;
  - (5) For the office of county council—[qualifying contributions which in the aggregate exceed \$5,000;] for each respective county:
    - (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$5,000;
    - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$1,500;
    - (C) County of Maui—qualifying contributions that in the aggregate, exceed \$5,000; and
    - (D) County of Kauai—qualifying contributions that in the aggregate, exceed \$3,000;
  - (6) For the office of the state senator—qualifying contributions [which] that, in the aggregate, exceed \$2,500;
  - (7) For the office of state house of representative—qualifying contributions [which] that, in the aggregate, exceed \$1,500; and
  - (8) For all other offices, qualifying contributions [which] that, in the aggregate, exceed \$500.”

SECTION 17. Section 11-221, Hawaii Revised Statutes, is amended to read as follows:

**“§11-221 Entitlement to payments.** Every candidate who is eligible to receive public funds pursuant to section 11-220 is entitled to payments pursuant to section 11-217 in an amount equal to each qualifying contribution received by that candidate or candidate committee during the matching payment period involved. A qualifying contribution shall be attributed to a primary, special or general election.

[A candidate is entitled to receive up to fifty per cent of the eligible amount upon initial certification by the commission without regard to the ten per cent votes cast requirement under section 11-218. Upon meeting the votes cast requirements under section 11-218 and upon certification by the commission, the candidate is entitled to receive an additional amount up to fifty per cent of the eligible amount.] A candidate eligible to receive public funds must obtain a minimum amount of qualifying campaign contributions as set forth in section 11-219 in order to be entitled to receive any matching public funds in an election. For the purpose of this

section, a candidate must have at least one other qualified candidate as an opponent for the primary, special, or general election to receive public funds for that election.”

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval.

(Approved July 7, 1997.)

Notes

1. Comma should be underscored.
2. So in original.

ACT 376

H.B. NO. 1104

A Bill for an Act Relating to Hawaiian Affairs.

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

SECTION 1. In 1989, the legislature adopted Senate Concurrent Resolution (S.C.R.) No. 106, S.D. 1, which called for the creation of a task force to examine the provision of services to Hawaiians. The task force for Hawaiian services, composed of eighteen public and private sector groups, was established and named the Hui ‘Imi task force for Hawaiian services (task force). Its defined purpose was to make findings and recommendations concerning the coordination of public and private services available to Hawaiians in the areas of education, economic development, housing, employment, medicine, law, cultural issues, and social service issues.

As directed by S.C.R. No. 106, S.D. 1, the task force produced a two-volume report entitled, The Hui ‘Imi Task Force for Hawaiian Services, volume I and volume II. The substance and content of the final report was the result of a unique and extraordinary level of cooperation and coordination among task force member organizations, which included government representatives, government agencies, and members of the Hawaiian community. The report contained findings and thirty-nine recommendations that were a result of extensive sampling, interviews, and group and community meetings involving approximately one thousand Hawaiian service providers and service recipients throughout the State. The task force’s report was distributed to all legislators in 1991, at which time the formal legislative authorization of the task force ended.

The members of the task force have continued to work together informally to determine if the recommendations contained in the report are being implemented in either public or private programs and to identify and address other concerns. Of the thirty-nine recommendations contained in the report, the task force has identified fourteen high priority areas.

The task force facilitated a joint effort by the department of education and the Kamehameha Schools/Bishop Estate to open and operate preschools and classrooms at selected schools in the State. The task force also articulated the community’s wish for a multi-service community center for Native Hawaiians, which is now being implemented by the department of Hawaiian home lands in coordination with other agencies in Kalamaula, Molokai.

In 1992, the legislature adopted three resolutions, House Concurrent Resolution (H.C.R.) No. 260, S.C.R. No. 138, and House Resolution (H.R.) No. 270, recognizing and commending the work of the Hui ‘Imi task force and urging the implementation of its recommendations. The legislature, finding the depth of experi-

ence, dedication, and commitment embodied in the membership of the task force to be of great benefit to the State, passed a bill in both the regular and special sessions of 1995 that supported appropriations and the formal reauthorization of the Hui 'Imi task force. Although funds were requested by the measure, implementation proved to be difficult and the task force was compelled to seek private resources to continue its effort.

In 1996, the task force introduced a similar bill to establish the Hui 'Imi pono advisory council to advise the governor, the legislature, and public and private agencies serving Hawaiians on issues described in the Hui 'Imi task force report. The bill reauthorized the Hui 'Imi pono advisory council, placing it within the office of state planning for administrative purposes only. The house committee on Hawaiian affairs and housing, in voting in favor of the bill, amended it by attaching the advisory council to the department of accounting and general services but urged participation by appropriate state departments.

The legislature finds that the work of a successor entity to the task force is and will continue to be invaluable to continue full communication among the public and private sectors on issues of concern to Hawaiians. Accordingly, the purpose of this Act is to formally reauthorize the Hui 'Imi task force as the Hui 'Imi advisory council. The reauthorization does not request any appropriation of moneys.

SECTION 2. There is established a Hui 'Imi advisory council, to be placed within the department of accounting and general services for administrative purposes only. The advisory council may consist of representatives from the following:

- (1) Office of Hawaiian affairs;
- (2) Department of education;
- (3) Department of Hawaiian home lands;
- (4) Department of health;
- (5) Department of human services;
- (6) House of representatives standing committee with primary jurisdiction over Hawaiian affairs;
- (7) Senate standing committee with primary jurisdiction over Hawaiian affairs;
- (8) ALU LIKE Inc.;
- (9) The Association of Hawaiian Civic Clubs;
- (10) E Ola Mau;
- (11) Kamehameha Schools/Bishop Estate;
- (12) The Lunalilo home;
- (13) The Native Hawaiian Culture and Arts Program of the Bernice Pauahi Bishop Museum;
- (14) The Native Hawaiian Legal Corporation;
- (15) Papa Ola Lokahi;
- (16) The Queen Lili'uokalani Children's Center; and
- (17) Any other agency, organization, or entity that expresses interest to participate in fulfilling the advisory council's mandate.

The advisory council shall make a good faith effort to include as members other public and private agencies, organizations, or entities that express interest in fulfilling the advisory council's mandate.

Each member shall be appointed by the director or other chief executive of the respective organization within forty-five days following the effective date of this Act. The members shall select a chairperson and establish procedural rules. Members shall serve without compensation and without reimbursement for expenses, including travel expenses, necessary for the performance of their duties.

The advisory council shall:

- (1) Advise the governor, the legislature, and public and private agencies serving Hawaiians on issues described in the Hui 'Imi task force volumes I and II and on such other issues affecting Hawaiians as the advisory council shall designate; and
- (2) Serve as a liaison between public and private entities serving the Hawaiian community in the planning and development of collaborative public and private endeavors.

SECTION 3. The Hui 'Imi advisory council shall:

- (1) Submit a report of its findings and recommendations, including an action plan for the implementation of Hui 'Imi task force report volumes I and II, to the governor and the legislature no later than twenty days prior to the convening of the regular session of 1998;
- (2) Submit bi-annual progress reports regarding the action plan including legislative recommendations, no later than twenty days prior to the convening of the regular sessions of 1999, 2001, and 2003; and
- (3) Cease to exist on June 30, 2004.

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

(Approved July 7, 1997.)

**ACT 377**

S.B. NO. 1581

A Bill for an Act Relating to the Environment.

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

SECTION 1. The legislature finds that developers, lenders, potential property buyers, and other potential responsible parties are reluctant to purchase, lend money for, or develop properties that may be contaminated by hazardous substances, pollutants, or contaminants.

The legislature further finds that many developers, lenders, and prospective purchasers are frequently willing to clean up properties voluntarily, if they are not considered an "owner or operator" under chapter 128D.

The purpose of this Act is to:

- (1) Establish a program within the department to facilitate voluntary and timely responses to hazardous substance releases and threats of releases; and
- (2) Provide relief from liability for eligible persons who conduct adequate voluntary response action pursuant to this Act.

SECTION 2. Chapter 128D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . VOLUNTARY RESPONSE PROGRAM**

**§128D-A General.** (a) Except as otherwise provided in this part, all requirements of rules adopted pursuant to part I shall apply to voluntary response actions conducted pursuant to this part. All voluntary response actions, where an exemption from liability may be granted by the department, shall follow the public participation requirements of the remedial process as described in rules adopted pursuant to part I. Additionally, the requesting party shall post a sign at the site notifying the public of

participation in the voluntary response program and the public's opportunity to comment.

(b) This part shall apply to any person who chooses to conduct a voluntary response action. However, the exemption from liability in section 128D-J shall only apply to prospective purchasers.

**§128D-B Definitions.** As used in this part, unless the context otherwise requires:

“Prospective purchaser” means a prospective owner, operator, tenant, developer, lender, or any other party who would not otherwise be liable under section 128D-6, prior to conducting a voluntary response action.

“Requesting party” means the person or persons submitting an application to conduct a voluntary response action.

“Voluntary response action” means a response conducted voluntarily by a requesting party.

**§128D-C Eligibility.** (a) This part shall apply to all releases or threats of releases to which the director is authorized to respond under section 128D-4, except:

- (1) A site listed or proposed to be listed on the National Priorities List (NPL) pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA);
- (2) Those sites with respect to which an order or other enforcement actions has been issued or entered under CERCLA and is still in effect;
- (3) A site where the United States Coast Guard has issued a federal Letter of Interest;
- (4) A site that is the subject of corrective action under the Resource Conservation and Recovery Act (RCRA) or chapter 342J;
- (5) At the discretion of the director, a site where the director has issued an order or is conducting a response pursuant to an enforceable agreement under this chapter 128D and chapter 342L;
- (6) A site which poses an imminent and substantial threat to human health, the environment, or natural resources as determined by the director; and
- (7) A site where the director has determined that there is a significant public interest.

(b) The requesting party shall provide the department with written consent from the property owner to conduct the voluntary response action including any restrictions of property rights.

(c) The requesting party shall pay a nonrefundable processing fee of \$1,000 with each application to be eligible for a voluntary response action.

**§128D-D Application.** (a) For each site at which a requesting party chooses to conduct a voluntary response action, an application and \$1,000 nonrefundable processing fee shall be submitted.

(b) The department shall review each application in a timely manner and approve or deny the application based upon the requirements in this section and sections 128D-B and 128D-C.

(c) Each application shall include but not be limited to the following information:

- (1) The requesting party's name, mailing address, telephone number, facsimile number, if applicable, or electronic mail address;
- (2) The property owners' names, mailing addresses, telephone numbers, facsimile numbers, if applicable, or electronic mail addresses;

- (3) The property location, mailing address, street or physical location address, latitude and longitude, tax map key numbers, and telephone number for the requesting party;
- (4) A brief description of the site, its operational history, and any known or suspected contamination;
- (5) A listing of any permits obtained by any facility on the property;
- (6) A description of the intended scope of work;
- (7) A description of any civil, criminal, or administrative actions relative to the environmental matters of the subject property;
- (8) A written consent by the property owner supporting the proposed voluntary response action including any restrictions of property rights; and
- (9) The signature of the requesting party.

(d) The requesting party shall provide the department with any and all reports and data pertaining to environmental investigations or response actions on the subject property.

(e) Within sixty days after initial approval of the application, the requesting party and the department shall negotiate an agreement for conducting the voluntary response action. The agreement shall contain guarantees of completion, such as letters of credit, personal guarantees, insurance, or similar measures of guarantee. If, after sixty days, an agreement cannot be negotiated in good faith, the department may deny the application.

(f) The department's decision on an application shall be final, with no right of appeal.

**§128D-E Denial of application.** (a) The director may deny an application submitted under section 128D-D. In denying an application, the director may consider the following:

- (1) An administrative enforcement action has been initiated that concerns the remediation of the hazardous substance, pollutant, or contaminant;
- (2) Site eligibility based on the criteria in section 128D-C;
- (3) Completeness and accurateness of the application:
  - (A) If an application is denied because it is incomplete or inaccurate, the director, not later than forty-five days after receipt of the application, shall identify the omission or inaccuracy for the requesting party. A requesting party whose application has been denied because it is incomplete or inaccurate, may resubmit an application for the same response action without submitting an additional application fee; and
  - (B) If a requesting party's application is denied a second time, the director may require an additional \$1,000 processing fee for any subsequent submittal;
- (4) Inappropriate or inadequate scope of work;
- (5) Pending litigation;
- (6) The capacity of the requesting party or the requesting party's agent to carry out the response action properly;
- (7) Whether the department will receive a substantial benefit for cleanup or an indirect public benefit in combination with a reduced direct benefit to the department;
- (8) Whether the continued operation of the site or new site development, with the exercise of due care, will aggravate or contribute to the existing contamination or interfere with the department's response action;



- (9) Whether the continued operation or new development of the property will pose health risks to the community and those persons likely to be present at the site; or
  - (10) The financial viability of the prospective purchaser.
- (b) If the director finally denies the application, the director shall:
- (1) Notify the requesting party that the application has been denied; and
  - (2) Explain the reasons for denial of the application.

**§128D-F Funding.** (a) The department shall establish an account, to be called the voluntary response action account, within the environmental response revolving fund pursuant to section 128D-2, for the purpose of administration and oversight of this part.

(b) The \$1,000 nonrefundable application fee shall be deposited into the voluntary response action account.

(c) Upon initial approval of an application, the department may require a deposit of up to \$5,000 to initiate a site-specific account. The department may require an additional deposit of up to \$5,000, whenever the balance of the site-specific account falls below \$1,000.

(d) If a site-specific account balance is inadequate to support oversight, the department may discontinue oversight on the voluntary response action. The department may pursue enforcement action against the requesting party and any other person liable under section 128D-6, pursuant to part I of this chapter, when an account balance is inadequate to support further oversight by the department.

(e) At the completion of the voluntary response action, or at the termination of the agreement, the department shall provide a final accounting of the site-specific account and return the balance to the requesting party.

**§128D-G Oversight costs.** (a) The department's oversight costs shall be calculated at \$100 for each hour of staff time plus actual expenses or one hundred twenty-five per cent of actual cost when contracting for oversight services.

(b) The department shall provide each requesting party or parties a summary of the oversight costs for the party's specific site on an annual basis.

**§128D-H Exempt positions.** There is established such positions as necessary to support the voluntary response program. These positions shall be appointed by the director without regard to chapters 76 and 77. These positions shall be included in any benefit program generally applicable to the officers and employees of the State.

**§128D-I Letter of completion.** (a) Within thirty days of satisfactory completion of the voluntary response action, the director shall issue a letter of completion for the response action completed by the requesting party.

(b) The letter of completion shall identify the specific hazardous substances, pollutants, contaminants, media, and land area addressed in the response action.

(c) If contamination is left on the site, the letter of completion shall identify land use restrictions and any required management plan.

(d) The letter of completion shall be noted on the property deed and shall be sent to the county agency that issues building permits. The benefits and restrictions identified in the letter of completion shall run with the land and apply to all future owners of the property. The exemption from liability noted in section 128D-J does not apply to those persons who were liable pursuant to section 128D-6 prior to conducting the voluntary response action.

**§128D-J Exemption from liability.** (a) To qualify for an exemption from liability, a requesting party that is also a prospective purchaser must have obtained final approval to conduct a voluntary response action from the department prior to becoming the owner or operator of the property.

(b) Prospective purchasers who complete a voluntary response action and receive a letter of completion from the department shall be exempt from future liability to the department for those specific hazardous substances, pollutants, contaminants, media, and land area addressed in the voluntary response action.

(c) The exemption from future liability to the department referenced in subsection (b) shall apply only to those specific hazardous substances, pollutants, and contaminants cleaned up to a risk-based standard of not more than one total lifetime cancer risk per one million and only to the specific media and land area addressed in the voluntary response action; provided that the exemption only applies to the contamination which occurred prior to conducting the voluntary response action.

(d) A party who is exempt from future liability to the department under subsections (b) and (c) shall not be liable for claims for contribution or indemnity regarding matters addressed in the voluntary response action.

(e) The department reserves the right to take action consistent with this chapter against responsible parties.

(f) The exemption from liability shall not be effective:

- (1) If a letter of completion is acquired by fraud, misrepresentation, or failure to disclose material information; or
- (2) Where transactions were made for the purpose of avoiding liability under part I.

(g) There shall be no exemption from liability for other laws or requirements.

**§128D-K Termination of voluntary response action.** (a) An agreement under this part may be terminated by the requesting party at any time.

(b) The director may terminate an agreement pursuant to this section when:

- (1) There is an imminent and substantial threat to public health, the environment, or natural resources;
- (2) The requesting party is not acting in good faith;
- (3) Inadequate funds remain in the site-specific account;
- (4) An applicant becomes ineligible after initiating the action pursuant to sections 128D-D and 128D-F;
- (5) An applicant fails to comply with the terms of the agreement noted in section 128D-E(e); or
- (6) The draft remedial action is inadequate.

(c) Termination of the agreement pursuant to this section does not affect any right the director may have under any law to recover costs or to take enforcement action.

(d) Nothing in this part prohibits the department from taking enforcement action prior to completion of the voluntary response action. Furthermore, the director may, at any time, use the director's authority under section 128D-4 when it is deemed necessary."

SECTION 3. Chapter 128D, Hawaii Revised Statutes, is amended by designating sections 128D-1 to 128D-23 as part I and inserting a title before section 128D-1 to read as follows:

**“PART I. HAWAII ENVIRONMENTAL RESPONSE LAW”**

SECTION 4. Section 128D-1, Hawaii Revised Statutes, is amended by amending the definition of “owner” or “operator” to read as follows:

““Owner” or “operator” means:

- (1) [in] In the case of a vessel, any person owning, operating, or chartering by demise the vessel[,];
- (2) [in] In the case of an onshore facility or an offshore facility, any person owning or operating the facility[,]; and
- (3) [in] In the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of a state or local government, any person who owned, operated, or otherwise controlled activities at the facility immediately beforehand.

“Owner” or “operator” does not include a person [or financial institution who holds or held a lien, encumbrance, security interest, or loan agreement that attaches or is attached to a facility, vessel, or real property; provided that the person or financial institution makes or made no decision or takes or took no action that causes or caused or contributes or contributed to a release or threatened release of a hazardous substance from or at a facility, vessel, or real property.] who, without participating in the management of the vessel or facility, holds indicia of ownership primarily to protect its security interest in the vessel or facility. Until such time as the department adopts rules pertaining to lenders, the provisions of the Asset Conservation, Lender Liability and Deposit Insurance Protection Act of 1996 shall apply to the actions of lenders after July 1, 1997.”

SECTION 5. There is appropriated out of the environmental response revolving fund established in section 128D-2, Hawaii Revised Statutes, the sum of \$100,000 or so much thereof as may be necessary for fiscal year 1997-1998 for the voluntary response program.

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

SECTION 6. In codifying the new part added to chapter 128D, Hawaii Revised Statutes, by section 2 of this Act, the Revisor of Statutes shall substitute appropriate section numbers for the letters used in the new sections’ designations in this Act.

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

SECTION 8. This Act shall take effect ninety days after its approval; except that section 5 shall take effect on July 1, 1997.

(Approved July 7, 1997.)

A Bill for an Act Relating to Early Intervention.

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

SECTION 1. The purpose of this Act is to establish the early intervention special fund (special fund) and the early intervention trust fund (trust fund) to enhance early intervention services to infants and toddlers with special needs by maximizing federal reimbursement and facilitating private contributions. Federal reimbursements for eligible early intervention services funded by legislative appropriations will be deposited into the special fund. Private donations and federal reimbursements for eligible early intervention services funded by private donations will be deposited into the trust fund. Moneys from both funds will be used to provide additional early intervention services. Grants will be made from the funds to public agencies, private nonprofit organizations, or qualified individuals for provision of community-based, family-centered, early intervention services.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding four<sup>1</sup> new sections to part XXVIII to be appropriately designated and to read as follows:

“**§321- Early intervention special fund.** (a) There is established in the state treasury a special fund to be known as the early intervention special fund to be administered by the department in accordance with this section.

(b) The fund shall consist of grants and income earned by the special fund. Notwithstanding section 29-24, all program income consisting of federal reimbursement funds received by the State for early intervention funded by legislative appropriations under this part shall be deposited into the special fund; provided that no state appropriations shall be deposited into the special fund.

**§321- Early intervention trust fund.** (a) There is established in the state treasury a trust fund to be known as the early intervention trust fund to be administered by the department in accordance with this section.

(b) The trust fund shall consist of government grants and private contributions including, but not limited to, gifts or donations from corporations or other businesses, foundations, individuals, and other interested parties, and income earned by the trust fund. Notwithstanding section 29-24, all program income consisting of federal reimbursement funds received by the State for early intervention funded by private donations and contributions under this part shall be deposited into the trust fund.

**§321- Early intervention funds; purpose and use.** (a) The purpose of the early intervention special fund and early intervention trust fund is to expand and enhance early intervention services for infants and toddlers with special needs by providing a cooperative funding mechanism between the public and private sectors to work together to make and secure appropriations and donations to the funds.

(b) The department may make grants from the funds under chapter 42D, pursuant to criteria and procedures established by rules adopted pursuant to chapter 91, for community-based, family-centered, early intervention services including, but not limited to:

- (1) Programs to provide early intervention services for infants and toddlers with developmental delays or at biological or environmental risk;

- (2) Family support programs to strengthen families to reduce the risk of child abuse and neglect;
  - (3) Training and education for professionals, paraprofessionals, and families; and
  - (4) Research, evaluation, and data management related to early intervention services.
- (c) Grants made under subsection (b) shall take the following forms:
- (1) Grants to private nonprofit organizations, public agencies, or qualified individuals to provide community-based, family-centered, early intervention services; and
  - (2) Direct payments for services, educational materials, training, quality assurance, equipment, data collection, and program evaluation.
- (d) The Hawaii early intervention coordinating council shall make recommendations to the department for the expenditure of moneys from the funds.’’

SECTION 3. There is appropriated out of the early intervention special fund the sum of \$3,200,000 or so much thereof as may be necessary and available for fiscal year 1997-1998 and the sum of \$4,600,000 or so much thereof as may be necessary and available for fiscal year 1998-1999 for early intervention services for infants and toddlers with special needs.

SECTION 4. There is appropriated out of the early intervention trust fund the sum of \$3,000,000 or so much thereof as may be necessary and available for fiscal year 1997-1998 and the sum of \$4,500,000 or so much thereof as may be necessary and available for fiscal year 1998-1999 for early intervention services for infants and toddlers with special needs.

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

SECTION 6. 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 7. New statutory material is underscored.<sup>2</sup>

SECTION 8. This Act shall take effect on July 1, 1997, and shall be repealed on June 30, 1999.

(Approved July 7, 1997.)

#### Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

## ACT 379

H.B. NO. 111

A Bill for an Act Relating to Sexual Assault.

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

SECTION 1. The legislature finds that sexual assault in the first, second, third, and fourth degrees, in the manner prohibited under the Hawaii penal code, are

not “continuing offenses” in that they represent distinct acts and, therefore, separate offenses. The legislature finds, however, that many young children who have been sexually abused over an extended period of time may be unable to specifically recall or identify dates, instances, or circumstances surrounding the abuse.

As discussed by Justice Nakayama in a dissenting opinion to the Hawaii Supreme Court’s recent decision in State v. Arceo, (No. 16950, November 18, 1996), the prosecution’s key witness in cases involving the sexual assault of a minor is usually a child with a limited ability to recall alleged acts with specificity. Justice Nakayama argued that this is “particularly problematical and evident in cases involving sexual assault by a parent, where the minor may be of tender years, under the exclusive control of the parent or guardian, and when the abuse has occurred on a number of occasions over a period of time.” The dissent cited the following language in support of the idea that young children subjected to a continuing pattern of abuse are not likely to clearly identify the specific instances when particular acts took place:

“Particularly when the accused resides with the victim or has virtually unchecked access to the child, and the abuse has occurred on a regular basis over a prolonged period of time, the child may have no meaningful reference point of time or detail by which to distinguish one specific act from another. The more frequent and repetitive the abuse, the more likely it becomes that the victim will be unable to recall specific dates and places. Moreover because the molestation usually occurs outside the presence of witnesses, and often leaves no permanent physical evidence, the state’s case rests on the testimony of a victim whose memory may be clouded by blur of abuse and a desire to forget.”

People v. Aldrich, 849 P.2d 821, 826 (Colo. Ct. App. 1992) (citation omitted)(quoting State v. Brown, 780 P.2d 880 (Wash. St. App. 1989).

Justice Nakayama urged the legislature to enact a “continuous sexual abuse of a minor” statute, similar to the one enacted by the State of California, to address the problems inherent in the criminal prosecution of sexual abuse cases involving young children who are unable to specify the time, places, or circumstances of each act. The legislature agrees that there is a need for such a statute, and finds that the California statute has been upheld as constitutional by that State and does not violate the right to due process.

The purpose of this Act is to set forth the parameters of the offense of continuous sexual assault of a minor under the age of fourteen years, similar to the statute enacted by California, that defines the circumstances and provides specific guidelines under which the sexual assault of a minor is deemed a continuing offense. This Act also makes the continuous sexual assault of a minor under the age of fourteen years a class A felony.

SECTION 2. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

**“§707- Continuous sexual assault of a minor under the age of fourteen years.** (1) Any person who:

- (a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and
- (b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, but while the minor is under the age of fourteen years,

is guilty of the offense of continuous sexual assault of a minor under the age of fourteen years.

(2) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts have occurred; the jury need not agree on which acts constitute the requisite number.

(3) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the time frame of the offense charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved, in which case a separate count may be charged for each victim.

(4) Continuous sexual assault of a minor under the age of fourteen years is a class A felony.’’

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. New statutory material is underscored.<sup>1</sup>

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

(Approved July 7, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 380**

H.B. NO. 1292

A Bill for an Act Relating to the Environment.

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

SECTION 1. The uniqueness of Hawaii’s plants and animals and the activities of people have contributed to the extinction and endangerment of native plants and animals. Nearly three-quarters of the extinctions in the United States have occurred in Hawaii, and almost forty per cent of the endangered plants and birds in the United States are native Hawaiian species. Over two hundred species were listed as endangered by the federal government during the period from 1991 to 1995. This increase reflects a crisis in the survival of unique Hawaiian plants and animals. It also has had a profound impact on land use issues on both public and private lands.

To ensure the continued perpetuation of Hawaii’s indigenous aquatic life, wildlife, land plants, and their habitats, public and private landowners must work together. Greater voluntary involvement of the private sector may be achieved by providing incentives for private landowners to take actions to protect and conserve threatened and endangered species and their habitats.

The existing endangered species law contained in chapter 195D, Hawaii Revised Statutes, while providing some protection for listed species on public lands, does not presently encourage private landowners to participate voluntarily in the conservation of endangered species and has not done enough to enhance the opportunities for survival of rare organisms on private lands. For example, the law lacks incentives for private land stewardships that would enhance recovery. The federal Endangered Species Act and new federal administrative initiatives provide some opportunities for innovative solutions that may enhance the likelihood of recovery of some of Hawaii’s threatened and endangered species.

The legislature finds and declares that state agencies:

- (1) Must cooperate with the federal government, county agencies, private organizations, and private landowners to promote the conservation and recovery of threatened and endangered species and their habitat in concert with economic development and cultural issues; and
- (2) In cooperating with the federal government, chapter 195D, Hawaii Revised Statutes, must be carried out in a manner that recognizes the jurisdiction, broad trusteeship, and police powers of the State with respect to management and conservation of fauna and flora within its borders.

Consequently, the purpose of this Act is to:

- (1) Augment chapter 195D, Hawaii Revised Statutes, to provide for the preparation and implementation of habitat conservation plans and safe harbor agreements under the federal Endangered Species Act and the state endangered species law, and to complement the federal law; and
- (2) Provide additional incentives for private landowners to recover and protect threatened and endangered species on their lands, while providing a dynamic and flexible framework to allow creative solutions, increase public appreciation and understanding of endangered species issues, and encourage partnerships to help Hawaii recover its unique natural heritage.

This Act also provides that all habitat conservation plans, safe harbor agreements, incidental take licenses, and subsequent actions will increase the population of Hawaii's threatened and endangered species.

SECTION 2. Chapter 195D, Hawaii Revised Statutes, is amended by adding eleven new sections to be appropriately designated and to read as follows:

**“§195D-A Habitat conservation plans.** (a) The board may enter into agreements with any landowner for the purpose of preparing and implementing a habitat conservation plan. An agreement may include multiple landowners. Applications to enter into a planning process shall identify:

- (1) The geographic area encompassed by the plan;
- (2) The ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan;
- (3) The endangered, threatened, proposed, and candidate species known or reasonably expected to occur in the ecosystems, natural communities, or habitat types in the plan area;
- (4) The measures or actions to be undertaken to protect, maintain, restore, or enhance those ecosystems, natural communities, or habitat types within the plan area;
- (5) A schedule for implementation of the proposed measures and actions; and
- (6) An adequate funding source to ensure that the proposed measures and actions are undertaken in accordance with the schedule.

After a habitat conservation plan is prepared, the board shall notify the public of its intent to enter into the habitat conservation plan and make the plan and the application available for public review and comment through the periodic bulletin of the office of environment quality control for not less than sixty days prior to approval.

(b) Except as otherwise provided by law, the board, upon recommendation from the department, in cooperation with other state, federal, county, or private organizations and landowners, after a public hearing on the island affected, and upon an affirmative vote of not less than two-thirds of its authorized membership, may enter into a habitat conservation plan, if it determines that the plan will further the



purposes of this chapter by protecting, maintaining, restoring, or enhancing identified ecosystems, natural communities, or habitat types upon which endangered, threatened, proposed, or candidate species depend within the area covered by the plan; that the plan will increase the likelihood of recovery of the endangered or threatened species that are the focus of the plan; and that the plan satisfies all the requirements of this chapter. Habitat conservation plans may allow conservation rental agreements, habitat banking, and direct payments. Any habitat conservation plan approved pursuant to this section shall be based on the best available scientific and other reliable data available at the time the plan is approved.

Each habitat conservation plan shall:

- (1) Identify the geographic area encompassed by the plan; the ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan; and the endangered, threatened, proposed, and candidate species known or reasonably expected to be present in those ecosystems, natural communities, or habitat types in the plan area;
  - (2) Describe the activities contemplated to be undertaken within the plan area with sufficient detail to allow the department to evaluate the impact of the activities on the particular ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan;
  - (3) Identify the steps that will be taken to minimize and mitigate all negative impacts, including without limitation the impact of any authorized incidental take, with consideration of the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed; and the funding that will be available to implement those steps;
  - (4) Identify those measures or actions to be undertaken to protect, maintain, restore, or enhance the ecosystems, natural communities, or habitat types within the plan area; a schedule for implementation of the measures or actions; and an adequate funding source to ensure that the actions or measures, including monitoring, are undertaken in accordance with the schedule;
  - (5) Be consistent with the goals and objectives of any approved recovery plan for any endangered species or threatened species known or reasonably expected to occur in the ecosystems, natural communities, or habitat types in the plan area;
  - (6) Provide reasonable certainty that the ecosystems, natural communities, or habitat types will be maintained in the plan area, throughout the life of the plan, in sufficient quality, distribution, and extent to support within the plan area those species typically associated with the ecosystems, natural communities, or habitat types, including any endangered, threatened, proposed, and candidate species known or reasonably expected to be present in the ecosystems, natural communities, or habitat types within the plan area;
  - (7) Contain objective, measurable goals, the achievement of which will contribute significantly to the protection, maintenance, restoration, or enhancement of the ecosystems, natural communities, or habitat types; time frames within which the goals are to be achieved; and provisions for monitoring (such as field sampling techniques) and evaluating progress in achieving the goals quantitatively and qualitatively; and
  - (8) Provide for an adaptive management strategy that specifies the actions to be taken periodically if the plan is not achieving its goals.
- (c) The board shall disapprove a habitat conservation plan if the board determines, based upon the best scientific and other reliable data available at the time its determination is made, that the cumulative activities, if any, contemplated to

be undertaken within the areas covered by the plan are not environmentally beneficial, or that implementation of the plan:

- (1) Is likely to jeopardize the continued existence of any endangered, threatened, proposed, or candidate species identified in the plan area;
- (2) Is likely to cause any native species not endangered or threatened at the time of plan submission to become threatened or endangered;
- (3) Fails to meet the criteria of subsections (a) and (b); or
- (4) Fails to meet the criteria of section 195D-4(g).

The habitat conservation plan shall contain sufficient information for the board to ascertain with reasonable certainty the likely effect of the plan upon any endangered, threatened, proposed, or candidate species in the plan area and throughout its habitat range.

(d) Notwithstanding any other law to the contrary, the board shall suspend or revoke the approval of any habitat conservation plan approved under this section if the board determines that:

- (1) Any parties to the plan, or their successors, have breached their obligations under the plan or under any agreement implementing the plan and have failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the plan will achieve its goals within the time frames or in the manner set forth in the plan; or
- (2) The plan no longer has the funding source specified in subsection (a) or another sufficient funding source to ensure the measures or actions specified in subsection (b) are undertaken in accordance with this section.

(e) The rights and obligations under any habitat conservation plan shall run with the land and shall be recorded by the department in the bureau of conveyances or the land court, as may be appropriate.

(f) Participants in a habitat conservation plan shall submit an annual report to the department within ninety days of each fiscal year ending June 30, that includes a description of activities and accomplishments, analysis of the problems and issues encountered in meeting or failing to meet the objectives set forth in the habitat conservation plan, areas needing technical advice, status of funding, and plans and management objectives for the next fiscal year, including any proposed modifications thereto.

**§195D-B Safe harbor agreements.** (a) To encourage landowners to voluntarily engage in efforts that benefit endangered, threatened, proposed, and candidate species, except as otherwise provided by law, the board, upon approval by not less than two-thirds of the board's authorized membership, after a public hearing on the island affected, may enter into a safe harbor agreement with one or more landowners to create, restore, or improve habitats or to maintain currently unoccupied habitats that threatened or endangered species can be reasonably expected to use, if the board determines that the cumulative activities, if any, contemplated to be undertaken within the areas covered by the agreement are environmentally beneficial. The board shall notify the public of its intent to enter into a safe harbor agreement and make the proposed agreement available for public review and comment through the periodic bulletin of the office of environment quality control for not less than sixty days prior to approval.

(b) A safe harbor agreement may authorize the take of an endangered, threatened, proposed, or candidate species incidental to an otherwise lawful activity in or affecting the created, restored, maintained, or improved habitat; provided that based on the best scientific and other reliable data available at the time the safe harbor agreement is approved, if these data are applicable:

- (1) The take would not jeopardize the continued existence of any endangered, threatened, proposed, or candidate species;
  - (2) The take would not reduce the population of endangered, threatened, proposed, or candidate species below the number found on the property prior to entering into the agreement;
  - (3) The agreement proposes to create, restore, maintain, or improve significant amounts of habitat for a minimum of five years;
  - (4) There is adequate funding for the agreement and the source of that funding is identified;
  - (5) The safe harbor agreement increases the likelihood that the endangered or threatened species for which a take is authorized will recover;
  - (6) Any take authorized pursuant to this subsection shall occur only in the habitat created, restored, maintained, or improved; and
  - (7) The cumulative impact of the activity, which is permitted and facilitated by the take, provides net environmental benefits.
- (c) Notwithstanding any other law to the contrary, the board shall suspend or rescind any safe harbor agreement approved under this section if the board determines that:
- (1) Any parties to the safe harbor agreement, or their successors, have breached their obligations under the safe harbor agreement or under any other agreement implementing the safe harbor agreement and have failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the agreement will achieve its goals within the time frames or in the manner set forth in the agreement; or
  - (2) To the extent that funding is or will be required, the funding source specified in subsection (b) no longer exists and is not replaced by another sufficient funding source to ensure that the measures or actions specified in subsection (b) are undertaken in accordance with this section.

**§195D-C Incentives.** (a) After approval of a habitat conservation plan or safe harbor agreement, or issuance of an incidental take license pursuant to this chapter, no agencies or departments of the State, in order to protect a threatened or endangered species, may impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor to the landowner, to mitigate or compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the plan, agreement, or license unless:

- (1) The landowner, or the landowner's successor, expressly consents to the requirement, condition, or modification;
- (2) The board has found, in accordance with those special procedures agreed to by the board and the landowner, or in the absence of any special procedures, in accordance with those procedures that govern the findings generally, that:
  - (A) The requirement, condition, or modification does not impose any additional restriction on any parcel of land or body of water available for use or development under the plan or agreement; and
  - (B) The requirement, condition, or modification will not increase the cost to the landowner or other parties to the plan or agreement of implementing the plan or agreement;
- (3) The department is prepared to exercise its authority to:
  - (A) Pay the landowner for the costs of any new requirement or condition or any modification of any existing requirement or

condition, which costs may be determined through binding arbitration; and

- (B) Take any other action to ensure that any party to the plan or agreement is not, without the party's consent, unduly burdened by the requirement, condition, or modification, in which case the department shall implement that necessary requirement, condition, or modification upon committing to pay the costs, mitigate the actions, or undertake the action;

- (4) The board has revoked the approval of the plan or rescinded the agreement in accordance with section 195D-A(d) or 195D-B(c); or

- (5) Extraordinary new circumstances or information indicate that failure to modify the plan or agreement is likely to appreciably reduce the likelihood of the survival or recovery of any threatened or endangered species in its natural habitat. If additional mitigation measures are subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a habitat conservation plan, safe harbor agreement, or incidental take license as a result of extraordinary circumstances, the primary obligation for executing mitigation measures shall rest with the State, or the federal government with its consent, and not with the landowner.

(b) Entry by a landowner into a habitat conservation plan or safe harbor agreement shall be voluntary.

(c) The department may establish a landowner contact and recognition program that:

- (1) Contacts landowners who may have threatened or endangered species or their habitat on their land and that sends information on the species or habitat in question. If the landowner is willing, a nonbinding memorandum of understanding may be signed, which states a general intention to protect the species or habitat found on the land;
- (2) If available, provides participating landowners with a current supply of information on the conservation of species and habitat found on their land;
- (3) On an annual basis, recognizes one or more private landowners who have demonstrated, through past and current efforts, sound conservation practices and principles on their land; and
- (4) On an annual basis, awards a private landowner participating in a habitat conservation plan an "Outstanding Participant of the Year" award.

(d) The department may establish a habitat conservation technical assistance program to assist landowners in developing habitat conservation plans by providing technical assistance.

(e) Persons participating within voluntary programs under this chapter may receive consideration from the board to use adjacent public lands for commercial nature tourism activities that increase public education and support for endangered species; provided that an agreed percentage of the fees charged for nature tourism activities shall be donated to the trust fund to implement this chapter.

(f) The execution of habitat conservation plans and safe harbor agreements under sections 195D-A and 195D-B, respectively, shall, for the purposes of providing incentives and assistance to landowners, be deemed to be a public purpose and in the public interest, and for the general welfare of the State.

**§195D-D Confidentiality.** All information submitted to the board by a landowner pursuant to section 195D-A or 195D-B, in the course of preparing a habitat conservation plan or safe harbor agreement, respectively, shall be kept

confidential until notice of the proposed plan or agreement is published in the periodic bulletins of the office of environmental quality control. The precise location of any threatened or endangered species may remain confidential.

**§195D-E Endangered species recovery committee.** (a) There is established within the department for administrative purposes only, the endangered species recovery committee, which shall serve as a consultant to the board and the department on matters relating to endangered, threatened, proposed, and candidate species. The committee shall consist of two field biologists with expertise in conservation biology, the chairperson of the board or the chairperson's designee, the ecoregion director of the United States Fish and Wildlife Service or the director's designee, the director of the United States Geological Survey, Biological Resources Division or the director's designee, and the director of the University of Hawaii Environmental Center or the director's designee.

Nongovernmental members shall be appointed by the governor pursuant to section 26-34. Nongovernmental members shall not serve for more than two consecutive terms. Nongovernmental members shall serve for four-year staggered terms, except that one of the members first appointed shall serve for two years.

Governmental members from the federal agencies are requested but not required to serve on the committee. The ability of the committee to carry out its functions and purposes shall not be affected by the vacancy of any position allotted to a federal governmental member.

(b) The endangered species recovery committee shall:

- (1) Review all proposals for habitat conservation plans, safe harbor agreements, and incidental take licenses and make recommendations, based on a full review of the best available scientific and other reliable data and in consideration of the cumulative impacts of the proposed action on the recovery potential of the endangered, threatened, proposed, or candidate species, to the department and the board as to whether or not they should be approved, amended, or rejected;
- (2) Review all habitat conservation plans, safe harbor agreements, and incidental take licenses on an annual basis to ensure compliance with agreed to activities and make recommendations for any necessary changes;
- (3) Consider and develop appropriate incentives to encourage landowners to voluntarily engage in efforts that restore and conserve endangered, threatened, proposed, and candidate species;
- (4) Perform such other duties as provided in this chapter; and
- (5) Consult with persons possessing expertise in such areas as the committee may deem appropriate and necessary in the course of exercising its duties.

**§195D-F Annual report; endangered species.** The department, after consultation with the endangered species recovery committee, by December 31 of each year, shall prepare a report summarizing:

- (1) The status of all endangered, threatened, proposed, and candidate species for which incidental take licenses pursuant to sections 195D-B and 195D-4 have been issued and the effectiveness of all habitat conservation plans and safe harbor agreements that have been approved;
- (2) The condition of the trust fund established under this chapter, including receipts and expenditures over the previous fiscal year; and
- (3) Any recommendations to further the purposes of this chapter.

The report and all information pertaining to incidental take licenses shall be available to the public.

**§195D-G Administrative enforcement of plans, agreements, or licenses.**

(a) Any person may petition the chairperson to appoint a hearings officer to hear a request to enjoin any person, including the State and any other government agency, alleged to be in violation of any habitat conservation plan, safe harbor agreement, or incidental take license, or to require the State to take action to enforce any term of a habitat conservation plan, safe harbor agreement, or incidental take license.

(b) Upon receipt of the petition, the chairperson shall make a diligent effort to resolve the subject matter of the petition and, if appropriate, to cause the noncomplying or other responsible party to comply with the habitat conservation plan, safe harbor agreement, or incidental take license. If the chairperson is unable to resolve the subject matter of the petition within a period of time deemed reasonable under the circumstances, but in no event more than ninety days; or if the petitioner is not satisfied with the chairperson's resolution of the subject matter, then the chairperson shall appoint a hearings officer to hear the petition. The hearings officer shall commence a contested case hearing in accordance with chapter 91 and, within thirty days of the completion of the hearing, grant in whole or in part, or deny the petition.

(c) Nothing in this section shall grant any authority whatsoever upon the hearings officer to assess monetary damages or criminal penalties against any party found to be in violation of this chapter, however, the hearings officer shall issue findings of fact and, if appropriate, an order directing the party found to be in violation to take specific action to comply with this chapter.

(d) Any person who believes that a violation of a habitat conservation plan, safe harbor agreement, or incidental take license has occurred, is occurring, or is likely to occur, may petition the chairperson for the immediate appointment of a hearings officer. The petition shall be accompanied by an affidavit alleging:

- (1) Specific facts showing that the continued existence of an endangered or threatened species will be jeopardized unless the violation is immediately enjoined; and
- (2) The efforts that have been made to notify the landowner of the alleged violation.

If the chairperson finds that there exists good cause for a hearing, then a hearings officer shall be appointed who shall conduct a hearing forthwith, and in any event within forty-eight hours after the filing of the petition. If the hearings officer finds that there is a substantial likelihood that the continued existence of an endangered or threatened species will be jeopardized unless the violation is immediately enjoined, then the hearings officer shall order temporary injunctive relief, which shall expire upon such terms as the hearings officer determines.

**§195D-H Relation of chapter to other laws.** The rights and remedies in this chapter shall be cumulative and in addition to any and all rights and remedies that may exist under applicable state and federal laws.

**§195D-I Release or establishment of endangered or threatened species outside its current range.** The department may authorize the release or establishment of any population, including eggs, propagules, or individuals, of an endangered or threatened species outside its current or historic range, after consulting with the endangered species recovery committee, if the release or establishment is likely to further the conservation of the species.

**§195D-J Net gain in recovery of species.** All habitat conservation plans, safe harbor agreements, incidental take licenses, and subsequent actions authorized under those plans, agreements, and licenses shall be designed to result in an overall net gain in the recovery of Hawaii's threatened and endangered species.

**§195D-K Trust fund.** (a) There is established within the state treasury a special fund to be known as the endangered species trust fund to be administered by the department in order to implement the purposes of this chapter.

The fund shall consist of moneys from the following sources:

- (1) Moneys accrued from the sale of retail items officially sponsored by the department for the fund;
- (2) Private contributions for the management and recovery of Hawaii's unique plants and animals;
- (3) Fees and assessments charged for the commercial use of public land and waters and designated for the fund;
- (4) Penalties, fines, or auctions resulting from enforcement violations for chapter 195D and this chapter; and
- (5) Legislative appropriations.

(b) The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury; provided that moneys received as deposits or contributions from private sources shall be deposited and accounted for in accordance with the conditions established by the agencies or persons making the contribution. Earnings on the investment of the assets of the fund shall become a part of the fund. Any balance in the fund at the end of a fiscal year shall be carried forward to the next fiscal year."

SECTION 3. Section 195D-2, Hawaii Revised Statutes, is amended as follows:

1. By adding nine new definitions to be appropriately inserted and to read: "Board" means the board of land and natural resources.

"Candidate species" means any species being considered by the United States Secretary of the Interior for listing as an endangered or threatened species, but not yet the subject of a proposed rule.

"Direct payments" means governmental compensation of landowners for their discovery, care, maintenance, and recovery of endangered, threatened, proposed, or candidate species or their essential habitat.

"Habitat banking" means a program that would allow a landowner, on whose property are found endangered, threatened, proposed, or candidate species or their essential habitat that would be impacted by a project being conducted on the property to purchase another property on which those affected species are found for the purposes of preserving those species as part of an approved habitat conservation plan.

"Jeopardize the continued existence of an endangered or threatened, proposed, or candidate species" means any action that would be expected, directly or indirectly, to reduce the likelihood of the survival or recovery of the species in the wild, including the loss of genetic diversity of its populations where the species is a plant species.

"Landowner" means the owner of the fee simple interest in private land.

"Natural communities" means a natural assemblage of plants or animals that occurs within certain elevation, moisture, and habitat conditions.

"Proposed species" means any species that is the subject of a proposed rule for listing as an endangered or threatened species pursuant to the Endangered Species Act.

“Recovery” or “recover” means that the number of individuals of the protected species has increased to the point that the measures provided under this chapter or the federal Endangered Species Act are no longer needed.”

2. By amending the definition of “conserve”, “conserving”, and “conservation” to read:

““Conserve”, “conserving”, and “conservation” mean to use and the use of all methods and procedures [for the purpose of increasing and maintaining populations of aquatic life, wildlife, and land plants.] which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter and the Endangered Species Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, habitat acquisition[, protection,] and maintenance, propagation, live [trapping, regulated taking,] capture, law enforcement, and transplantation;”

SECTION 4. Section 195D-4, Hawaii Revised Statutes, is amended to read as follows:

**“§195D-4 Endangered species and threatened species.** (a) Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act shall be deemed to be an endangered species under [the provisions of] this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under [the provision of] this chapter. [However, the] The department may determine, in accordance with this section, however, that any such threatened species is an endangered species throughout all or any portion of the range of such species within this State.

(b) In addition to the species that have been determined to be endangered or threatened pursuant to the Endangered Species Act, the department [may], by rules adopted pursuant to chapter 91, may determine any indigenous species of aquatic life, wildlife, or land plant to be an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, educational, or other purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or [manmade] artificial factors affecting its continued existence within Hawaii.

(c) [Basis for determinations.] The department shall make determinations required by subsection (b) [of this section] on the basis of all available scientific, commercial, and other data after consultation, as appropriate, with federal agencies, other interested state and county agencies, and interested persons and organizations.

(d) [Lists.

(1)] The department shall issue rules containing a list of all species of aquatic life, wildlife, and land plants that have been determined, in accordance with subsections (a) [through] to (c) [of this section], as endangered species and a list of all such species so designated as threatened species. Each list shall include the scientific, common, and Hawaiian [name or] names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.



[(2)] Except with respect to species of aquatic life, wildlife, or land plants determined to be endangered or threatened pursuant to the Endangered Species Act, the department [shall], upon its own recommendation or upon the petition of three interested persons[,], who have presented to the department substantial evidence [which] that warrants review, shall conduct a review of any listed or unlisted indigenous species proposed to be removed from or added to the lists published pursuant to [paragraph (1) of] this subsection.

(e) [Prohibited acts.] With respect to any threatened or endangered species of aquatic life, wildlife, or land plant, it is unlawful, except as provided in [subsection (f) of this section,] subsections (f) and (g), for any person [subject to the jurisdiction of this State] to:

- (1) Export any such species from this State;
- (2) Take any such species within this State;
- (3) Possess, process, sell, offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species;
- (4) Violate any rule pertaining to the conservation of [such] the species [or to any threatened species of aquatic life, wildlife, and land plant] listed pursuant to this section and adopted by the department pursuant to [authority provided by] this chapter[.]; or
- (5) Violate the terms of, or fail to fulfill the obligations imposed and agreed to under, any license issued under subsection (f) or (g), any habitat conservation plan authorized under section 195D-A, or any safe harbor agreement authorized under section 195D-B.

(f) [License.] The department may issue temporary licenses, under such terms and conditions as it may prescribe, to allow any act otherwise prohibited by subsection (e) [of this section], for scientific purposes or to enhance the propagation or survival of the affected species. [Licenses issued pursuant to this subsection shall be revocable for due cause and shall be nonassignable. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of two years from the date of revocation.]

(g) After consultation with the endangered species recovery committee, the board may issue a temporary license as a part of a habitat conservation plan to allow a take otherwise prohibited by subsection (e) if the take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; provided that:

- (1) The applicant, to the maximum extent practicable, shall minimize and mitigate the impacts of the take;
- (2) The applicant shall guarantee that adequate funding for the plan will be provided;
- (3) The applicant shall post a bond, or deposit a sum of money in the fund created by section 183D-10.5, adequate to ensure monitoring of the species by the State and to assure that the applicant takes all actions necessary to minimize and mitigate the impacts of the take;
- (4) The plan shall increase the likelihood that the species will survive and recover;
- (5) The plan takes into consideration the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed;
- (6) The measures, if any, required under section 195D-A(b) shall be met, and the department has received any other assurances that may be required so that the plan may be implemented;
- (7) The activity, which is permitted and facilitated by issuing the license to take a species, does not involve the use of submerged lands, mining, or blasting.

- (8) The cumulative impact of the activity, which is permitted and facilitated by the license, provides net environmental benefits; and
- (9) The take is not likely to cause the loss of genetic representation of an affected population of any endangered, threatened, proposed, or candidate plant species.

Board approval shall require an affirmative vote of not less than two-thirds of the authorized membership of the board. The department shall notify the public of its intent to issue a license under this section and make the application available for public review and comment through publication in the periodic bulletin of the office of environment quality control for not less than sixty days prior to approval.

(h) Licenses issued pursuant to this section may be suspended or revoked for due cause, and if issued pursuant to a habitat conservation plan or safe harbor agreement, shall run with the land for the term agreed to in the<sup>1</sup> and shall not be assignable or transferable separate from the land. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of two years from the date of revocation.

(i) The department shall work cooperatively with federal agencies in concurrently processing habitat conservation plans, safe harbor agreements, and incidental take licenses pursuant to the Endangered Species Act. After notice in the periodic bulletins of the office of environmental quality control and a public hearing on the islands affected, which shall be held jointly with the federal agency whenever a landowner seeks both a federal and a state safe harbor agreement, habitat conservation plan, or incidental take license the board may approve the agreement, plan, or license without requiring a separate state agreement, plan, or license if the federal agreement, plan, or license satisfies, or is amended to satisfy, all the criteria of this chapter.”

SECTION 5. Section 195D-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The office of the governor shall review other programs administered by the department and, to the extent practicable, utilize such programs in furtherance of the purposes of this [section.] chapter. The governor or the governor’s authorized representative shall also encourage all federal agencies to utilize their authority in furtherance of the purposes of this chapter. All other state [and federal] agencies [to utilize] shall use their [authorities] authority in furtherance of the purposes of this [section] chapter by [carrying]:

- (1) Carrying out programs for the protection of threatened and endangered species [and by taking]; and
- (2) Taking such action as may be necessary to [insure] ensure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of threatened or endangered species.

In carrying out programs authorized by this chapter, the department may enter into agreements with federal agencies, counties, private landowners, and organizations for the administration and management of any area or facility established under section 195D-A or 195D-B, or public lands utilized for conserving, managing, enhancing, or protecting indigenous aquatic life, wildlife, land plants, threatened and endangered species, and their habitat.”

SECTION 6. Section 195D-6, Hawaii Revised Statutes, is amended to read as follows:

“**§195D-6 Rules.** The department [shall] may adopt rules pursuant to chapter 91 necessary to carry out the purposes of this chapter.”

SECTION 7. Section 195D-7, Hawaii Revised Statutes, is amended to read as follows:

“**§195D-7 Enforcement.** (a) Any employee or agent of the department upon whom the board [of land and natural resources] has conferred powers of police officers, including the power to serve and execute warrants and arrest offenders, or issue citations throughout the State, and any police officer of the counties of this State shall have the authority to enforce any of the provisions of this chapter or any rule adopted [pursuant hereto.] under this chapter.

(b)<sup>2</sup> Any employee or agent of the department, for the purpose of enforcing the terms and conditions of any license issued under this chapter and upon written notification to the affected landowner, may enter upon, cross over, be upon, or remain upon privately owned lands for such purposes and shall not be subject to arrest for trespass while so engaged or for such cause thereafter.

(c) A landowner of property on which an endangered species exists shall not be liable for civil damages for injuries to employees of, or persons under contract with the department if injury to those employees or persons caused by their own negligence occurs while those employees or persons are enforcing the terms and conditions of any license issued under this chapter.”

SECTION 8. Section 343-3, Hawaii Revised Statutes, is amended to read as follows:

“**§343-3 Public records and notice.** (a) All statements, environmental assessments, and other documents prepared under this chapter shall be made available for inspection by the public during established office hours.

(b) The office shall inform the public of notices filed by agencies of the availability of environmental assessments for review and comments, of determinations that statements are required or not required, of the availability of statements for review and comments, and of the acceptance or nonacceptance of statements.

(c) The office shall inform the public of:

(1) A public comment process or public hearing if a federal agency provides for the public comment process or public hearing to process a habitat conservation plan, safe harbor agreement, or incidental take license pursuant to the federal Endangered Species Act; and

(2) The board of land and natural resources' intent to:

(A) Enter into a habitat conservation plan or safe harbor agreement, and availability for inspection of the proposed agreement, plan, and application to enter into a planning process for the preparation and implementation of the habitat conservation plan for public review and comment; and

(B) Issue an incidental take license as part of a habitat conservation plan or safe harbor agreement.

(d) The office shall inform the public by the publication of a periodic bulletin to be available to persons requesting this information. The bulletin shall be available through the office and public libraries.”

SECTION 9. Section 520-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An owner of land who is required or compelled to provide access or parking for such access through or across the owner’s property because of state or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property used for recreation purposes, or as part of a habitat conservation plan, or

safe harbor agreement, shall be afforded the same protection as to such access, including parking for such access, as an owner of land who invites or permits any person to use that owner's property for recreational purposes under subsection (a).”

Part III

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. In codifying the new sections added to chapter 195D, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections' designations in this Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 13. This Act shall take effect upon its approval; provided that no new safe harbor agreements, habitat conservation plans, or incidental take licenses issued pursuant to sections 195D-B or 195D-4, Hawaii Revised Statutes, shall be approved or issued subsequent to July 1, 2002.

(Approved July 7, 1997.)

Notes

- 1. So in original.
- 2. Subsections (b) and (c) should be underscored.
- 3. Edited pursuant to HRS §23G-16.5.

ACT 381

S.B. NO. 175

A Bill for an Act Relating to the Environment.

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

SECTION 1. The legislature finds that responsible commercial propagation and use of selected threatened and endangered plant species can be of tremendous benefit in not only bolstering and stabilizing the populations of those species, but in serving as a means for enhancing public perception of and active participation in ecological preservation.

The legislature also finds that as the commercial and private propagation, and the subsequent increased availability of selected threatened and endangered species becomes a common practice, the destruction of such species through takings in the wild should correspondingly lessen.

The legislature further finds that ensuring the successful application of programs and proposals such as this will require the regulatory agency to encourage compliance with the law by not adopting rules and regulations that are unduly onerous and would discourage public participation.

The purpose of this Act is to require the department of land and natural resources to adopt rules authorizing the sale of selected threatened and endangered plant species grown from nursery stock and not collected from the wild. It is the intent of the legislature that the rules not be overly burdensome on those who either

purchase or privately propagate such plant species, lest the purpose of this Act be negated.

SECTION 2. Section 195D-4, Hawaii Revised Statutes, is amended to read as follows:

**“§195D-4 Endangered species and threatened species.** (a) Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act shall be deemed to be an endangered species under [the provisions of] this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under [the provision of] this chapter. However, the department may determine, in accordance with this section, that any such threatened species is an endangered species throughout all or any portion of the range of such species within this State.

(b) In addition to the species that have been determined to be endangered or threatened pursuant to the Endangered Species Act, the department [may], by rules adopted pursuant to chapter 91, may determine any indigenous species of aquatic life, wildlife, or land plant to be an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, educational, or other purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or [manmade] artificial factors affecting its continued existence within Hawaii.

(c) Basis for determinations. The department shall make determinations required by subsection (b) [of this section] on the basis of all available scientific, commercial, and other data after consultation, as appropriate, with federal agencies, other interested state and county agencies, and interested persons and organizations.

(d) Lists.

- (1) The department shall issue rules containing a list of all species of aquatic life, wildlife, and land plants that have been determined, in accordance with subsections (a) [through] to (c) [of this section], as endangered species and a list of all such species so designated as threatened species. Each list shall include the scientific, common, and Hawaiian name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.
- (2) Except with respect to species of aquatic life, wildlife, or land plants determined to be endangered or threatened pursuant to the Endangered Species Act, the department [shall], upon its own recommendation or upon the petition of three interested persons[,], who have presented to the department substantial evidence which warrants review, shall conduct a review of any listed or unlisted indigenous species proposed to be removed from or added to the lists published pursuant to paragraph (1) [of this subsection].

(e) Prohibited acts. With respect to any endangered species of aquatic life, wildlife, or land plant, it is unlawful, except as provided in [subsection] subsections (f) [of this section,] and (g), for any person subject to the jurisdiction of this State to:

- (1) Export any such species from this State;
- (2) Take any such species within this State;

- (3) Possess, process, sell, offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species;
- (4) Violate any rule pertaining to the conservation of such species or to any threatened species of aquatic life, wildlife, and land plant listed pursuant to this section and adopted by the department pursuant to authority provided by this chapter.

(f) License. The department may issue temporary licenses, under such terms and conditions as it may prescribe, to allow any act otherwise prohibited by subsection (e) [of this section], for scientific purposes or to enhance the propagation or survival of the affected species. Licenses issued pursuant to this subsection shall be revocable for due cause and shall be nonassignable. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of two years from the date of revocation.

(g) Subsection (e) and any other provision of law to the contrary notwithstanding, the department shall adopt rules in accordance with chapter 91 authorizing the propagation, possession, ownership, and sale of selected endangered and threatened land plant species grown from cultivated nursery stock and not collected or removed from the wild.”

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 July 7, 1997.)

**ACT 382**

H.B. NO. 1857

A Bill for an Act Relating to Hawaiian Home Lands Trust Individual Claims.

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

SECTION 1. The legislature finds that chapter 674, Hawaii Revised Statutes, was enacted 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.

Chapter 674, Hawaii Revised Statutes, established a Hawaiian home lands trust individual claims review panel which was charged with the responsibility to:

- (1) Receive, review, and evaluate the merits of an individual beneficiary's claim;
- (2) 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;
- (3) Prepare and transmit a report to the governor and legislature, at least twenty days prior to the convening of each regular session, and a final report, at least twenty days prior to the convening of the 1997 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 legislative action; and
- (4) Disburse any compensation awarded by the legislature in regular session or undertake other actions as provided by law which are acceptable to a claimant.

Chapter 674, Hawaii Revised Statutes, also provided 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 legislature in regular session on each claim brought before the panel is not acceptable to an individual beneficiary claimant.

In response to its mandated responsibilities, the Hawaiian home lands trust individual claims review panel conducted an extensive hearing process to formulate a method of quantifying actual damages over claims made by trust beneficiaries. The legislature also finds that there is disagreement between the parties over the formula utilized by the Hawaiian home lands trust individual claims review panel to arrive at award amounts. This disagreement, coupled with the legislature's belief that these claims should be handled together, rather than in a piecemeal fashion, has led to the necessity of this Act.

The legislature believes that the process to settle individual claims for breaches under the Hawaiian home lands trust needs to be clarified and that the active and meaningful participation of all affected parties is necessary in order to ensure that a fair, equitable, and expedient solution is established for all Hawaiian home land trust beneficiaries.

The purpose of this Act is to conclusively address the issue of determining just compensation for Hawaiian home land trust beneficiaries who have made claims under chapter 674, Hawaii Revised Statutes.

**SECTION 2.** The attorney general, director of finance, chairperson of the Hawaiian homes commission, and the chairperson of the Hawaiian home lands trust individual claims review panel established pursuant to chapter 674, Hawaii Revised Statutes, shall convene within thirty days of the effective date of this Act to discuss and formulate an appropriate formula and any criteria necessary to qualify and resolve all claims made under chapter 674, Hawaii Revised Statutes. Once formulated, the formula and criteria shall be submitted for approval by the governor by October 15, 1997, and reported to the legislature no later than twenty days prior to the convening of the 1998 regular session.

For the purposes of this section, the attorney general shall be responsible for recording and submitting the formula and criteria for approval to the governor and reporting to the legislature on the formula.

**SECTION 3.** The Hawaiian home lands trust individual claims review panel established pursuant to chapter 674, Hawaii Revised Statutes, shall utilize the formula and criteria established and approved under section 2 of this Act to review properly submitted claims not included in the claims review panel's 1997 report to the legislature.

The chairperson of the Hawaii homes commission and the Hawaiian home lands trust individual claims review panel shall vigorously pursue nonmonetary remedial relief to resolve properly submitted claims incorporated in the claims review panel's 1997 report to the legislature.

**SECTION 4.** Section 674-4, Hawaii Revised Statutes, is amended to read as follows:

“**§674-4 Tenure and compensation of members.** The term of office of each member of the panel shall be until [December 30, 1997.] December 31, 1999. 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. Expenses incurred under this section shall be paid by the department of commerce and consumer affairs.”

SECTION 5. Section 674-14, Hawaii Revised Statutes, is amended to read as follows:

“**§674-14 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 [each regular legislative session,] the regular session of 1998, and a final report to be transmitted to the governor and to the legislature, at least twenty days prior to the convening of the [1997 regular legislative session,] regular session of 1999, 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 legislature in regular session.”

SECTION 6. Section 674-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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, [1997,] 1999, a written notice with the panel that the claimant does not accept the action taken by the legislature in regular session upon the 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.”

SECTION 7. Section 674-19, Hawaii Revised Statutes, is amended to read as follows:

“**§674-19 Limitation on actions.** Every claim cognizable under this part shall forever be barred unless the action is commenced by [September 30, 1998.] December 31, 1999.”

SECTION 8. Any resolution contained in this Act of the claims submitted with the claims review panel’s 1997 report to the legislature shall not be considered a precedent for any other claims under chapter 674, Hawaii Revised Statutes. All properly submitted claims to be adjudicated by the Hawaiian home lands trust individual claims review panel shall be subject to the criteria and formula established and approved pursuant to section 2 of this Act.

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 July 8, 1997.)

**ACT 383**

H.B. NO. 118

A Bill for an Act Relating to Unmarried Couples.

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

Part I

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER 572C  
RECIPROCAL BENEFICIARIES

§ -1 **Purpose.** The purpose of this chapter is to extend certain rights and benefits which are presently available only to married couples to couples composed of two individuals who are legally prohibited from marrying under state law.

§ -2 **Findings.** The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e. brother and sisters of the half as well as to the whole blood, uncle and niece, aunt and nephew.

However, the legislature concurrently acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by such legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son, or two individuals who are of the same gender. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another.

§ -3 **Definitions.** For the purposes of this chapter:

“Declaration of reciprocal beneficiary relationship” means a statement in a form issued by the director that declares the intent of two people to enter into a relationship. By signing it, two people swear under penalty of perjury that they meet the requirements for a valid reciprocal beneficiary relationship.

“Director” means the director of health.

“Reciprocal beneficiaries” means two adults who are parties to a valid reciprocal beneficiary relationship and meet the requisites for a valid reciprocal beneficiary relationship as defined in section -4.

§ -4 **Requisites of a valid reciprocal beneficiary relationship.** In order to enter into a valid reciprocal beneficiary relationship, it shall be necessary that:

- (1) Each of the parties be at least eighteen years old;

- (2) Neither of the parties be married nor a party to another reciprocal beneficiary relationship;
- (3) The parties be legally prohibited from marrying one another under chapter 572;
- (4) Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) Each of the parties sign a declaration of reciprocal beneficiary relationship as provided in section -5.

**§ -5 Registration as reciprocal beneficiaries; filing fees; records.** (a) Two persons, who meet the criteria set out in section -4, may enter into a reciprocal beneficiary relationship and register their relationship as reciprocal beneficiaries by filing a signed notarized declaration of reciprocal beneficiary relationship with the director. For the filing of the declaration, the director shall collect a fee of \$8, which shall be remitted to the director of finance for deposit into the general fund.

(b) Upon the payment of the fee, the director shall register the declaration and provide a certificate of reciprocal beneficiary relationship to each party named on the declaration. The director shall maintain a record of each declaration of reciprocal beneficiary relationship filed with or issued by the director.

**§ -6 Rights and obligations.** Upon the issuance of a certificate of reciprocal beneficiary relationship, the parties named in the certificate shall be entitled to those rights and obligations provided by the law to reciprocal beneficiaries. Unless otherwise expressly provided by law, reciprocal beneficiaries shall not have the same rights and obligations under the law that are conferred through marriage under chapter 572.

**§ -7 Termination of reciprocal beneficiary relationship; filing fees and records; termination upon marriage.** (a) Either party to a reciprocal beneficiary relationship may terminate the relationship by filing a signed notarized declaration of termination of reciprocal beneficiary relationship by either of the reciprocal beneficiaries with the director. For the filing of the declaration, the director shall collect a fee of \$8, which shall be remitted to the director of finance for deposit into the general fund.

(b) Upon the payment of the fee, the director shall file the declaration and issue a certificate of termination of reciprocal beneficiary relationship to each party of the former relationship. The director shall maintain a record of each declaration and certificate of termination of reciprocal beneficiary relationship filed with or issued by the director.

(c) Any marriage license subsequently issued by the department to any individual registered as a reciprocal beneficiary shall automatically terminate the individual's existing reciprocal beneficiary relationship.

(d) If either party to a reciprocal beneficiary relationship enters into a legal marriage, the parties shall no longer have a reciprocal beneficiary relationship and shall no longer be entitled to the rights and benefits of reciprocal beneficiaries."

SECTION 2. Chapter 87, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§87- Reciprocal beneficiary family coverage defined; reciprocal beneficiary employees, state and counties, and fund responsibility costs.** (a) The board of trustees shall establish a reciprocal beneficiary family coverage health

benefits plan for an employee who is a reciprocal beneficiary under chapter and elects to enroll in reciprocal beneficiary family coverage.

(b) As used in this section, reciprocal beneficiary family coverage means coverage under a health benefits plan that insures, originally or upon subsequent amendment, an employee who is a reciprocal beneficiary, the other party to the employee's reciprocal beneficiary relationship, and any dependent-beneficiary of the employee, any unmarried child of the non-employee reciprocal beneficiary under age nineteen, or a surviving beneficiary of the employee.

(c) This section shall be repealed on June 30, 1999."

SECTION 3. Chapter 323, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§323- Hospital visitation policy and extension of authority to reciprocal beneficiaries.** A reciprocal beneficiary, as defined in chapter , of a patient shall have the same rights as a spouse with respect to visitation and making health care decisions for the patient."

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part 10A to read as follows:

**"§431:10A- Reciprocal beneficiary family coverage defined; policyholder and employer responsibility for costs; availability.** (a) Any other law to the contrary notwithstanding, reciprocal beneficiary family coverage, as defined in subsection (b), shall be made available to reciprocal beneficiaries, as defined in chapter , but only to the extent that family coverage, as defined in section 431:10A-103, is currently available to individuals who are not reciprocal beneficiaries.

(b) As used in this section, reciprocal beneficiary family coverage means a policy that insures, originally or upon subsequent amendment, a reciprocal beneficiary who shall be deemed the policyholder, the other party to the policyholder's reciprocal beneficiary relationship registered pursuant to chapter , dependent children or any child of any other person dependent upon either reciprocal beneficiary.

(c) If a reciprocal beneficiary policyholder incurs additional costs or premiums, if any, by electing reciprocal beneficiary family coverage under this section, the employer may pay additional costs or premiums."

SECTION 5. Section 431:10A-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A policy of accident and sickness insurance shall neither be delivered nor issued for delivery to any person in this State unless:

- (1) The entire monetary and other considerations are expressed in the policy;
- (2) The time at which the insurance takes effect and terminates is expressed in or determinable from the policy;
- (3) It purports to insure only one person, except that a policy may provide family coverage as defined in section 431:10A-103[;] or reciprocal beneficiary family coverage as defined in section 431:10A- ;
- (4) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten point with a lower case unspaced alphabet length not less than one hundred and twenty

- point. The text shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions;
- (5) The exceptions and reductions of indemnity are set forth in the policy and, except the required and optional provisions set forth in section 431:10A-105 and section 431:10A-106, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as exceptions, or exceptions and reductions; provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction shall be included with the benefit provision to which it applies;
  - (6) Each policy form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page; and
  - (7) It does not contain any provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner."

SECTION 6. Section 431:10A-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All policies providing family coverage, as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-\_\_\_\_, on an expense incurred basis shall provide that the benefits applicable for children shall be payable for newborn infants from the moment of birth; provided that the coverage for newly born children shall be limited to the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for a child, the policy may require that notification of birth and payment of the required premium must be furnished the insurer within thirty-one days after the date of birth in order to have the coverage continue beyond the thirty-one-day period."

SECTION 7. Section 431:10A-206, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-206 Coverage of newborn children.** All group or blanket policies providing family coverage, as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-\_\_\_\_, on an expense incurred basis shall provide coverage for newborn children in compliance with section 431:10A-115."

SECTION 8. Section 431L-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage,<sup>1</sup> as defined in section 431:10A-103 and reciprocal beneficiary family coverage, as defined in section 431:10A-\_\_\_\_, the insurer shall be required:

- (1) To permit the parent to enroll, under the family coverage or reciprocal beneficiary family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

- (2) If the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage or reciprocal beneficiary family coverage upon application of the child's other parent, the state agency administering the Medicaid program, or the state agency administering the child support enforcement program; and
- (3) Not to disenroll (or eliminate coverage of) the child unless the insurer is provided satisfactory written evidence that:
  - (A) The court or administrative order is no longer in effect; or
  - (B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment."

SECTION 9. Section 431L-4, Hawaii Revised Statutes, is amended to read as follows:

**"[§431L-4] Employer obligations.** Where a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this State, the employer is required:

- (1) To permit the parent to enroll under family coverage, as defined in section 431:10A-103 or reciprocal beneficiary family coverage, as defined in section 431:10A-\_\_\_\_\_, any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;
- (2) If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage or <sup>2</sup>reciprocal beneficiary family coverage upon application by the child's other parent, by the state agency administering the Medicaid program, or by the state agency administering the child support enforcement program;
- (3) Not to disenroll (or eliminate coverage of) any such child unless the employer is provided satisfactory written evidence that:
  - (A) The court or administrative order is no longer in effect;
  - (B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or
  - (C) The employer has eliminated family health coverage or reciprocal beneficiary family coverage for all of its employees[.]; and
- (4) To withhold from the employee's compensation the employee's share (if any) of premiums for health coverage and to pay this amount to the insurer."

SECTION 10. Section 509-2, Hawaii Revised Statutes, is amended to read as follows:

**"§509-2 Creation of joint tenancy, tenancy by the entirety, and tenancy in common.** (a) Land, or any interest therein, or any other type of property or property rights or interests or interest therein, may be conveyed by a person to oneself and another or others as joint tenants, or by a person to oneself and one's spouse[,] or reciprocal beneficiary, or by spouses to themselves, or by reciprocal beneficiaries to themselves, as tenants by the entirety, or by joint tenants to themselves and another or others as joint tenants, or tenants in common to themselves or to themselves and another or others as joint tenants, or by tenants by the entirety to themselves or themselves and another or others as joint tenants or as tenants in common, or by one tenant by the entirety to the tenant's spouse or reciprocal beneficiary of all of the tenant's interest or interests, without the necessity of conveying through a third party, and each such instrument shall be construed as

validly creating a joint tenancy, tenancy by the entirety, tenancy in common, or single ownership, as the case may be, if the tenor of the instrument manifestly indicates such intention.

(b) For the purposes of this chapter:

“Reciprocal beneficiary” means an adult who is a party to a registered reciprocal beneficiary relationship in accordance with chapter , and has a valid certificate of reciprocal beneficiary relationship that has not been terminated.”

SECTION 11. Section 560:2-201, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Reciprocal beneficiary” means an adult who is a party to a registered reciprocal beneficiary relationship in accordance with chapter , and has a valid certificate of reciprocal beneficiary relationship that has not been terminated.

“Reciprocal beneficiary relationship” is the registered status of two adults defined in chapter .”

SECTION 12. Section 560:2-202, Hawaii Revised Statutes, is amended to read as follows:

**“§560:2-202 Elective share.** (a) Elective-share amount. The surviving spouse or reciprocal beneficiary of a decedent who dies domiciled in this State has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, or the reciprocal beneficiary and the decedent were in a reciprocal beneficiary relationship, in accordance with the following schedule:

<p>If the decedent and the spouse were married to each other[:]; <u>or the decedent and the reciprocal beneficiary were in a relationship:</u></p> <p>Less than 1 year</p> <p>1 year but less than 2 years</p> <p>2 years but less than 3 years</p> <p>3 years but less than 4 years</p> <p>4 years but less than 5 years</p> <p>5 years but less than 6 years</p> <p>6 years but less than 7 years</p> <p>7 years but less than 8 years</p> <p>8 years but less than 9 years</p> <p>9 years but less than 10 years</p> <p>10 years but less than 11 years</p> <p>11 years but less than 12 years</p> <p>12 years but less than 13 years</p> <p>13 years but less than 14 years</p> <p>14 years but less than 15 years</p> <p>15 years or more</p>	<p>The elective-share percentage is:</p> <p>Supplemental amount only.</p> <p>3% of the augmented estate.</p> <p>6% of the augmented estate.</p> <p>9% of the augmented estate.</p> <p>12% of the augmented estate.</p> <p>15% of the augmented estate.</p> <p>18% of the augmented estate.</p> <p>21% of the augmented estate.</p> <p>24% of the augmented estate.</p> <p>27% of the augmented estate.</p> <p>30% of the augmented estate.</p> <p>34% of the augmented estate.</p> <p>38% of the augmented estate.</p> <p>42% of the augmented estate.</p> <p>46% of the augmented estate.</p> <p>50% of the augmented estate;</p>
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provided, however, the surviving spouse or reciprocal beneficiary may elect to take a share smaller than that to which the surviving spouse or reciprocal beneficiary is entitled hereunder.

(b) Supplemental elective-share amount. If the sum of the amounts described in sections 560:2-207, 560:2-209(a)(1), and that part of the elective-share amount

payable from the decedent's probate estate and nonprobate transfers to others under section 560:2-209(b) and (c) is less than \$50,000, the surviving spouse or reciprocal beneficiary is entitled to a supplemental elective-share amount equal to \$50,000 minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in section 560:2-209(b) and (c).

(c) Effect of election on statutory benefits. If the right of election is exercised by or on behalf of the surviving spouse[,] or reciprocal beneficiary, the surviving spouse's or reciprocal beneficiary's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(d) Non-domiciliary. The right, if any, of the surviving spouse or reciprocal beneficiary of a decedent who dies domiciled outside this State to take an elective share in property in this State is governed by the law of the decedent's domicile at death."

SECTION 13. Section 560:2-208, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Exclusions:

- (1) The value of any property is excluded from the decedent's nonprobate transfers to others:
  - (A) To the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or
  - (B) If the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse[,] or reciprocal beneficiary.
- (2) The augmented estate shall not include the value of any property that either:
  - (A) Is held in a trust created and funded by any party other than the decedent [or], the surviving spouse[:], or the reciprocal beneficiary; or
  - (B) Was received by either spouse during marriage or either reciprocal beneficiary during a reciprocal beneficiary relationship, by gift, devise, inheritance or distribution from a trust created and funded by any party other than the decedent [or], the surviving spouse, or the reciprocal beneficiary; provided that such property was kept segregated from property includible in the augmented estate.”

SECTION 14. Section 560:2-209, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

- (1) Amounts included in the augmented estate under section 560:2-204 which pass or have passed to the surviving spouse or reciprocal beneficiary by testate or intestate succession and amounts included in the augmented estate under section 560:2-206; and
- (2) Amounts included in the augmented estate under section 560:2-207 up to the applicable percentage thereof. For the purposes of this subsection

tion, the “applicable percentage” is twice the elective-share percentage set forth in the schedule in section 560:2-202(a) appropriate to the length of time [the]:

- (A) The spouse and the decedent were married to each other[.]; or
- (B) The reciprocal beneficiary and the decedent were in a reciprocal beneficiary relationship.

(b) If, after the application of subsection (a), the elective-share amount is not fully satisfied or the surviving spouse or reciprocal beneficiary is entitled to a supplemental elective-share amount, amounts included in the decedent’s probate estate and in the decedent’s nonprobate transfers to others, other than amounts included under section 560:2-205(3)(A) or (C), are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent’s probate estate and that portion of the decedent’s nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent’s probate estate and of that portion of the decedent’s nonprobate transfers to others in proportion to the value of their interests therein.”

SECTION 15. Section 560:2-301, Hawaii Revised Statutes, is amended to read as follows:

**“§560:2-301 Entitlement of spouse[;] or reciprocal beneficiary; premarital will.** (a) If a testator’s surviving spouse married the testator, or the testator’s reciprocal beneficiary entered into a reciprocal beneficiary relationship with the testator, after the testator executed the testator’s will, the surviving spouse or reciprocal beneficiary is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse or reciprocal beneficiary would have received if the testator had died intestate as to that portion of the testator’s estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse or entered into a reciprocal beneficiary relationship with the surviving reciprocal beneficiary and who is not a child of the surviving spouse or reciprocal beneficiary, nor is devised to a descendant of such a child or passes under section 560:2-603 or 560:2-604 to such a child or to a descendant of such a child, unless:

- (1) It appears from the will or other evidence that the will was made in contemplation of [the]:
  - (A) The testator’s marriage to the surviving spouse; or
  - (B) The testator’s entering into a reciprocal beneficiary relationship with the reciprocal beneficiary;
- (2) The will expresses the intention that it is to be effective notwithstanding any subsequent marriage[;], or reciprocal beneficiary relationship; or
- (3) The testator provided for the spouse or reciprocal beneficiary by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator’s statements or is reasonably inferred from the amount of the transfer or other evidence.

(b) In satisfying the share provided by this section, devises made by the will to the testator’s surviving spouse, or reciprocal beneficiary, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse, or entered a reciprocal beneficiary relationship with the reciprocal beneficiary, and who is not a child of the surviving spouse or reciprocal beneficiary, or a devise or substitute gift under section 560:2-



603 or 560:2-604 to a descendant of such a child, abate as provided in section 560:3-902.”

SECTION 16. Section 560:2-711, Hawaii Revised Statutes, is amended to read as follows:

**“§560:2-711 Interest in “heirs” and like.** If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual’s “heirs”, “heirs at law”, “next of kin”, “relatives”, or “family”, or language of similar import, the property passes to those persons, including the State, and in such shares as would succeed to the designated individual’s intestate estate under the intestate succession law of the designated individual’s domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual’s surviving spouse or reciprocal beneficiary is living but is remarried or has terminated the reciprocal beneficiary relationship at the time the disposition is to take effect in possession or enjoyment, the surviving spouse or reciprocal beneficiary is not an heir of the designated individual.”

SECTION 17. Section 560:2-802, Hawaii Revised Statutes, is amended to read as follows:

**“§560:2-802 Effect of divorce, annulment, [and] decree of separation[.], and termination of reciprocal beneficiary relationship.** (a) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section. An individual who has terminated a reciprocal beneficiary relationship with the decedent is not deemed a surviving reciprocal beneficiary unless, by virtue of a subsequent registration as a reciprocal beneficiary, the individual is the reciprocal beneficiary of the decedent at the time of death.

(b) For purposes of parts 1, 2, 3, and 4 of this article, and of section 560:3-203, a surviving spouse or reciprocal beneficiary does not include:

- (1) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;
- (2) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; [or]
- (3) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights[.]; or
- (4) An individual who does not have a certificate of reciprocal beneficiary relationship declaring the decedent as their reciprocal beneficiary or the relationship has been terminated under chapter \_\_\_\_\_ or otherwise.”

SECTION 18. Section 560:2-804, Hawaii Revised Statutes, is amended to read as follows:

**“§560:2-804 Revocation of probate and nonprobate transfers by divorce[;] or termination of reciprocal beneficiary relationship; no revocation by other changes of circumstances.** (a) Definitions. In this section:

“Disposition or appointment of property” includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

“Divorce or annulment” means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 560:2-802. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

“Divorced individual” includes an individual whose marriage has been annulled.

“Governing instrument” means a governing instrument executed by [the]:

- (1) A divorced individual before the divorce or annulment of the individual’s marriage to the individual’s former spouse[.]; or
- (2) An individual who is a former reciprocal beneficiary before the termination of the reciprocal beneficiary relationship with the individual’s former reciprocal beneficiary.

“Relative of the divorced individual’s former spouse” means an individual who is related to the divorced individual’s former spouse by blood, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

“Revocable”, with respect to a disposition, appointment, provision, or nomination, means one under which [the]:

- (1) The divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual’s former spouse or former spouse’s relative, whether or not the divorced individual was then empowered to designate the individual’s self in place of the individual’s former spouse or in place of the individual’s former spouse’s relative and whether or not the divorced individual then had the capacity to exercise the power[.]; or
- (2) An individual who is a former reciprocal beneficiary, at the time of the termination, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual’s former partner or former partner’s relative, whether or not the individual was then empowered to designate the individual’s self in place of the individual’s former partner or in place of the individual’s former partner’s relative and whether or not the individual who is the former reciprocal beneficiary then had the capacity to exercise the power.

“Termination” means the dissolution of a reciprocal beneficiary relationship under chapter between two adults.

(b) Revocation upon divorce[.] or termination. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the [marital] estate made between the divorced individuals before or after the marriage, divorce, [or] annulment, between two former reciprocal beneficiaries before the termination of a reciprocal beneficiary relationship, the divorce or annulment of a marriage[:.] or the termination of a reciprocal beneficiary relationship:

- (1) Revokes any revocable:
  - (A) Disposition or appointment of property made by a divorced individual or a former reciprocal beneficiary to the individual’s former spouse or reciprocal beneficiary in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual’s former spouse[:.] or reciprocal beneficiary;
  - (B) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual’s

former spouse or an<sup>3</sup> individual's former reciprocal beneficiary or on a relative of the divorced individual's former spouse[;] or an individual's former reciprocal beneficiary; and

- (C) Nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse or an individual's former reciprocal beneficiary or a relative of the former reciprocal beneficiary to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

- (2) Severs the interests of the former spouses or reciprocal beneficiaries in property held by them at the time of the divorce [or], annulment, or termination, as joint tenants with the right of survivorship or as community property with the right of survivorship, transforming the interests of the former spouses or reciprocal beneficiaries into tenancies in common.

(c) Effect of severance. A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses or reciprocal beneficiaries unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(d) Effect of revocation. Provisions of a governing instrument are given effect as if the former spouse or reciprocal beneficiary and relatives of the former spouse or reciprocal beneficiary disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse or reciprocal beneficiary and relatives of the former spouse or reciprocal beneficiary died immediately before the divorce [or], annulment[.], or termination.

(e) Revival if divorce nullified[.] or reciprocal beneficiary relationship re-registered. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

Provisions revoked solely by this section are revived by the an<sup>4</sup> individual's re-registering a reciprocal beneficiary relationship to the former reciprocal beneficiary.

(f) No revocation for other change of circumstances. No change of circumstances other than as described in this section and in section 560:2-803 effects a revocation.

(g) Protection of payors and other third parties.

- (1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, [or] remarriage, termination, or re-registration of a reciprocal beneficiary relationship, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, [or] remarriage[.], termination, or re-registration of a reciprocal beneficiary relationship. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section;
- (2) Written notice of the divorce, annulment, [or] remarriage, termination, or re-registration of a reciprocal beneficiary relationship under this

subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, [or] remarriage, termination, or re-registration of a reciprocal beneficiary relationship, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial circuit of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

- (h) Protection of bona fide purchasers; personal liability of recipient.
- (1) A person who purchases property from a former spouse, former reciprocal beneficiary, relative of a former spouse[,] or reciprocal beneficiary, or any other person for value and without notice, or who receives from a former spouse, a former reciprocal beneficiary, relative of a former spouse[,] or reciprocal beneficiary, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, former reciprocal beneficiary, relative of a former spouse[,] or reciprocal beneficiary, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section;
- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, former reciprocal beneficiary, relative of the former spouse[,] or reciprocal beneficiary, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

SECTION 19. Sections 560:1-201, 560:2-102, 560:2-103, 560:2-114, 560:2-203, 560:2-205, 560:2-206, 560:2-207, 560:2-210, 560:2-211, 560:2-212, 560:2-213, 560:2-214, 560:2-402, 560:2-403, 560:2-404, 560:2-405, 560:2-705, 560:2-803, 560:3-203, 560:3-301, 560:3-302, 560:3-403, 560:3-703, 560:3-713, 560:3-901, 560:3-902, 560:3-906, 560:3-915, 560:3-916, 560:3-1212, 560:5-301, 560:5-309, 560:5-311, 560:5-312, 560:5-408, 560:5-410, 560:5-422, 560:5-601, and 560:6-107, Hawaii Revised Statutes, are amended by substituting the term "spouse or reciprocal beneficiary", or like terms, wherever the word "spouse", or like term, appears, as the context requires.

SECTION 20. Section 663-3, Hawaii Revised Statutes, is amended to read as follows:

**“§663-3 Death by wrongful act.** (a) When the death of a person is caused by the wrongful act, neglect, or default of any person, the deceased’s legal representative, or any of the persons [hereinafter] enumerated[,] in subsection (b), may maintain an action against the person causing the death or against the person responsible for the death. The action shall be maintained on behalf of the persons [hereinafter] enumerated[,] in subsection (b), except that the legal representative may recover on behalf of the estate the reasonable expenses of the deceased’s last illness and burial.

(b) In any action under this section, such damages may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including:

- (1) [loss] Loss of society, companionship, comfort, consortium, or protection[.];
- (2) [loss] Loss of marital care, attention, advice, or counsel[.];
- (3) Loss of care, attention, advice, or counsel of a reciprocal beneficiary as defined in chapter ;
- [(3) loss] (4) Loss of filial care or attention[.]; or
- [(4) loss] (5) Loss of parental care, training, guidance, or education, suffered as a result of the death of the person;

by the surviving spouse, reciprocal beneficiary, children, father, mother, and by any person wholly or partly dependent upon the deceased person. The jury or court sitting without jury shall allocate the damages to the persons entitled thereto in its verdict or judgment, and any damages recovered under this section, except for reasonable expenses of last illness and burial, shall not constitute a part of the estate of the deceased. Any action brought under this section shall be commenced within two years from the date of death of the injured person, except as otherwise provided.”

## Part II

SECTION 21. Section 79-7, Hawaii Revised Statutes, is amended to read as follows:

**“§79-7 Vacation allowances on termination of employment.** An employee whose employment is voluntarily terminated without prejudice during any calendar year shall be entitled to all of the employee’s accumulated vacation allowance plus the employee’s current accrued vacation allowance to and including the date of termination, notwithstanding that the current accrued vacation allowance may not have been recorded at the time. An employee whose employment is involuntarily terminated otherwise than for cause due to the employee’s own misconduct shall be entitled to all of the employee’s accumulated vacation allowance and current accrued vacation allowance, and the date of such termination shall be fixed so as to permit the employee to take the leave. The date of discharge of an employee whose employment is terminated for cause due to the employee’s own misconduct may, within the discretion of the department head concerned, be fixed so as to permit the allowance of all or any part of any accumulated vacation allowance and current earned vacation allowance. If any employee dies with accumulated or current accrued vacation earned but not taken, an amount equal to the value of the employee’s pay over the period of such earned vacation, and any earned and unpaid wages, shall be paid to the person or persons who may have been designated as the beneficiary or beneficiaries by the employee during the employee’s lifetime in a

verified written statement filed with the comptroller or other disbursing officer who issues warrants or checks to pay the employee for the employee's services as a public officer or public employee, or, failing the designation, to the employee's surviving spouse[,] or reciprocal beneficiary, or, failing the surviving spouse[,] or reciprocal beneficiary, to the employee's estate.

Whenever an employee's service is to be terminated, voluntarily or involuntarily, the service, at the option of the department head or other appointing power concerned, may be terminated forthwith and the retiring employee may be paid forthwith, in lieu of the employee's vacation allowance, the amount of compensation to which the employee would be entitled or which the employee would be allowed during the vacation period if the employee were permitted to take the employee's vacation in the normal manner, and in such case the employee's position may be declared vacant and may be permanently filled by a new appointee before the expiration of any vacation period following the date of the termination. Prompt notice upon such forms and in such manner as may be required by the personnel classification board having jurisdiction over the position shall be given by the department head of any action taken under this provision."

SECTION 22. Section 79-13, Hawaii Revised Statutes, is amended to read as follows:

**"§79-13 Funeral leave.** Three days' leave with pay, on such days as may be designated by the officer or employee, shall be granted any officer or employee in the service of the State or any county upon the death of any member of the officer's or employee's immediate family. The term "immediate family" shall include the spouse[,] or reciprocal beneficiary, children, parents, siblings, father-in-law, mother-in-law, grandparents, of the officer or employee, or an individual who has become a member of an immediate family through the Hawaiian "hanai" custom; provided, however, an individual affected by the "hanai" relationship shall be entitled to utilize funeral leave only for those members of the individual's immediate family resulting from the "hanai" relationship."

SECTION 23. Section 83-8, Hawaii Revised Statutes, is amended to read as follows:

**"[[§83-8]] Travel and transportation expenses.** Whenever any unit of government of this State will benefit from a temporary intergovernmental assignment, it may, in accordance with applicable statutes and rules, pay for or reimburse another government for travel and transportation expenses of an employee on such an assignment, or a portion of such expenses, by agreement between the sending and the receiving agencies. Such expenses may include a per diem allowance if the period of assignment will be for less than eight months or the costs of moving the employee's spouse or reciprocal beneficiary, and children, household goods and personal effects between agencies if the period of assignment will be for eight months or longer."

SECTION 24. Section 87-23.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

**"(a)** The board of trustees shall determine the benefits of a long-term care benefits plan for employee-beneficiaries, their spouses[,] or reciprocal beneficiaries, 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[,], or reciprocal beneficiaries, 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."

SECTION 25. Section 88-1, Hawaii Revised Statutes, is amended to read as follows:

**"§88-1 Restrictions.** The provisions of this section shall be applicable to every pension and to every recipient or beneficiary thereof, granted or provided for by any special act of the legislature (other than benefits, or the recipients thereof, payable to beneficiaries or retirants of the employees' retirement system under part II) whether the pension be payable by the State or by any county, or by any board, commission, bureau, department, or other agency thereof:

- (1) No recipient or beneficiary shall be permitted to draw any pension, or any portion thereof, in excess of \$50 per month, while the recipient or beneficiary is holding any salaried position or office in, under or by authority of the United States, the State, or any political subdivision thereof. This paragraph shall not apply to any recipient or beneficiary who is elected to the legislature or to the council of any county.
- (2) If the recipient or beneficiary is a surviving spouse[,], or reciprocal beneficiary, the pension so granted shall cease when the surviving spouse or reciprocal beneficiary remarries[,], marries, or enters into a new reciprocal beneficiary relationship.
- (3) Any pension payable to any minor shall cease when the minor reaches the age of eighteen years.
- (4) If any recipient or beneficiary of a pension, having a spouse or reciprocal beneficiary at the time the pension was first granted to the recipient or beneficiary dies, then the spouse[,], or reciprocal beneficiary, as long as the spouse or reciprocal beneficiary remains unmarried[,], or not in a reciprocal beneficiary relationship, shall be paid sixty per cent of the amount of the pension payable to the beneficiary."

SECTION 26. Section 88-4, Hawaii Revised Statutes, is amended to read as follows:

**"§88-4 Medical aid, etc., when free.** Every recipient of any retirement allowance or pension payable by the State or by any county or by any other governmental body or agency created by or under the laws of the State who is actually and solely dependent upon the recipient's retirement allowance or pension for the recipient's maintenance and support or whose total income in whatever form or from whatever source received, including but not limited to, the recipient's retirement allowance or pension and any income of the recipient's spouse or reciprocal beneficiary is less than \$2,400 a year shall, for the recipient and the recipient's spouse[,], or reciprocal beneficiary, be entitled to free medical treatment from any government physician employed by the State or any county and to free hospitalization at any state hospital or at a hospital where county patients are treated at county expense in the county wherein the recipient resides.

Whenever a retirant or pensioner having a spouse or reciprocal beneficiary dies, then the spouse[,], or reciprocal beneficiary, as long as the spouse or reciprocal beneficiary remains [single,] unmarried and does not enter into a reciprocal beneficiary relationship, shall be eligible for benefits under this section."

SECTION 27. Section 88-5, Hawaii Revised Statutes, is amended to read as follows:

“**§88-5 List of pensioners, who shall provide.** The proper department of each county shall determine who is entitled to benefits under section 88-4 and shall provide to any government physician employed by the State or any county, and any county hospital or a hospital where county patients are treated at county expense in the county wherein the pensioner or beneficiary resides, a current list of pensioners and their [spouses] or reciprocal beneficiaries who are entitled to benefits under section 88-4. Upon request, the state retirement system shall provide to the proper departments of each county such information as may be required to administer section 88-4.”

SECTION 28. Section 88-84, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the member’s designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, there shall be payable:

- (1) To the surviving spouse[,] or reciprocal beneficiary, an allowance payable under option 3 of section 88-83 if the member had at least ten years of credited service but was ineligible for service retirement at the time of death in service, which allowance shall be computed on the basis of section 88-76; or if the member was eligible for service retirement at the time of death in service, the allowance that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83; or a benefit as specified under subsection (a)(1);
- (2) To the deceased member’s dependent child, or children under age eighteen if there is no surviving spouse[,] or reciprocal beneficiary, an equally divided benefit as specified under subsection (a)(1); or
- (3) To the deceased member’s estate, if there is no surviving spouse or reciprocal beneficiary or dependent child or children, a benefit as specified under subsection (a)(1).”

SECTION 29. Section 88-85, Hawaii Revised Statutes, is amended to read as follows:

“**§88-85 Accidental death benefit.** Upon the receipt of proper proofs of a member’s death by the board of trustees, there shall be paid to the member’s designated beneficiary or to the member’s estate the amount of the member’s accumulated contributions and if, upon the receipt of evidence or proofs that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member, there shall be paid in lieu of the ordinary death benefits provided by the contributions of the State or county, a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries[;], marries, or enters into a new reciprocal beneficiary relationship; or



- (2) If there be no surviving spouse[,] or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under such age, divided in such manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains such age; or
- (3) If there is no surviving spouse or reciprocal beneficiary or child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no such nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in death to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition."

SECTION 30. Section 88-93, Hawaii Revised Statutes, is amended to read as follows:

**“§88-93 Named beneficiaries by active members; effect of marriage, entry into reciprocal beneficiary relationship, divorce, termination of reciprocal beneficiary relationship, or death.** All nominations by written designation of beneficiaries shall become null and void when:

- (1) The beneficiary predeceases the member;
- (2) The member is divorced from the beneficiary; [or]
- (3) The member is unmarried, and subsequently marries[.]; or
- (4) The member enters into or terminates a reciprocal beneficiary relationship.

Any of the above events shall operate as a complete revocation of such designation and all benefits payable by reason of the death of the member shall be payable to the member's legal representatives unless, after the death, divorce or marriage, or entry into or termination of reciprocal beneficiary relationship, the member makes other provision in a written designation duly executed and filed with the board of trustees."

SECTION 31. Section 88-163, Hawaii Revised Statutes, is amended to read as follows:

**“§88-163 Death benefits: funeral expenses; payments to dependents.** (a) Upon the death of any member of the police force, fire department, or band, as a result of any injury received or disease contracted while in the performance of his duty, or when entitled to a pension under this part or who has been pensioned under this part there shall be paid, for funeral expenses, a sum not to exceed \$100. Should

the deceased member leave a dependent widow or reciprocal beneficiary and a child or children under the age of eighteen years, then there shall be paid out of the system \$50 per month to the widow until her death or remarriage or to the reciprocal beneficiary until death, marriage, or entry into a new reciprocal beneficiary relationship and \$7.50 per month to the widow or reciprocal beneficiary for each child so long as the child shall reside with the widow or reciprocal beneficiary or is supported by [her.] the widow or reciprocal beneficiary. Upon the death of such widow[,] or reciprocal beneficiary, or in the event the deceased member leaves no widow or reciprocal beneficiary but a child or children under the age of eighteen years, then there shall be paid out of the system \$50 per month to the child or children of the deceased member under the age of eighteen years with each child, if there be more than one, receiving an equal share of the \$50 per month payment plus \$7.50 per month. All payments to a child of a deceased member provided for herein shall cease when he or she arrives at the age of eighteen years.

(b) If any member of the police force, fire department or band, dies not leaving a widow[,] or reciprocal beneficiary, but leaving a father or mother dependent upon him, the father or mother (but not both) shall, upon satisfactory proof of dependency being made to the board of trustees receive from the system a sum not exceeding \$50 per month. The board shall determine whether the father or mother is dependent and how much of the amount herein provided for shall be paid to him or her. If there be no widow or reciprocal beneficiary and no child and no father or mother, but dependent brothers or sisters, then such pension shall be paid to them in such sums as shall not exceed the aggregate amount of \$30 per month. All pensions authorized as provided in this subsection shall be subject to reduction by the board of trustees whenever, in its judgment, circumstances make it reasonable, fair, or necessary. All pensions so reduced may thereafter be restored or further reduced as the board may deem best.

(c) On the remarriage of any widow or reciprocal beneficiary entitled to the benefits of any sum, or in the event of any father or mother, brothers or sisters ceasing to be dependents then the payments to them shall cease.”

SECTION 32. Section 88-189, Hawaii Revised Statutes, is amended to read as follows:

**“§88-189 Widow’s [and], widower’s,<sup>4</sup> and reciprocal beneficiary’s pensions.** The widow and widower or reciprocal beneficiary of any deceased man or woman, who have been previously granted or are found subsequent to his or her death to have been entitled to a pension under this part, or to have had ten or more years of service although he or she had not reached the age of sixty years, shall be eligible for a pension equal to the same amount, including all the bonuses provided in section 88-11, and all other benefits, that the said deceased was receiving or entitled to receive at the time of his or her death, and all future benefits deriving thereto, so long as the widow [or], widower, or reciprocal beneficiary remains unmarried[.] or has not entered into a new reciprocal beneficiary relationship.”

SECTION 33. Section 88-286, Hawaii Revised Statutes, is amended to read as follows:

**“§88-286 Death benefit.** (a) The surviving spouse or reciprocal beneficiary and dependent child or children of a member at the time of the member’s death shall be eligible for a death benefit if the member suffers either an accidental death or an ordinary death while in service after accumulating ten years of credited service.

(b) In the case of ordinary death, the death benefit shall be as follows:

- (1) For the surviving spouse[,], or reciprocal beneficiary, an allowance equal to one-half of the member's accrued normal retirement allowance unreduced for age, payable to the surviving spouse or reciprocal beneficiary until remarriage[,], marriage, or entry into a new reciprocal beneficiary relationship; or if the member was eligible for retirement at the time of the member's death in service, and death occurred after June 30, 1990, the surviving spouse or reciprocal beneficiary may elect the allowance that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option B and computed on the basis of section 88-283;
- (2) If there is a surviving spouse[,], or reciprocal beneficiary, each dependent child under age eighteen shall receive an allowance equal to ten per cent of the member's accrued normal retirement allowance unreduced for age, payable to each dependent child until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age; and
- (3) If there is no surviving spouse[,], or reciprocal beneficiary, each dependent child under age eighteen shall receive an allowance equal to twenty per cent of the member's accrued normal retirement allowance unreduced for age, payable to each dependent child until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age.

For the purpose of determining eligibility for ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

- (c) In the case of accidental death, the death benefit shall be as follows:
  - (1) For the surviving spouse[,], or reciprocal beneficiary, the amount of the death benefit shall be thirty per cent of the member's average final compensation, payable until remarriage;
  - (2) If there is a surviving spouse[,], or reciprocal beneficiary, each dependent child under eighteen shall receive an allowance equal to the greater of:
    - (A) Ten per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age; or
    - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed six per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen; and

- (3) If there is no surviving spouse[,], or reciprocal beneficiary, each dependent child under eighteen shall receive an allowance equal to the greater of:
  - (A) Twenty per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed forty per

cent of the member's accrued normal retirement allowance unreduced for age; or

- (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed twelve per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen."

SECTION 34. Section 105-2, Hawaii Revised Statutes, is amended to read as follows:

**"§105-2 Exceptions.** Section 105-1 shall not apply to:

- (1) The governor;
- (2) The mayor of any county;
- (3) Any member of a police department or a fire department or of the staff of a hospital, or any officer or employee of the board of water supply of the city and county of Honolulu, when using a motor vehicle for a personal purpose incidental to the person's service or work (but not for pleasure);
- (4) Any officer or employee of the State who, upon written recommendation of the comptroller, is given written permission by the governor to use, operate, or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the State;
- (5) Any officer or employee of any county who, upon written recommendation of the budget director, is given written permission by the mayor, to use, operate or drive for personal use (but not for pleasure) any motor vehicle owned or controlled by the county;
- (6) Any officer or employee of the State, or of any county, who, in case of emergency, because of the person's illness, or the person's incapacity caused by accident while at work, or because of the illness of a member of the person's immediate family including a reciprocal beneficiary while the person is at work, is conveyed in a motor vehicle to the person's place of abode, or to a hospital or other place, but every such use of such a motor vehicle shall be certified to by the officer or by the head of the department, commission, board, bureau, agency, or instrumentality controlling or possessing the motor vehicle immediately thereafter, and the certificate shall be forthwith filed with the comptroller, in the case of the State, or with the budget director, in the case of a county; and
- (7) The assigned driver of a Van Go Hawaii vehicle or any other state ridesharing program vehicle."

SECTION 35. Section 171-74, Hawaii Revised Statutes, is amended to read as follows:

**"§171-74 Qualifications of lessees.** To qualify for a residential lease under this part, the lessee shall:

- (1) Be of legal age and have at least one person, related to the lessee by blood or marriage and solely dependent upon the lessee for support, who will occupy the premises with the lessee; provided that this requirement shall not apply to a husband and wife or to reciprocal beneficiaries who are joint lessees, even if both are employed;

- (2) Be a citizen and a resident of the State for not less than five years immediately preceding the issuance of the lease;
- (3) Have a gross income not in excess of \$20,000 a year, including the gross income of the lessee's spouse[.] or reciprocal beneficiary. In determining gross income, the standard income tax exemption for each of the lessee's dependents, as determined by the income tax laws of the State, shall be allowed; and
- (4) Have such other qualifications as may be established by the board of land and natural resources.

Any person who, after taking a residential lease, through change or circumstances, loses the qualifications initially required of the person or becomes disqualified to take a residential lease, shall not thereby be required to surrender the person's residential lease, but shall be entitled to continue to hold the same."

SECTION 36. Section 171-99, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Interests, descent; certificate of occupation or homestead lease. In case of the death of any occupier or lessee under an existing certificate of occupation or existing homestead lease, all the interest of the occupier or lessee, any conveyance, devise, or bequest to the contrary notwithstanding, in land held by the decedent by virtue of such certificate of occupation or homestead lease shall vest in the relations of the decedent as follows:

- (1) In the widow [or], widower[;], or reciprocal beneficiary;
- (2) If there is no widow [or], widower[;], or reciprocal beneficiary, then in the children;
- (3) If there are no children, then in the widows [or], widowers, or reciprocal beneficiaries of the children;
- (4) If there are no such widows [or], widowers, or reciprocal beneficiaries, then in the grandchildren;
- (5) If there are no grandchildren, then in the parents or surviving parent;
- (6) If there are no parents or surviving parent, then in the sisters and brothers;
- (7) If there are no sisters and brothers, then in the widowers [or], widows, or reciprocal beneficiaries of the sisters and brothers;
- (8) If there are no such widowers [or], widows, or reciprocal beneficiaries, then in the nieces and nephews;
- (9) If there are no nieces or nephews, then in the widowers [or], widows, or reciprocal beneficiaries of the nieces and nephews;
- (10) If there are no such widowers [or], widows, or reciprocal beneficiaries, then in the grandchildren of the sisters and brothers;
- (11) If there are no grandchildren of any sister or brother, then in the State.

All the successors, except the State, shall be subject to the performance of the unperformed conditions of the certificate of occupation, or the homestead lease, in like manner as the decedent would have been subject to the performance if the decedent had continued alive; provided that if a widow [or], widower, or reciprocal beneficiary, in whom the interest shall have vested, shall thereafter marry again and decease leaving a widower [or], widow, or reciprocal beneficiary and a child or children of the first marriage surviving, the interest of the deceased shall vest in such child or children; and provided further that in case two or more persons succeed together to the interest of any occupier or lessee, according to the foregoing provisions, they shall hold the same by joint tenancy so long as two or more shall survive, but upon the death of the last survivor, the estate shall descend as provided above."

SECTION 37. Section 209-28, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Personal loans may be made for the purpose of meeting necessary expenses or to satisfy serious needs of individuals and families including reciprocal beneficiaries which arose as an immediate and direct result of a disaster.”

SECTION 38. Section 209-29, Hawaii Revised Statutes, is amended to read as follows:

“**§209-29 Eligibility for loans.** Loans may be made to individuals, partnerships, corporations, cooperatives, or other business associations, but only if the applicant:

- (1) Suffered loss of or damage to property in a rehabilitation area as a result of a state disaster;
- (2) For a commercial loan, had operated an industrial, manufacturing, processing, wholesaling, or retailing business, or professional or service business, or building rental business, immediately before the disaster;
- (3) Presents a suitable program for:
  - (A) Rehabilitation or re-establishment of the applicant’s business to its predisaster level when applying for a commercial loan; or
  - (B) Meeting necessary expenses and satisfying the serious needs of the applicant and the applicant’s family including reciprocal beneficiary when applying for a personal loan;
- (4) Has reasonable ability to repay the loan; and
- (5) For a commercial loan, presents written evidence that the Small Business Administration had declined an application for financial assistance under the Small Business Administration Disaster Loan Program or has reduced the amount of the loan request; provided that the declination was not due to the applicant’s having sufficient financial resources to rehabilitate the applicant; or
- (6) For a commercial loan, cannot secure any loans from the Small Business Administration Disaster Loan Program because the making of the loans is not covered by the program, and the director of business, economic development, and tourism is reasonably satisfied that the applicant is not able to secure loans from private lending institutions and does not have sufficient financial resources to rehabilitate the applicant.

Paragraph (6) shall be applied in the alternative with respect to paragraph (5) of this section.”

SECTION 39. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

“**§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument which is executed prior to January 1, 1967.
- (2) Any document or instrument which is given to secure a debt or obligation.
- (3) Any document or instrument which only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.

- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid.
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid.
- (6) Any document or instrument conveying real property which is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale.
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto.
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments.
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain.
- (10) Any document or instrument which solely conveys or grants an easement or easements.
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition.
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship which is executed pursuant to an order of the court in the divorce action[.] or termination of reciprocal beneficiary relationship.
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust.
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust."

SECTION 40. Section 306-1, Hawaii Revised Statutes, is amended by amending the definitions of "university athletic unit", "university dining unit", "university health unit", "university housing unit", and "university parking unit" to read as follows:

"“University athletic unit” means athletic facilities of every nature devoted either exclusively to use by the university, including its students, faculties, guests, employees, and their families[,] including reciprocal beneficiaries, or both to university and non-university uses, for the enjoyment or utilization of, or for the privilege of observance of athletic contests or exhibitions conducted in or by means of, which facilities a fee is imposed or a charge made. A university athletic unit includes, but is

not limited to, gymnasium, field house, stadium, playing field, baseball diamond, courts suitable for tennis, volleyball, and basketball, swimming and diving pools.

“University dining unit” means a structure or facility suitable for the feeding and boarding of students enrolled in the university, members of the faculties of the university, guests, employees of the university, and members of the families including reciprocal beneficiaries of any such persons, for the use and services of which a fee is imposed or charge made. A university dining unit may be a separate structure or structures or included in another university project.

“University health unit” means a facility for the treatment, diagnosing or prevention of illness of students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university, employees of the university, and members of the families including reciprocal beneficiaries of any such persons, for the use and services of which a fee is imposed or charge made. A university health center includes, but is not limited to, health centers, infirmaries and clinics, and may be a separate structure or structures or included in another university project.

“University housing unit” means a structure or structures suitable for the housing of and use and occupancy as a dwelling by students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university at the invitation or request of the board, employees of the university, and members of the families including reciprocal beneficiaries of any such persons, for the use and occupancy of which a fee or rent is charged. A university housing unit includes, but is not limited to, dormitories, apartments, and other multiple unit buildings, houses and other single unit buildings.

“University parking unit” means a facility for the parking or storage, or both, of vehicles owned or used by students enrolled in the university, members of the faculties of the university, persons temporarily visiting the university, employees of the university, and members of the families including reciprocal beneficiaries of any such person, for the use, services or occupancy of which a fee is imposed or charge made. A university parking unit includes, but is not limited to, parking spaces on streets, alleys, drives and other roadways under the jurisdiction of the board, paved or unpaved surface areas or lots, and subsurface, surface or above surface structure or structures, and may be a separate structure or structures or included in another university project.”

SECTION 41. Section 324-22, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The use of such additional information obtained by researchers shall also be governed by subsection (a) and in addition, where the patient is still living and the information is to be obtained directly from the patient, the researcher shall first obtain the approval of the patient, the patient’s immediate family[,] including a reciprocal beneficiary, or attending physician, in that order of priority.”

SECTION 42. Section 327-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent’s body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

- (1) The spouse or reciprocal beneficiary of the decedent;
- (2) An adult son or daughter of the decedent;
- (3) Either parent of the decedent;



- (4) An adult brother or sister of the decedent;
- (5) A grandparent of the decedent; and
- (6) A guardian of the person of the decedent at the time of death.”

SECTION 43. Section 327-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to section 327-3. The request shall be made with reasonable discretion and sensitivity to the circumstances of the family[,] including a reciprocal beneficiary. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in section 327-6. An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made. The director of health may adopt rules to implement this subsection.”

SECTION 44. Section 334-6, Hawaii Revised Statutes, is amended to read as follows:

**“§334-6 Fees; payment of expenses for treatment services.** (a) Pursuant to chapter 91, the director shall establish reasonable charges for treatment services 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 the patient’s family[,] including a reciprocal beneficiary, and no collections shall be made where in the judgment of the director, such collections would tend to make the patient or the patient’s family including a reciprocal beneficiary, a public charge or deprive the patient and the patient’s family including a reciprocal beneficiary, of necessary support.

(b) Every person 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 their reception, maintenance, and treatment and any property not exempt from execution belonging to the person shall be subject to sequestration for the payment of the expenses. Every parent or legal guardian of a patient who is a minor and every spouse or reciprocal beneficiary of a patient shall be liable for the expenses attending the reception, maintenance, and treatment of that minor child or spouse or reciprocal beneficiary 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.”

SECTION 45. Section 334-59, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Emergency hospitalization. If the physician or the psychologist who performs the emergency examination has reason to believe that the patient is:

- (1) Mentally ill or suffering from substance abuse;

(2) Imminently dangerous to self or others, or is gravely disabled, or is obviously ill; and

(3) In need of care or treatment, or both;

the physician or the psychologist may direct that the patient be hospitalized on an emergency basis or cause the patient to be transferred to another psychiatric facility for emergency hospitalization, or both. The patient shall have the right immediately upon admission to telephone the patient's guardian or a family member including a reciprocal beneficiary, or an adult friend and an attorney. If the patient declines to exercise that right, the staff of the facility shall inform the adult patient of the right to waive notification to the family including a reciprocal beneficiary, and shall make reasonable efforts to ensure that the patient's guardian or family including a reciprocal beneficiary, is notified of the emergency admission but the patient's family including a reciprocal beneficiary, need not be notified if the patient is an adult and requests that there be no notification. The patient shall be allowed to confer with an attorney in private."

SECTION 46. Section 334-60.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The court shall set a hearing on the petition and notice of the time and place of such hearing shall be served in accordance with, and to those persons specified in, a current order of commitment. If there is no current order of commitment, notice of the hearing shall be served personally on the subject of the petition and served personally or by certified or registered mail, return receipt requested, deliverable to the addressee only, on the subject's spouse[,] or reciprocal beneficiary, legal parents, adult children, and legal guardian, if one has been appointed. If the subject of the petition has no living spouse[,] or reciprocal beneficiary, legal parent and adult children, or if none can be found, notice of the hearing shall be served on at least one of the subject's closest adult relatives if any can be found. Notice of the hearing shall also be served on the public defender, attorney for the subject of the petition, or other court-appointed attorney as the case may be. If the subject of the petition is a minor, notice of the hearing shall also be served upon the person who has had the principal care and custody of the minor during the sixty days preceding the date of the petition if such person can be found within the State. Notice shall also be given to such other persons as the court may designate."

SECTION 47. Section 334-60.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The court may adjourn or continue a hearing for failure to timely notify a spouse[,] or reciprocal beneficiary, guardian, relative, or other person determined by the court to be entitled to notice, or for failure by the subject to contact an attorney as provided in section 334-60.4(b)(7) if the court determines the interests of justice so require."

SECTION 48. Section 334-125, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notice of the hearing shall be:

- (1) Served personally on the subject of the petition pursuant to family court rules; and
- (2) Delivered personally or mailed by certified or registered mail, return receipt requested, deliverable to addressee only, to as many as are known to the petitioner of the subject's spouse[,] or reciprocal benefi-

ciary, legal parents, adult children, and legal guardian, if one has been appointed. Petitioner shall certify that such notices have been mailed, and to whom, but proof of receipt of such notices is not required. Notice shall also be served on any other person that the court designates.”

SECTION 49. Section 351-2, Hawaii Revised Statutes, is amended by amending the definition of “relative” to read as follows:

““Relative” means a victim’s spouse[,] or reciprocal beneficiary, parent, grandparent, stepparent, child, grandchild, stepchild, brother, sister, half brother, half sister, stepbrother, stepsister, or spouse’s or reciprocal beneficiary’s parents;”

SECTION 50. Section 352-13, Hawaii Revised Statutes, is amended to read as follows:

“**§352-13 Evaluation, counseling, training.** The director shall provide the opportunity for intelligence and aptitude evaluation, psychological testing and counseling, prevocational and vocational training, and employment counseling to all persons committed to the youth correctional facilities. Counseling services shall be available for the committed person’s family including a reciprocal beneficiary, during the term of commitment.”

SECTION 51. Section 353-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director or a designated agent may grant furloughs to committed persons with a minimum or lower security classification in any correctional facility of the department for the purpose of employment, social reorientation, education, or training, or any other valid purpose as determined by the director. Special out-of-state furloughs may be granted to those already otherwise furloughed, at no cost to the State, when death or critical illness or injury to the committed person’s immediate family including a reciprocal beneficiary, occurs. Any committed person who is engaged in private employment, by contract or otherwise, not under the immediate custody of the State shall not be considered an agent or employee of the State. Any moneys earned from employment by such person shall be used to satisfy a restitution order and to reimburse the State for the cost of room and board. If any earned moneys remain after these expenses have been paid, that amount shall be held in an individual account for the committed person.

When an inmate is granted a special out-of-state furlough, the director shall inform the authorities of the state to which the inmate is to be furloughed of the inmate’s arrival.”

SECTION 52. Section 386-34, Hawaii Revised Statutes, is amended to read as follows:

“**§386-34 Payment after death.** Where an employee is entitled to weekly income and indemnity benefits for permanent total or permanent partial disability and dies from any cause other than the compensable work injury, payment of any unpaid balance of the benefits to the extent that the employer is liable therefor, but not to exceed the amount prescribed under section 386-32(a) for other cases, shall be made to the employee’s dependents as provided herein. If, at the time of the death, the employee is entitled to any benefits from the special compensation fund, the benefits shall also be paid to the employee’s dependents as provided herein:

- (1) To a dependent widow [or], widower, or reciprocal beneficiary, for the use of the widow [or], widower, or reciprocal beneficiary, and the dependent children, if any. The director of labor and industrial relations may from time to time apportion such compensation among the widow [or], widower, or reciprocal beneficiary, and any dependent children.
- (2) If there be no dependent widow [or], widower, or reciprocal beneficiary, but one or more dependent children, then to such child or children to be divided equally among them if more than one.
- (3) If there be no dependent widow, widower, reciprocal beneficiary, or child, but there be a dependent parent, then to such parent, or if both parents be dependent, to both of them, to be divided equally between them; or if there be no such parents, but a dependent grandparent, then to such grandparent, or if more than one, then to all of them to be divided equally among them.
- (4) If there be no dependent widow, widower, reciprocal beneficiary, child, parent, or grandparent, but there be a dependent grandchild, brother, or sister, then to such dependent, or if more than one, then to all of them to be divided equally among them.
- (5) If there be no such dependents, the unpaid balance of the compensation shall be paid in a lump sum into the special compensation fund.”

SECTION 53. Section 386-41, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Funeral and burial allowance. Where a work injury causes death, the employer shall pay funeral expenses not to exceed ten times the maximum weekly benefit rate to the mortician and burial expenses not to exceed five times the maximum weekly benefit rate to the cemetery selected by the family including a reciprocal beneficiary or next of kin of the deceased or in the absence of such family including a reciprocal beneficiary or next of kin, by the employer. Such payments shall be made directly to the mortician and cemetery; provided that when the deceased has a pre-paid funeral and burial plan such payments for funeral and burial expenses, not to exceed the foregoing limits, shall be made directly to the surviving spouse or reciprocal beneficiary or the decedent’s estate if there is no surviving spouse[.] or reciprocal beneficiary.

(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 .6667 and not less than the minimum prescribed in the section divided by .6667.

To the dependent widow [or], widower, or reciprocal beneficiary, if there are no dependent children, fifty per cent.

To the dependent widow [or], widower, or reciprocal beneficiary, if there are one or more dependent children of the deceased, sixty-six and two-thirds per cent. The compensation to the widow [or], widower, or reciprocal beneficiary shall be for the use and benefit of the widow [or], widower, or reciprocal beneficiary and of the dependent children, and the director of labor and industrial relations from time to time may apportion the compensation between them in such way as the director deems best.

If there is no dependent widow [or], widower, or reciprocal beneficiary, but a dependent child, then to the child forty per cent, and if there is more than one dependent child, then to the children in equal parts sixty-six and two-thirds per cent.

If there is no dependent widow, widower, or reciprocal beneficiary, or child, but there 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 are dependent, then one-half of the foregoing compensation to each of them; if there is no dependent parent, but one or more dependent grandparents, then to each of them the same compensation as to a parent.

If there is no dependent widow, widower, or reciprocal beneficiary, child, parent or grandparent, but there is a dependent grandchild, brother, or sister, or two or more of them, then to 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 54. Section 386-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following persons, and no others, shall be deemed dependents and entitled to income, and indemnity benefits under this chapter:

A child who is (1) unmarried and under eighteen years, or (2) unmarried and under twenty years if the child is a full-time student at a high school, business school, or technical school, or unmarried and under twenty-two years if the child is a full-time undergraduate student at a college, or (3) unmarried and incapable of self-support, or (4) married and under eighteen years, if actually dependent upon the deceased;

The surviving spouse[,] or reciprocal beneficiary, if either living with the deceased at the time of the injury or actually dependent upon the deceased;

A parent or grandparent, if actually dependent upon the deceased;

A grandchild, brother, or sister, if (1) under eighteen years or incapable of self-support, and (2) actually and wholly dependent upon the deceased.”

SECTION 55. Section 386-43, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The weekly benefits to dependents shall continue:

To a surviving spouse[,] or reciprocal beneficiary, until death [or], remarriage, marriage, or entry into a new reciprocal beneficiary relationship with two years’ compensation in one sum upon remarriage[.], marriage, or entry into a new reciprocal beneficiary relationship.

To or for a child, (1) so long as unmarried, until attainment of the age of eighteen, or (2) so long as unmarried, until attainment of the age of twenty if the child is a full-time student at a high school, business school, technical school, or unmarried and under twenty-two years if the child is a full-time undergraduate student at a college, or (3) so long as unmarried, until termination of the child’s incapability of self-support, or (4) until marriage, except that in the case of a married child under eighteen, weekly benefits shall continue during the period of actual dependency until attainment of the age of eighteen.

To a parent or grandparent, for the duration, whether continuous or not, of such actual dependency, provided that the amount of the weekly benefits shall at no time exceed the amount payable at the time of death.

To or for a grandchild, brother, or sister, for the period in which he or she remains actually and wholly dependent until attainment of the age of eighteen or termination of the incapability of self-support.

(b) The aggregate weekly benefits payable on account of any one death shall not exceed the product of 312 times the effective maximum weekly benefit rate prescribed in section 386-31, but this limitation shall not apply with respect to benefits to a surviving spouse or reciprocal beneficiary who is physically or mentally incapable of self-support and unmarried as long as he or she remains in that

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condition and to benefits to a child and to benefits to an unmarried child over eighteen incapable of self-support as long as he or she is otherwise entitled to such compensation.”

SECTION 56. Section 388-4, Hawaii Revised Statutes, is amended to read as follows:

“**§388-4 Payment of wages to relatives of deceased employees.** Where an employee dies leaving any wages, vacation, or sick leave pay due the employee, the employer shall, within thirty days after such death, whether or not a personal representative has been appointed, pay the wages, vacation, or sick leave pay in an amount not exceeding \$2,000 to, and upon application by the surviving spouse or reciprocal beneficiary or, if none, by an adult child. The employer shall require the applicant to show proof of his or her relationship to the deceased by affidavit and to acknowledge receipt of the payment in writing. Any such payment shall discharge the employer to the extent thereof and the employer shall not be liable to the decedent’s estate. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.”

SECTION 57. Section 398-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 reciprocal beneficiary, or parent with a serious health condition.”

SECTION 58. Section 431:10-234, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10-234 Spouses’ and reciprocal beneficiaries’ right in life insurance policy.** (a) Every life insurance policy made payable to or for the benefit of the spouse or the reciprocal beneficiary of the insured, and every life insurance policy assigned, transferred, or in any way made payable to a spouse or reciprocal beneficiary, or to a trustee for the benefit of a spouse[,] or a reciprocal beneficiary, regardless of how the assignment or transfer is procured, shall, unless contrary to the terms of the policy, inure to the separate use and benefit of such spouse[,] or reciprocal beneficiary.

(b) Without the consent of one’s spouse[,] or reciprocal beneficiary, a married person or an individual who is registered as a reciprocal beneficiary, may contract, pay for, take out, and hold a policy on the life or health of one’s spouse, reciprocal beneficiary, or children, or against loss by such spouse, or reciprocal beneficiary, or children due to disablement by accident. Premiums paid on the policy by a married person or reciprocal beneficiary shall be held to have been that person’s separate estate, and the policy shall inure to the use and benefit of that person and that person’s children, free from any claim by the spouse, or reciprocal beneficiary, or others.”

SECTION 59. Section 431:10C-103, Hawaii Revised Statutes, is amended by amending the definitions of “no-fault benefits” and “no-fault insured” to read as follows:

“(10) (A) No-fault benefits, sometimes referred to as personal injury protection benefits, with respect to any accidental harm means:

- (i) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional, nursing, dental, optometric, ambulance, prosthetic services, products and accommodations furnished, and x-ray. The foregoing expenses may include any nonmedical remedial care and treatment rendered in accordance with the teachings, faith, or belief of any group which depends for healing upon spiritual means through prayer;
  - (ii) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation;
  - (iii) Monthly earnings loss measured by an amount equal to the lesser of:
    - (I) \$1,200 a month; or
    - (II) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity;
  - (iv) All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including, but not limited to:
    - (I) Expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed not for income but for the benefit of the person or the person's family including a reciprocal beneficiary up to \$800 a month;
    - (II) Funeral expenses not to exceed \$1,500; and
    - (III) Attorney's fees and costs to the extent provided in section 431:10C-211(a);

provided that the term, when applied to a no-fault policy issued at no cost under the provisions of section 431:10C-410(3)(A), shall not include benefits under items (i), (ii), and (iii) for any person receiving public assistance benefits.
- (B) No-fault benefits shall be subject to:
- (i) An aggregate limit of \$10,000 for services provided under section 431:10C-103(10)(A)(i) and (ii) and \$10,000 for services provided under section 431:10C-103(10)(A)(iii) and (iv) per person or such person's survivor including a reciprocal beneficiary where each applicable policy provides only the basic no-fault coverage;
  - (ii) An aggregate limit of the expanded limits where the insured has contracted for it under an optional additional coverage; or
  - (iii) The aggregate limit shall be subject to the application of benefits or transfer thereof as provided in section 431:10C-103(6).
- (11) No-fault insured means:
- (A) The person identified by name as insured in a no-fault policy complying with section 431:10C-301; and
  - (B) While residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of no-fault policy complying with this article:
    - (i) A spouse or reciprocal beneficiary or other relative of a named insured, and

- (ii) A minor in the custody of a named insured or of a relative residing in the same household with a named insured.  
A person resides in the same household if the person usually makes the person's home in the same family unit, which may include reciprocal beneficiaries, even though the person temporarily lives elsewhere."

SECTION 60. Section 432:1-104, Hawaii Revised Statutes, is amended by amending the definition of "mutual benefit society" to read as follows:

- "(2) Mutual benefit society is any corporation, unincorporated association, society, or entity:
  - (A) Organized and carried on for the primary benefit of its members and their beneficiaries and not for profit, and:
    - (i) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members' spouses or reciprocal beneficiaries or children, or
    - (ii) Making provision for the payment of any other benefits to or for its members,  
whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected from its members, and the payment of death benefits is made to the families[,] including reciprocal beneficiaries, heirs, blood relatives, or persons named by its members as their beneficiaries; or
  - (B) Organized and carried on for any purpose, which:
    - (i) Regularly requires money to be paid to it by its members, whether the money be in the form of dues, subscriptions, receipts, contributions, assessments or otherwise, and
    - (ii) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives[,] including reciprocal beneficiaries, or to any person or persons named by its members as their beneficiaries, or to any class of persons which includes or may include its members,  
whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons; or
  - (C) Organized and carried on for any purpose, whose requirements and provisions although not identical with, are determined by the commissioner to be substantially similar to, those enumerated in [[subparagraphs]] (A) and (B).

Participating in a prepaid legal service plan subject to chapter 488 shall not in itself make a corporation, unincorporated association, society, or entity a mutual benefit society and subject to this article."

SECTION 61. Section 443B-1, Hawaii Revised Statutes, is amended by amending the definition of "debtor" to read as follows:

"“Debtor” means any person or the person’s spouse[,] or reciprocal beneficiary, parent (if the person is a minor), guardian, executor, or administrator obligated or allegedly obligated to pay a debt.”



SECTION 62. Section 453-15, Hawaii Revised Statutes, is amended to read as follows:

“**§453-15 Who shall give consent to a postmortem examination.** A pathologist or any licensed physician or surgeon may conduct a postmortem examination when written consent thereto is given by whoever of the following assumes custody of the body for purposes of burial: father, mother, husband, wife, reciprocal beneficiary, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend or person, including a governmental agency, charged by law with the responsibility for the burial. If two or more such persons assume custody of the body, the consent of one of them is sufficient. The consent shall include the consent to the retention by the pathologist or licensed physician or surgeon who conducts the postmortem examination of tissues, including fetal material, of the body removed at the time of the postmortem examination to be used for necessary or advisable scientific investigation, including research, teaching, and therapeutic purposes.”

SECTION 63. Section 516-71, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided for in this section, for any sale of a leasehold residential lot, no later than ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract, 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[,] or reciprocal beneficiary, 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 ten calendar days to review, accept, or reject the terms of the lease.”

SECTION 64. Section 586-1, Hawaii Revised Statutes, is amended by amending the definition of “family and household members” to read as follows:

““Family and household members” means spouses or reciprocal beneficiaries, former spouses[,] or former reciprocal beneficiaries, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.”

SECTION 65. Section 663-1, Hawaii Revised Statutes, is amended to read as follows:

“**§663-1 Torts, who may sue and for what.** Except as otherwise provided, all persons residing or being in the State shall be personally responsible in damages, for trespass or injury, whether direct or consequential, to the person or property of others, or to their spouses[,] or reciprocal beneficiaries, children under majority, or wards, by such offending party, or the offending party’s child under majority, or by the offending party’s command, or by the offending party’s animals, domestic or wild; and the party aggrieved may prosecute therefor in the proper courts.”

SECTION 66. Section 706-670.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) As used in this section, the following terms have the following meanings:

“Offense against the person” means any of the offenses described in chapter 707 and includes any attempt to commit any of those offenses.

“Prisoner” or “parolee” means a person who has been convicted of an offense against the person.

“Surviving immediate family member” means a person who is a surviving grandparent, parent, sibling, spouse[,] or reciprocal beneficiary, child, or legal guardian of a deceased victim.

“Victim” means the person who was the victim of the offense against the person for which the prisoner or parolee was convicted.”

SECTION 67. Section 706-673, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) As used in this section, the following terms have the following meanings:

“Offense against the person” means any of the offenses described in chapter 707 and includes any attempt to commit any of those offenses.

“Prisoner” means a person who has been convicted of an offense against the person.

“Surviving immediate family member” means a person who is a surviving grandparent, parent, sibling, spouse[,] or reciprocal beneficiary, child, or legal guardian of a deceased victim.

“Victim” means the person who was the victim of the offense against the person for which the prisoner was convicted.”

SECTION 68. Section 707-769, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) If the owner of the property is the defendant’s spouse or reciprocal beneficiary, it is a defense to a prosecution for extortion under paragraph (1) of section 707-764 that:

- (a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and
- (b) The defendant and the defendant’s spouse or reciprocal beneficiary were living together at the time of the conduct.”

SECTION 69. Section 708-834, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) If the owner of the property is the defendant’s spouse[,] or reciprocal beneficiary, it is a defense to a prosecution for theft of property that:

- (a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and
- (b) The defendant and the defendant’s spouse or reciprocal beneficiary were living together at the time of the conduct.”

SECTION 70. Section 709-906, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member, or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of

abuse of a family or household member may, upon request, transport the abused person to a hospital or safe shelter.

For the purposes of this section, “family or household member” means spouses [or], former spouses, reciprocal beneficiaries, former reciprocal beneficiaries, parents, children, and persons jointly residing or formerly residing in the same dwelling unit.”

SECTION 71. Section 801D-2, Hawaii Revised Statutes, is amended by amending the definition of “surviving immediate family members” to read as follows:

““Surviving immediate family members” means surviving grandparents, parents, siblings, spouse, reciprocal beneficiary, children, and any legal guardian of the homicide victim.”

SECTION 72. Any proposed health insurance coverage provided pursuant to this Act shall be exempt from the provisions of part IV of chapter 23, Hawaii Revised Statutes.

SECTION 73. The auditor shall conduct a “closed claim” study to assess the fiscal impacts of providing reciprocal benefits under workers’ compensation, public health fund, public employees’ retirement, and prepaid health insurance provisions. The auditor shall include in the report, data collected from the appropriate state agencies, indicating the number of claims made under each benefit category and the total fiscal impacts upon the State of each benefit category. The auditor shall submit a report to the legislature at least twenty days prior to the convening of the 1999 regular session.

SECTION 74. Notwithstanding any other law to the contrary, the rights and benefits extended by this Act shall be narrowly interpreted and nothing in this Act shall be construed nor implied to create or extend rights or benefits not specifically provided herein.

SECTION 75. 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 76. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>5</sup>

SECTION 77. This Act shall take effect on July 1, 1997.

(Became law on July 8, 1997, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

#### Notes

1. Comma should not be underscored.
2. “Or” should be underscored.
3. “An” should be underscored.
4. So in original.
5. Edited pursuant to HRS §23G-16.5.

# PROPOSED CONSTITUTIONAL AMENDMENTS

## S.B. NO. 209

A Bill for an Act Proposing an Amendment to Article VII, Section 3, of the Constitution, to Provide for the Appointment of a Tax Review Commission Every Ten Years.

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

SECTION 1. The purpose of this Act is to propose an amendment to Article VII, section 3, of the Constitution of the State of Hawaii, to change the appointment of a tax review commission from every five years to every ten years starting in the year 2005, in order to give the legislature sufficient time to consider its recommendations.

SECTION 2. Article VII, section 3, of the Constitution of the State of Hawaii is amended to read as follows:

### “TAX REVIEW COMMISSION

**Section 3.** There shall be a tax review commission, which shall be appointed as provided by law on or before July 1, [1980,] 2005, and every [five] ten years thereafter. The commission shall submit to the legislature an evaluation of the State’s tax structure, recommend revenue and tax policy and then dissolve.”

SECTION 3. The question to be printed on the ballot shall be as follows:

“Shall a tax review commission be appointed every ten years, instead of every five years, starting in the year 2005?”

SECTION 4. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

SECTION 5. This Act shall take effect upon its approval,<sup>1</sup> upon compliance with Article XVII, section 3, of the Constitution of the State of Hawaii.

#### Note

1. So in original.

## H.B. NO. 117

A Bill for an Act Proposing a Constitutional Amendment Relating to Marriage.

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

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii, to clarify that the legislature has the power to reserve marriage to opposite-sex couples.

The legislature finds that the unique social institution of marriage involving the legal relationship of matrimony between a man and a woman is a protected relationship of fundamental and unequalled importance to the State, the nation, and society. The legislature further finds that the question of whether or not the State

## PROPOSED CONSTITUTIONAL AMENDMENTS

should issue marriage licenses to couples of the same sex is a fundamental policy issue to be decided by the elected representatives of the people. This constitutional measure is thus designed to confirm that the legislature has the power to reserve marriage to opposite-sex couples and to ensure that the legislature will remain open to the petitions of those who seek a change in the marriage laws, and that such petitioners can be considered on an equal basis with those who oppose a change in our current marriage statutes.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be designated and to read as follows:

### “MARRIAGE

**Section 23.** The legislature shall have the power to reserve marriage to opposite-sex couples.”

SECTION 3. The question to be printed on the ballot shall be as follows:

“Shall the Constitution of the State of Hawaii be amended to specify that the legislature shall have the power to reserve marriage to opposite-sex couples?”

SECTION 4. New constitutional material is underscored.<sup>1</sup>

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

#### Note

1. Edited pursuant to HRS §23G-16.5.

**COMMITTEE REPORTS  
ON BILLS ENACTED  
AND ON  
PROPOSED CONSTITUTIONAL AMENDMENTS**

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**TABLES SHOWING EFFECT  
OF ACTS**

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**GENERAL INDEX**

**COMMITTEE REPORTS ON BILLS ENACTED  
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HB120	338	1063, 1507	10, 1065	110
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### **Proposed Constitutional Amendments**

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SB209	Const Am	497, 747	1293, 1700	

## TABLES SHOWING EFFECT OF ACTS

Nineteenth State Legislature  
1997 Regular Session

Key: Am = Amended — = Chapter or section number to  
N = New be assigned in HRS  
R = Repealed Supplement  
Ree = Reenacted

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8-11	Am	30	41D-3	Am	251
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11-153, 155	Am	61			
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11-193	Am	2	46-1.5, 4, 15.1, 15.2	Am	350
		375	53-1, 6, 17, 22	Am	350
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11-205.5	Am	190	76-16	Am	350
11-205.6, 206, 208, 212 to 214, 217, 219, 221	Am	375	78-13	Am	355
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26-12	Am	202	87-22.3, 22.5, 23	Am	276
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29-_____	N	168	88-74	Am	211
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36-21	Am	47	88-75	Am	374
36-24	Am	350	88-76	Am	212
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88F-6	Am	171	163D-17	Am	190
97-6	Am	264	171-2, 18.5	Am	350
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		190	171-74, 99	Am	383
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103D-201	Am	190	183D-22	Am	293
		352	184-___	N	242
103D-202 to 205, 208, 211, 213, 214, 302, 303	Am	352	188-50	Am	293
103D-304	Am	21	189-10, 11	Am	307
		352	195-6.6	Am	190
103D-305, 306, 308, 310 to 313, 321 to 323	Am	352	195D-___ (11 secs)	N	380
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		352	195D-4	Am	380
103D-325, 401	Am	352			381
103D-407	Am	92	195D-5, 6, 7	Am	380
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247-3	Am	383	291-___	N	308
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			458-6.6, 6.8, 7	R	301
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